



Attracting and Protecting Seasonal Workers from third countries in the EU – contribution of the Slovak Republic

EMN Study – Questionnaire Form
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Preface

The aim of the study prepared in the questionnaire format is to provide information and overview on key changes and activities related to seasonal migration in the SR in the years 2016 to 2019, i.e. in the period of time when the SR transposed 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 (hereinafter referred to as the "Seasonal Workers Directive"). The study introduces the current situation as well as changes and activities related to legislative, institutional, political and practical aspects of third-country national seasonal workers' admission to the Slovak labour market. It analyses the profile of seasonal workers and sectors of their employment (also on the basis of statistics available), measures for attracting them and the level of saturation of the labour market needs by these workers, as well as the application of the protection aspects of the Seasonal Workers Directive. Due to the pandemic situation at the time of drafting of this study, the study also addresses the impact of the pandemic on seasonal workers employment in one of the sections. The study will contribute to the European Commission's Implementation Report concerning the said Directive, planned for 2020.

Methodologically, this study relies in particular on secondary sources of information, when mainly relevant legislative and information documents were used as the basis for the drafting of this study. Replies to the questionnaire/email questions by state and non-state authorities and institutions involved also served as the source of information and statistics¹.

Based on the questionnaires from each EU Member State, the European Commission prepares a synthesis report covering the main findings from the Members States. The questionnaire form of the study from the Slovak Republic in Slovak and English language (and later on the synthesis report) are available on the Slovak EMN National Contact Point website www.emn.sk.

¹ Replies were submitted by the following institutions/authorities: Ministry of Labour, Social Affairs and Family of the SR, Ministry of Agriculture and Rural Development of the SR, Ministry of Foreign and European Affairs of the SR, Ministry of Finance of the SR, Central Office of Labour, Social Affairs and Family, Bureau of the Border and Foreign Police of the Police Force Presidium, National Labour Inspectorate and the Federation of Employers' Associations of the SR.

List of abbreviations

BBFP – Bureau of Border and Foreign Police of the Police Force Presidium
Central Office/COLSAF - Central Office of Labour, Social Affairs and Family
Coll. – Collection of Laws of the Slovak Republic
EC – European Commission
EEA – European Economic Area
EMN – European Migration Network
EU – the European Union
IOM – International Organization for Migration
Labour Office - Office of Labour, Social Affairs and Family
MoARD SR – Ministry of Agriculture and Rural Development of the Slovak Republic
MoLSAF SR – Ministry of Labour, Social Affairs and Family of the Slovak Republic
NLI – National Labour Inspectorate
OSCE – Organization for Security and Co-operation in Europe
RPHA - Regional Public Health Authority
SR – Slovak Republic

Summary

The European Migration Network (EMN) study "Attracting and Protecting Seasonal Workers from third countries in the EU" was selected for elaboration by the EMN Steering Board within the scope of the 2020 Work Programme. For each of the Member States, the study is drafted using the same template in the form of answers to questions below. Based on the national studies the European Commission (EC) will prepare a synthesis report drawing out key findings from the Member States.

The study target group comprises mainly of third country nationals (nationals of the countries outside the EU and EEA)² authorised to reside in the territory of the Slovak Republic for the purpose of seasonal employment within the meaning of the Seasonal Workers Directive.

Below is the overview of key findings in each of the sections of the study.

Section 0 looks at the impact of the spreading of communicable COVID-19 disease on third-country national seasonal workers employment in the SR, as well as on the measures adopted by the Government of the SR related to the crisis situation declared in the SR on 12 March 2020, which continues at the time of drafting of this study.

In general, seasonal workers admission policy of the SR applicable to third-country nationals did not change during the period in question. The Slovak Republic, however, promptly reacted to the crisis caused by the pandemic not only by amendments to the instruments for admitting foreigners from third countries to the SR but also by adopting practical measures impacting the functioning of state authorities fulfilling tasks in the field of migration – in the field of border protection and granting residence to third-country nationals. For example, validity of temporary residence permits and of work permit of those nationals of third countries affected by the crisis who entered the territory of the SR legally before the crisis and the validity of their permits would expire during the crisis was extended for two months after the crisis situation will be revoked. As of April 2020, exceptions could have been applied within the sector of agriculture concerning seasonal agricultural works involving mutual provision of services among agricultural businesses located within neighbouring member states that require cross-border transportation of agriculture equipment and workers especially for the purpose of sowing and harvesting; as well as exceptions concerning operators of agriculture equipment and mechanisms. Foreigners who entered the territory of the SR legally but did not have residence granted, are/were entitled to stay in the territory of the Slovak Republic for one month after the crisis situation will be revoked. In practice, worsened conditions affecting the international migration of workers have been recorded. Seasonal workers had to go into state quarantine and only on the basis of negative tests were they admitted onto the territory of the SR.

Section 1 discusses the profile of seasonal workers in Slovakia – their country of origin, the sectors they work in, the length of their stay, etc.

Available data collected by the SR (information on the country of origin and sex of seasonal workers) show that seasonal work is most frequently (in the context of countries outside the EU/EEA) performed by citizens of Serbia and Ukraine. In the monitored period men accounted for approx. 74% and women for approx. 26% of the total number of legally employed seasonal workers. To enter and stay in the SR seasonal workers mostly use the legislative instruments allowing for short-term stays for the purpose of seasonal employment such as the visa-free regime or Schengen visa for the purpose of seasonal employment together with work permit which includes labour market test. The vast majority of seasonal workers work in the manufacturing sector, which is one of the four sectors utilising seasonal work in the SR. With respect to the time of year (spring, summer, autumn), an increased need for seasonal employment has been communicated mainly in the sector of agriculture in order to ensure harvesting of crops. Information on the age and qualification structure of seasonal workers is not yet collected in the SR.

The Slovak Republic does not yet have instruments and mechanisms to identify the profile of third-country nationals and, thus, it is not possible to assess effectiveness, effect, relevance, aptness and sustainability of labour mobility policies. One of the tasks of the Strategy of Foreigners Labour Mobility is to ensure collection of data concerning employment of third-country nationals in order to facilitate better identification of the profile of third-country national seasonal workers.

Section 2 summarizes and analyses measures to attract seasonal workers and the level of saturation of the labour market needs in the Member State by these workers. It examines strategic documents and legal instruments for their implementation while trying to communicate the positions of competent central state authorities and employers' representatives formed by the practice.

The Slovak Republic attempts to partially meet its labour market needs by admitting seasonal workers from third countries, which is proven by the thorough transposition of the Seasonal Workers Directive or by the fulfilling of the tasks resulting from the strategic material entitled "*Migration Policy of the Slovak Republic: Perspective until*

² A third-country national is every person who is neither the state citizen of the Slovak Republic nor the citizen of any of the EU Member States, of another EEA Contracting State or of the Swiss Confederation; a third-country national shall mean also a stateless person (Act No. 404/2011 Coll. on Residence of Foreigners and on changes and amendments to some acts).

2020", which, within the scope of controlled economic migration, mentions seasonal employment as one of the possibilities for labour market development. Another specific strategic document which includes proposals for measures with direct or indirect impact on the field of seasonal employment is the "*Strategy of Foreigners Labour Mobility in the Slovak Republic Until 2020, With an Outlook Until 2030*". Said measures reflect employers' needs concerning seasonal work in particular in the form of simplification of procedures and shortening of time limits in related proceedings, even if it concerns repeated entry of seasonal workers to the territory of the SR. According to the employers' representatives, third-country seasonal workers partially help to meet employers' needs in the Slovak labour market, but more of them could work especially in agriculture during the harvest season.

In **Section 3** the study describes and analyzes protection aspects of the Seasonal Workers Directive and rights of seasonal workers in Slovakia as defined in the legislation and recognized by relevant state authorities.

Seasonal workers' legal status concerning their rights in the field of social insurance, taxes and education reviewed by this study equals that of the nationals of the SR. Due to the short-term nature of seasonal employment stays (maximum of 180 days within 12 consecutive months), however, due to the conditions of the entitlement (which are the same for state citizens of the SR) seasonal workers have limited access to maternity benefit. Similarly, due to the entitlement conditions (which are also the same for state citizens of the SR) seasonal workers have limited access to unemployment benefits, although this limitation is not explicitly stipulated in the Act on Social Insurance. The minimum standard of ensuring protection of seasonal workers requirements defined in the Directive (pertaining to contracts, adequate salary, adequate accommodation, working conditions) have been transposed into the Slovak legal system from the Seasonal Workers Directive.

A general monitoring system within the scope of which employment of seasonal workers from third countries is monitored too is in place in the SR. If a foreigner performing work in the territory of the Slovak Republic considers that his/her rights or legally protected interests were affected by non-compliance with employment conditions, he/she can file a complaint with competent authorities or seek legal protection. There are, however, some practical obstacles in the area of execution of said rights, such as insufficient knowledge of the Slovak language, dependency on the employer and the fear of reaching for help resulting from said dependency, or insufficient access to legal aid and legal representation.

Section 4 draws conclusions from the key findings and identifies needs, challenges and their practical application in the area.

The study also includes the **statistical annex** which contains data available from Eurostat and selected statistics collected at the national level.

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 ☐

In general, the seasonal workers admission policy applicable to third-country nationals did not change; no quotas are applied following the situation caused by COVID-19 and the economic sectors in which seasonal employment of third-country nationals is allowed did not change either. Admission policy, however, changed for the duration of the declared state of crisis and for the period of two months after its end, as the possibilities of TCNs' entering the territory of the SR, TCNs' leaving of the territory of the SR, legal extension of stay and the possibility of applying for temporary stay for the purpose of seasonal employment were impacted as follows:

The Slovak Republic has reacted to the crisis caused by the spreading of the novel communicable COVID-19 disease promptly not only by amendments to the instruments for admitting foreigners to the SR but also by adopting practical measures impacting the functioning of state authorities fulfilling tasks in the field of migration – in the field of border protection and granting residence to third-country nationals.

On 7 April 2020, the National Council of the Slovak Republic passed the Act No. 73/2020 Coll. amending and supplementing some acts within the purview of the Ministry of Interior of the Slovak Republic (hereinafter referred to as the "Ministry of Interior") in relation to COVID-19 (hereinafter referred to as the "Act No. 73/2020 Coll.").³ This Act entered into force on 9 April 2020.⁴

The abovementioned Act No. 73/2020 Coll. introduced into the Act on Residence of Foreigners and on changes and amendments to some acts⁵, inter alia, a transitional provision⁶ related to the crisis situation caused by COVID-19. Within the meaning of said provision⁷, most importantly, regarding the validity of the temporary stay of the third-country nationals whose residence would have otherwise expired during the extraordinary situation, state of emergency or state of extreme emergency declared in relation to COVID-19 (hereinafter referred to as the "crisis situation") or if its validity would have expired within one month after the crisis situation is revoked. The validity period and, hence, also the validity of stays was extended for two months after the crisis situation is revoked for all persons concerned. This measure granted third-country nationals temporary protection against losing their right to stay in the SR that would be caused not through their own fault but due to force majeure.

At the same time, the Act⁸ for the duration of the crisis situation lays down the changes to the residence of those third-country nationals who entered the territory of the SR legally before the declaration of the crisis situation (e.g. under visa-free regime or as Schengen visa holders) and did not have residence granted pursuant to said Act for the period exceeding 90 days. Within the meaning of this provision, concerned foreigners are entitled to stay in the territory of the Slovak Republic for one month after the crisis situation is revoked.⁹

It can be assumed in both cases that the abovementioned provisions could have a direct impact on third-country nationals with authorisation for the purpose of seasonal work in the SR. However, it is impossible to acquire more detailed data concerning this specific category of third-country nationals.

A practical measure against the spreading of the novel communicable COVID-19 disease which has had and will continue to have an impact on the admission of seasonal workers from third-countries to Slovakia in 2020 was the temporary closing of the Slovakia's diplomatic missions abroad, and their subsequent limited operation for the duration of the crisis situation. Foreign Police Departments operated in a limited regime in line with the measures set by the Public Health Authority of the SR.¹⁰ Based on the Government of the Slovak Republic Decision concerning the prevention of entry of foreign nationals into the territory of the SR as part of the measures against the spreading of the COVID-19 disease, until further notice, Foreign Police Departments (hereinafter also referred to as "police departments") and diplomatic missions of the SR abroad did not accept Schengen visa or Slovak visa applications or applications for granting temporary residence during the crisis situation. This limitation did not apply to applications for the renewal of temporary residence already granted and any exceptions¹¹ (such as

³ The text of the of Act No. 73/2020 Coll. in the Slovak language is available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/73/20200409>. (consulted on 01/06/2020)

⁴ Source: BBFP Questionnaire (of 30/06/2020).

⁵ Act No. 404/2011 Coll. on Residence of Foreigners and on changes and amendments to some acts.

⁶ Provision under Article 131i of the Act on Residence of Foreigners.

⁷ Provision under Article 131i par. 1 of the Act on Residence of Foreigners.

⁸ Provision under Article 131 par. 2 of the Act on Residence of Foreigners.

⁹ The date of crisis situation termination in the SR was not known at the time this study was written

¹⁰ Source: BBFP Questionnaire (of 30/06/2020).

¹¹ Exceptions laid down in provisions under Article 131i par. 3 through to 11 of the Act on Residence of Foreigners.

submission of the documents required by law necessary for the proceeding of such application or suspending the relevant periods pursuant to said law act) as well as to applications related to changes of employment .

On 13 May 2020 the National Council of the Slovak Republic passed the bill¹² amending, in Article III, the Act No. 5/2004 Coll. on Employment Services and on changes and amendments to some acts, as amended (hereinafter also referred to as the "Act on Employment Services") in order to align it with the Act No. 73/2020 (the latest amendment to the Act on Residence of Foreigners) and its section concerning the maintaining of validity of temporary residences granted to third-country nationals. The amendment stipulates that validity of the confirmation of the possibility to fill in a vacancy which corresponds to a highly qualified employment, confirmation of the possibility to fill in a vacancy and employment permits which would otherwise have expired during the crisis situation or within one month after the crisis situation is revoked shall be extended to two months after the crisis situation related to COVID-19 is revoked.¹³

According to the Ministry of Agriculture and Rural Development of the SR (hereinafter referred to as the "Ministry of Agriculture"), the agricultural sector has been impacted by the worsened conditions for the international migration of workers. Seasonal workers had to go into state quarantine and only on the basis of negative tests were they admitted onto the territory of the SR.¹⁴

During the meeting of the Central Crisis Staff of the Slovak Republic held on 3 April 2020, the Minister of Agriculture requested allowing of "free movement of foreign experts who are needed in agricultural and food-processing sectors". Third-country nationals could apply for a permission to enter the territory of the SR provided their stay within the territory of the SR is necessary and provided they have applied to Public Health Authority of the SR to grant them an exception.¹⁵

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

Legislative measures specifically concerning seasonal employment were not adopted, yet the measures mentioned in section a. above could/did impact also third-country seasonal workers' situation. For more information please refer to section a. above.

Pursuant to the Recommendation of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings and as a result of the crisis situation, the National Labour Inspectorate contemplates carrying out systematic inspections in high-risk sectors, focusing specifically on agriculture, as soon as business operations are re-launched.¹⁶

In the Slovak Republic, exceptions¹⁷ have been applied within the agricultural sector since April 2020 concerning seasonal agricultural workers involving mutual provision of services among agricultural businesses within neighbouring member states that require cross-border transportation of agriculture equipment and workers especially for the purpose of sowing and harvesting; as well as exceptions concerning operators of agriculture equipment and mechanisms such as self-propelled harvesters, combine harvesters or special harvesting machines.

¹² Act amending the Act No. 461/2003 Coll. on Social Insurance, as subsequently amended, amending and supplementing some acts.

¹³ Source: MoLSAF SR Questionnaire (of 19/05/2020).

¹⁴ Source: MoARD SR Questionnaire (of 02/06/2020).

¹⁵ Source: <http://www.sppk.sk/clanok/3214> and Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak; available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC0330%2803%29>. Entry application form was published at the MoARD SR website <https://www.mpsr.sk/ziadost-o-vstup-servisnych-pracovnikov-zo-zahranicia/439>. Exceptions were granted in accordance with the "Measures of the Public Health Authority of the Slovak Republic in case of public health threat" no. OLP/3012/2020 of 4 April 2020. Consulted on 01/06/2020.

¹⁶ Source: NLI Questionnaire (of 15/05/2020).

¹⁷ Within the meaning of the "Measures of the Public Health Authority of the Slovak Republic in case of public health threat" no. LP/3012/2020 of 4 April 2020 (in the Annex) Clause no. 6.: "In justified cases not included in Clauses 4 and 5 the Public Health Authority of the Slovak Republic may grant exception from Clauses 1 to 3 on the basis of a justified written request of a member of Government of the Slovak Republic within its scope of authority. Granting of an exception for entering the Slovak Republic is conditioned by subjecting oneself to laboratory diagnostics of COVID-19 at the border crossing, immediately after crossing the state border."

Section 1: Profile of seasonal workers

Note: All questions in this section refer to seasonal workers covered by the Directive, except for questions 2b, 11, 12 and 13.

The Slovak Republic does not yet have instruments and mechanisms to identify the profile of third-country nationals and, thus, it is not possible to assess the effectiveness, effect, relevance, aptness and sustainability of labour mobility policies.¹⁸

One of the challenges and tasks of the 2018 Strategy of Foreigners Labour Mobility in the Slovak Republic (which is discussed in more details in Question no. 14) is to develop instruments for collecting data concerning third-country nationals and, by doing so, form predispositions for better identification of the profile of third-country national seasonal workers.¹⁹ Within the context of this task²⁰, the Central Office of Labour, Social Affairs and Family (hereinafter referred to as the "Central Office"), National Labour Inspectorate (hereinafter also referred to as "NLI") and the Institute for Labour and Family Research in cooperation with the Statistical Office of the SR have undertaken to prepare and collect data concerning the following since 2019:

- a) third-country nationals' employment rate (disaggregated by age and sex, education level, economic activity and classification of jobs);
- b) third-country nationals' unemployment rate (disaggregated by age and sex);
- c) number of third-country nationals employed illegally (disaggregated by age and sex);
- d) types of contracts concluded with third-country nationals (temporary, seasonal or permanent contracts).

More detailed data available are provided below individually for each question. Individual answers are based on the Eurostat data published for 2018 as confirmed by the Bureau of the Border and Foreign Police (hereinafter also referred to as "BBFP") which is the Eurostat's Slovak National Contact Point for statistical data concerning seasonal workers.²¹

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

Yes ☒

No ☐

The Slovak Republic transposed provisions stipulated in the Seasonal Workers Directive by means of two main transpositional norms, namely the Act on Residence of Foreigners and the Act on Employment Services, as well as through a number of specific legal norms laying down further details related to the seasonal employment of third-country nationals in the SR. Authorisation to work in the SR as a seasonal worker can be sought pursuant to the two main transpositional norms specified above (with the exception of the period of duration of the state of emergency declared due to the spreading of the communicable COVID-19 disease when their application was suspended).

The SR admits third-country national seasonal workers in accordance with the Seasonal Workers Directive either for short periods of stay not exceeding 90 days (with visa granted or under visa-free regime and with granted work permit) or for longer stays exceeding 90 days by granting the applicants temporary residence for the purpose of seasonal employment (for maximum period of 180 days).

Seasonal employment definition is governed by the Act on Employment Services²². For the purpose of said act, seasonal employment shall mean a type of activity execution of which does not exceed 180 days in the course of 12 consecutive months and that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly higher.

The list of seasonal employment sectors is governed by a generally binding regulation issued by the Ministry of Labour, Social Affairs and Family of the SR (hereinafter also referred to as the "Ministry of Labour") (for more information please see Question no. 2).

¹⁸ This answer covers the state of data and information on the profile of seasonal workers at the time of drafting of this study in May 2020.

¹⁹ Available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2018-663> (consulted on 23/05/2020).

²⁰ Clause 24 of the Strategy of Foreigners Labour Mobility in the Slovak Republic.

²¹ The SR has been submitting the statistics to Eurostat since 2017 (first reference year) and they are a combination of information from two sources: the first source is the ECU IS (translator's note: ECU IS stands for the "Registry of Foreigners Permitted to stay in the Slovak Republic" Information System) of the BBFP, from which data is drawn on the residence permits issued for the purpose of "Seasonal Work" where the length of stay exceeds 90 days; and the second source is the registry of the Central Office of Labour, Social Affairs and Family, from which data is drawn on the residence permits issued for the purpose of "Seasonal Employment" where the length of stay does not exceed 90 days. (Source: BBFP Questionnaire on 15/05/2020 and additional data on 01/07/2020).

²² Provisions under Article 22 par. 5 of Act on Employment Services.

2. What are the sectors covered by the Seasonal Workers Directive in your Member State?²³

In Slovakia, the Seasonal Workers Directive applies to sectors stipulated in the Decree of the Ministry of Labour, Social Affairs and Family of the Slovak Republic No. 190/2017 Coll. of 27 June 2017 establishing the list of seasonal employment sectors.²⁴ Within the meaning of this Decree, the following four sections divided by economic activity classification represent seasonal employment sectors:

Section A – Agriculture, forestry and fishing

Section C – Manufacturing

Section F – Construction

Section I – Hospitality services.

Labour Offices are granting work permits for seasonal work or confirmation on the possibility to fill the vacant position for employments falling under the above stated sections and which fulfill the criteria of seasonal work. In the statistics of the Central Office, however, the SK NACE code of the prevailing economic activity of the employer is followed.

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

According to Eurostat data (see Statistical Annex) and to the information provided by BBFP, in 2018 seasonal workers were mostly employed in the manufacturing sector.²⁵

Statistical data of the Central Office for years 2018 and 2019 list following professions according to the SK ISCO-08 classification:²⁶

Year 2018:

8212 - Electrical and Electronic Equipment Assemblers	1283
9329 - Manufacturing Labourers Not Elsewhere Classified	151
8142 - Plastic Products Machine Operators	131
8211 - Mechanical Machinery Assemblers	105
7212 - Welders and Flame Cutters	104
7112 - Bricklayers and Related Workers	81

Year 2019:

8211 - Mechanical Machinery Assemblers	580
8142 - Plastic Products Machine Operators	306
8212 - Electrical and Electronic Equipment Assemblers	246
9211 - Crop Farm Labourers	104
9329 - Manufacturing Labourers Not Elsewhere Classified	82
9214 - Garden and Horticultural Labourers	79
8219 - Assemblers Not Elsewhere Classified	76

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

Yes ☐

No ☒

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

Of the total number of seasonal workers in 2018 (see Statistical Annex), the top 5 countries of origin were: Serbia (1,098), Ukraine (962), Georgia (119), North Macedonia (87) and Bosnia and Herzegovina (79). Serbian nationals are represented almost exclusively in the manufacturing sector. Ukrainian nationals work in a number of sectors, however, the majority of them also work in the manufacturing sector.²⁷

4. What was the main age group of seasonal workers who received an authorisation in 2018 in your Member State?²⁸

²³ 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 requires.

²⁴ Available at: www.slov-lex.sk/pravne-predpisy/SK/ZZ/2017/190/20170718 (consulted on 01/07/2020).

²⁵ Source: Eurostat – Study Statistical Annex; BBFP Questionnaire (of 15/05/2020).

²⁶ Source: Central Office Questionnaire (of 19/05/2020).

²⁷ Source: Eurostat – see Statistical Annex; BBFP Questionnaire (of 15/05/2020).

²⁸ Please refer to the following age groups in your answer: 15-19; 20-24; 25-29; 30-34; 35-39; 40-44 etc.

Age groups are not included in the statistical datasets submitted to Eurostat. This information is not available.²⁹

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

The share of men among seasonal workers in 2018 was 74%, while women accounted for 26%. The higher share of men among seasonal workers is mainly linked to the prevalence of economic sectors C – Manufacturing and F – Construction where mostly men are employed.³⁰

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

Yes ☒

No ☐

The minimum salary in the SR is governed by the Act No. 663/2007 Coll. on Minimum Salary as subsequently amended and by the annually adopted Implementing Regulation of the Government of the SR concerning said act, which sets the minimum monthly salary amount for the given calendar year. In 2018, the minimum salary was set as 480 EUR. The minimum salary for the year 2019 was 520 EUR and for the year 2020 it was 580 EUR.

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

Information on average/minimum salary of third-country national seasonal workers in the SR has not been purposefully collected until now (see the introduction to Chapter 1), hence it is unavailable.

For the purpose of this Study, partial information on the average salary of forestry workers in 2018 has been provided. Service providers employ mainly seasonal labourers whose average salary was 639 EUR.³¹

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

BBFP does not have data concerning the average duration of stay of third-country nationals with visas or those granted temporary residence.³²

In 2018 the most frequently occurring duration of stay of third-country national seasonal workers was 1-90 days.³³ Thus to enter and stay in the SR the seasonal workers in general (officially) use mainly the instruments allowing short-term stays for the purpose of seasonal employment within the meaning of Art. 12 par. 1 of Seasonal Workers Directive, i.e. either a visa-free regime or visa issued for the purpose of seasonal work and work permit for the purpose of seasonal employment. Compared to the negligible numbers of temporary residence permits issued for the purpose of seasonal employment for the duration exceeding 90 days (tens of people annually at most), represents thus the regime for the period of up to 90 days (based on the work permit for the purpose of seasonal employment issued by the relevant Office of Labour, Social Affairs and Family) an instruments by using of which the applicant avoids another time consuming procedure and avoids paying fees for the applications for temporary residence permits.³⁴

Falling outside of the scope of Seasonal Workers Directive may be those foreigners who opted for the possibility to apply for temporary residence for the purpose of employment, which is granted for the period of 2 years, rather than apply for temporary residence for the purpose of seasonal employment, which is granted for the maximum of 180 days in the course of 12 consecutive months. In 2019 a total of 12,652 temporary residence permits for the purpose of employment were granted or renewed to Ukrainian nationals and 3,943 such residences were granted or renewed to Serbian nationals. As of the end of 2019, 15,580 Ukrainians and 5,455 Serbs had valid temporary residence for the purpose of employment.³⁵

In this respect and in relation to Serbia and Ukraine, it is important to stress that the legal regulation concerning the temporary residence of "Slovaks Living Abroad", accessible to foreigners who can prove their Slovak ancestry, may play a certain role. Compared to other types of residence, this type of residence permit can be gained more easily and it allows for a longer duration of stay and a more advantageous legal status (in case of employment no work permit and labour market test is needed) than the permits designed specifically for seasonal work. The

²⁹ Source: BBFP Questionnaire (of 15/05/2020).

³⁰ Source: Eurostat – see Statistical Annex; BBFP Questionnaire (of 15/05/2020).

³¹ Source: MoARD SR Questionnaire (of 02/06/2020).

³² Source: BBFP Questionnaire (of 15/05/2020).

³³ Source: Eurostat – see Statistical Annex; BBFP Questionnaire (of 15/05/2020).

³⁴ Source: Response from the BBFP (of 30/06/2020).

³⁵ Source: BBFP statistics.

number of Serbs who were granted this type of temporary residence or renewed their existing one in 2019 is relatively high – 1,628 residence permits. In the same year this residence type was gained also by 683 Ukrainians.

Consequently, types of temporary residence permits other than those specifically meant for seasonal work can also be used in line with the valid legislation for the purpose of seasonal employment.

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

Yes ☒

No ☐

The Ministry of Labour did not register increased need for seasonal workers during any particular period of the year.³⁶

However, the Federation of Employers' Associations of the SR registered a higher need declared by its members operating in various sectors most of the year (in spring, summer and autumn).³⁷

Media also reported on the Slovak Agriculture and Food Chamber declaring an increased need for workers in agriculture in order to secure harvesting of crops. In its statements, the Slovak Agriculture and Food Chamber declares that even in spite of the continuing crisis situation some extra 8,000 seasonal workers will be needed in Slovakia during the harvest period of 2020.³⁸ Harvesting of crops in Slovakia takes place mainly at the end of spring and beginning of summer. However, following the rapid decline in the manufacturing industry and emerging economic crisis due to the COVID-19 outbreak, the number of registered unemployed citizens at the Offices of Labour is raising. The Central Office expects that they will take on the seasonal jobs and that in this way the need for these types of employments will be covered.³⁹

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 ☒

Information on skills of third-country national seasonal workers in the SR have not been purposefully collected until now (see the introduction to Chapter 1) and neither is such information monitored by the Central Office⁴⁰, yet the data concerning the highest qualification level should start being processed pursuant to long-term measure 24 of the Strategy of Foreigners Labour Mobility in the Slovak Republic.

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 ☒

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 ☐

³⁶ Source: MoLSAF SR Questionnaire (of 19/05/2020).

³⁷ Source: Federation of Employers' Associations of the SR's e-mail response (of 21/05/2020).

³⁸ Available at: <https://www.ta3.com/clanok/1180246/sezonni-zamestnanci-budu-zrejme-chybat-obavaju-sa-farmari.html> (consulted on 01/06/2020).

³⁹ Source: Response from Central Office (of 30/06/2020).

⁴⁰ Source: Central Office Questionnaire (of 19/05/2020).

In recent years, the National Labour Inspectorate has been relatively frequently finding violations of the ban on illegal employment of third-country nationals who fail to meet eligibility conditions for employment stipulated in Article 21 par. 1 of Act on Employment Services, or who are performing dependent work activities and residing within the territory of the SR in contravention to the Act on Residence of Foreigners.⁴¹ However, based on the data available in the National Labour Inspectorate database containing cases of illegal employment it is not possible to specify particular types of work performed by illegally employed third-country nationals. Information on the magnitude and characteristics of seasonal activities performed by irregular migrants is not available either.⁴²

According to the Federation of Employers' Associations of the SR it can be assumed that irregular migrants are performing seasonal work in Slovakia, however, detailed information about this is not available.⁴³

In this context it can reasonably be assumed that the performance of seasonal work can be considered even in case of groups of third-country nationals who were not granted work permit for seasonal employment or who were granted a different type of temporary residence, which allows or on the other hand does not allow legal employment (e.g. temporary residence for the purpose of conducting business with a trade license).⁴⁴ This means that illegal seasonal work is also possible by those foreigners who have visa, legal residence granted for another purpose or who are in breach of the visa free agreement.⁴⁵ However, exact data is not available.

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

Note: All questions in this section refer to seasonal workers covered by the Seasonal Workers Directive, except for question 19.

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

Yes ☒

No ☐

Entry and stay of seasonal workers from third countries is governed by the Act on Residence of Foreigners, which is one of the most important implementation instruments of the Slovak migration policy and of the Seasonal Workers Directive. Third-country national seasonal workers as one of the categories of the Slovak Republic workforce is also defined and incorporated in a number of strategic materials of the SR concerning labour migration.

One of the main documents adopted by the Government of the SR, a strategic and conceptual paper entitled "*Migration Policy of the Slovak Republic: Perspective until 2020*", was adopted by the Resolution of the Slovak Government No. 574 of 31 August 2011. Within the scope of managed economic migration, this document mentions seasonal employment as one of the possibilities of labour market development and points out the need to focus on updating the conditions forming the legal framework relevant for allowing access of foreigners to the labour market regarding seasonal work, temporary and circular migration, short-term employment forms, etc.

For more information please see the answer to Question no. 15.

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

Yes ☒

No ☐

"Strategy of Foreigners Labour Mobility in the Slovak Republic Until 2020, With an Outlook Until 2030" (hereinafter also referred to as the "Strategy of Foreigners Labour Mobility") is a specific strategic document which includes proposals of measures that have a direct or indirect impact, among other areas, on seasonal employment.⁴⁶

The Strategy of Foreigners Labour Mobility was prepared in 2018 by the Ministry of Labour working in cooperation with the Inter-Ministerial Expert Committee for Labour Migration and Foreigners' Integration (MEKOMIC), an advisory body to the Minister of Labour, Social Affairs and Family of the SR for implementation of tasks in the field of migration and integration policies of the Slovak Republic, and with other bodies cross-sectionally bound

⁴¹ Source: National Labour Inspectorate Questionnaire (of 15/05/2020).

⁴² Source: National Labour Inspectorate Questionnaire (of 15/05/2020).

⁴³ Source: Federation's of Employers' Associations e-mail response of 21/05/2020.

⁴⁴ Source: Analysis of the author and BBFP response (of 30/06/2020).

⁴⁵ Source: BBFP response (of 03/07/2020).

⁴⁶ Source: BBFP's response of 15/05/2020. The Strategy is available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2018-663> (consulted on 23/05/2020)

to fulfil the goals defined in the Resolution of the Slovak Government on the Strategy of Foreigners Labour Mobility.⁴⁷

This follows from the Manifesto of the Government of the Slovak Republic⁴⁸, in which the Government of the SR undertook to “consider the needs of employers in particular as regards workers, while being aware of the fact that the lack of qualified personnel represents a serious threat to further growth of Slovak companies”. Another reason for the drafting of the Strategy of Foreigners Labour Mobility was the need for a comprehensive strategy concerning planned management of controlled regulated labour mobility of foreigners to the Slovak labour market which would cover the Slovak economy’s needs and, in particular, the needs of strategic investors.⁴⁹

In the effort to consider the need of employers pertaining to seasonal employment, the Strategy of Foreigners Labour Mobility proposes a number of measures to shorten the time limit for the issuance of permits for the purpose of seasonal employment, which were later adopted in 2019 in the form of the Act on Employment Services amendment:

- time limit for the notification of a vacancy is reduced from 15 to 10 working days;
- time limit for the issuance of a permit for the purpose of seasonal employment is reduced from a maximum of 20 working days to a maximum of 10 working days in case of a foreigner who was issued work permit for the purpose of seasonal employment in the last 5 years prior to filing the application (in case of a repeated application), and
- review of applications for the issuance of a permit for the purpose of seasonal employment by the Committees for Employment Matters was abolished⁵⁰.

Another measure impacting the support for and acceleration of third-country national seasonal workers for the so-called in-demand professions is the accelerated temporary residence grant procedure⁵¹ for the purpose of seasonal employment. Pursuant to said provision, a Police Department may decide on the application for a grant of temporary residence for the purpose of employment of a third-country national who will undertake an in-need occupation in the given district within 30 days from the receipt of the confirmation of the possibility to fill a vacancy issued by the Office of Labour. The employer or ‘user employer’ to whom a third-country national is temporarily assigned⁵² must comply with the condition stipulated in Article 12 (ai) of the Act on Employment Services⁵³ and must not employ more than 30% of third-country nationals as a proportion of the total number of its employees.⁵⁴

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

Yes ☒

No ☐

According to the statement by the Federation of Employers’ Associations of the SR, third-country national seasonal workers are very much needed in the Slovak labour market.⁵⁵ Increased demand for agricultural workers needed to secure the harvesting of crops has also been indicated by the Slovak Agriculture and Food Chamber. The Chamber stated that even in the continuing crisis situation some 8,000 additional seasonal workers will be needed in Slovakia this harvest season.⁵⁶

A survey conducted by the Institute for Labour and Family Research in 2019⁵⁷ states that Slovak businesses suffer from a shortage of labour. As indicated by the outcomes of the survey carried out in April 2019 by the Business Alliance of Slovakia and think-tank INEKO, involving 115 employers from various sectors of industry, services and agriculture, approx. 38% of all employers already had to turn away business for that reason.

⁴⁷ According to the Statutes of November 2007 establishing MEKOMIC - the Inter-Ministerial Expert Committee for Labour Migration and Foreigners’ Integration of the Ministry of Labour, Social Affairs and Family of the SR, changed in line with the measures coming from the Strategy of Foreigners Labour Mobility by a Statute from 11 December 2018 the MEKOMIC members are the employees of the Ministry of Labour, Social Affairs and Family of the SR, other ministries and central state authorities and other state authorities and institutions which are active in this area.

⁴⁸ Available at: https://www.vlada.gov.sk/data/files/6483_programove-vyhlasenie-vlady-slovenskej-republiky.pdf (consulted on 17/06/2020).

⁴⁹ Available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2018-663> (consulted on 23/05/2020).

⁵⁰ This is not a legislative measure; however it comes from the internal guideline for the Offices of Labour. Source: Response from Central Office (of 30/06/2020).

⁵¹ Provision under Article 33 par. 8 of Act in Residence of Foreigners.

⁵² The term “user employer” is defined under Article 58 of Act No. 311/2001 Coll. (Labour Code) as a legal or natural person to whom the employed person is temporarily assigned by his/her employer or by a temporary employment agency.

⁵³ Provision under Article 12 (ai) of Act on Employment Services defines the “professions with labour shortage”.

⁵⁴ Provision under Article 21b par. 7 of Act on Employment Services lays down the circumstances when an Office of Labour, Social Affairs and Family shall not be obliged to consider the labour market situation.

⁵⁵ Source: Federation’s of Employers’ Associations e-mail response of 21/05/2020.

⁵⁶ Available at: <https://www.ta3.com/clanok/1180246/sezonni-zamestnanci-budu-zrejme-chybat-obavaju-sa-farmari.html> (consulted on 01/06/2020)

⁵⁷ Available at: https://ivpr.gov.sk/wp-content/uploads/2020/03/odstranovanie_barier_zahr_prac_vu_kordosova_2019.pdf (consulted on 01/06/2020)

According to the survey, every second business is trying to solve its labour shortage by looking for workers abroad. 39.5% of respondents consider the main factor contributing to this situation to be the fact that the Slovak labour market workforce is not sufficient and 28.9% of respondents also think that the workers available in the domestic labour market have unreasonable wage expectations which do not correspond with their skills and competences. "A high share of the companies rejecting contracts serves to prove that labour shortages have already started to hinder economic growth". Only 15% of businesses do not have a problem with a shortage of workers, while half of all employers declared in the survey that they feel a significant shortage of labour. Workers are mainly needed for the positions with a gross salary of 500 to 800 EUR/month.⁵⁸

According to the abovementioned survey by the Institute for Labour and Family Research, in 2019 there have been more than 85 thousand vacancies in Slovakia and, due to the shortage of domestic workforce; every second vacancy was filled by foreign workers.⁵⁹

Similarly, the Ministry of Agriculture assumes that the employing of third-country national seasonal workers helped to address the shortage of workforce during the harvest.⁶⁰

a. If yes, for which sectors and what are these labour market needs?

According to the statement by Federation of Employers' Associations of the SR, the agriculture sector is dependent on the work of seasonal workers from abroad, especially in the fruit, vegetable and wine sectors.⁶¹

The statement by the Central Office also indicates that seasonal workers are needed mainly in agriculture.⁶²

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?

Yes ☐

No ☐

To some extent ☒

According to the statement by Federation of Employers' Associations of the SR, third-country national seasonal workers helped to partially saturate employers' needs on the Slovak labour market. However, as the constant shortage of labour force has already been felt for several years, the demand has probably not been addressed satisfactorily.⁶³

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?

N/A

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

N/A

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?

BBFP does not have the required information. Due to the nature of the work carried out by the Foreign Police Departments it is not possible to average or quantify all costs and processing time for applications for granting temporary residence for the purpose of seasonal employment.⁶⁴

⁵⁸ Inštitút pre výskum práce a rodiny, RNDr. Miroslava Kordošová, PhD (2019): Odstraňovanie bariér a zvyšovanie úrovne BOZP u zahraničných pracovníkov. Available at: https://ivpr.gov.sk/wp-content/uploads/2020/03/odstranovanie_barier_zahr_prac_vu_kordosova_2019.pdf (consulted on 01/06/2020).

⁵⁹ Ibid.

⁶⁰ Source: MoARD SR Questionnaire (of 02/06/2020).

⁶¹ Source: Federation's of Employers' Associations e-mail response of 21/05/2020.

⁶² Source: Central Office Questionnaire (of 19/05/2020).

⁶³ Source: Federation's of Employers' Associations e-mail response of 21/05/2020.

⁶⁴ Source: BBFP Questionnaire (of 15/05/2020).

Applying for a seasonal work permit and the issuance of such permit are free of charge.⁶⁵

The Ministry of Foreign and European Affairs of the SR does not have information on the number of visas granted for the purpose of seasonal employment⁶⁶ and thus they are not able to quantify the costs or average the processing time for these applications. In this context, the Ministry stated that, until 2 February 2020, the Schengen Visa application fee was set at 60 EUR or 35 EUR in case the application was submitted by a national of a third country with which the EU concluded visa facilitation agreements. The average processing time depends on the complexity of the application and the extent of communication with the applicant prior to the submission of the application.⁶⁷

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?

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?

N/A

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

Yes ☒

No ☐

Pursuant to the Act on Employment Services, the competent Office of Labour, Social Affairs and Family (hereinafter referred to as Labour Office) at the place of the future seasonal employment shall be entitled and obliged to apply a labour market test prior to granting a work permit (in case of short stays not exceeding 90 days) or prior to issuing a confirmation of the possibility to fill in a vacancy (in case of longer stays exceeding 90 days), unless stipulated otherwise in said Act. By reviewing the jobseekers' database in the given region or district, the competent Labour Office verifies whether the vacancy in question could be filled by any of the jobseekers⁶⁸ registered as unemployed Slovak nationals or foreigners entitled to be registered as jobseekers.

Within the scope of the work permit for seasonal employment application procedure (stay not exceeding 90 days), the employer is obliged to report the vacancy to the competent Labour Office at least 10 working days before submitting an application. In the case of a temporary residence permit application for the purpose of seasonal employment based on the confirmation of the possibility to fill in a vacancy (stay exceeding 90 days), the employer is obliged to report the vacancy to the competent Labour Office at least 20 working days before submitting the application. In both cases the competent Labour Office offers suitable jobseekers to the employer, organizes interviews, verifies circumstances on the side of the employer such as establishing whether the employer has been employing people illegally in the period of five years prior to submitting of the application, checking arrears of payments towards insurance companies and financial administration; checking accommodation provided by the employer, etc. Based on the results, the Labour Office grants or does not grant work permit or confirmation of the possibility to fill in a vacancy.⁶⁹

When granting work permit (stay not exceeding 90 days), the Labour Office applies a labour market test and may grant work permit provided that the vacancy cannot be filled by a jobseeker registered in the given region and all the legal provisions are met. Similarly, confirmation of the possibility to fill a vacancy (stay exceeding 90 days) issued by the Labour Office contains consent for the filling of a vacancy provided that the vacancy cannot be filled by a registered jobseeker and all the legal provisions are met; and the Labour Office also takes into account the position of the diplomatic mission pursuant to specific legislation.⁷⁰

The legislation provides for exemption from the labour market test application in case of a third-country national applying for some of the professions listed in the current version of the shortage occupations list for given district. In the context of adoption of the Labour Force Strategy and subsequent simplification of labour market access for the foreigners critical for Slovak economy, continuous monitoring of shortage occupations at the labour market

⁶⁵ Source: Central Office Questionnaire (of 19/05/2020).

⁶⁶ Diplomatic missions of the SR abroad do have this type of information at the time of submission of Schengen Visa for the purpose of seasonal employment application, as the work permit is submitted to them, but this information is not disaggregated within the scope of the total volume of visa applications.

⁶⁷ Source: Response by the Ministry of Foreign and European Affairs of the SR of 20/05/2020.

⁶⁸ Provisions under Article 6 and 8 of Act on Employment Services.

⁶⁹ Source: Central Office Questionnaire (of 19/05/2020).

⁷⁰ Provisions under Article 21b par. 6 of Act on Employment Services.

commenced at the end of 2018. Based on the data in the information system provided by Labour Offices, the Central Office evaluates the overall situation in the districts⁷¹ quarterly and subsequently publishes *Shortage Occupations List* divided into regions on its website⁷². These are occupations in which it has not been possible to fill vacancies in the long term by local workers. At the same time, the lists list only those districts in the given region where the average unemployment rate in the given period does not exceed 5%. The aim is to place third-country nationals specifically in those professions and in districts with a low rate of unemployment through an accelerated procedure and without the labour market test.⁷³ The Shortage Occupations List current at the time of writing of this EMN study also includes some occupations which may have seasonal character; however, they are not monitored within the List separately as seasonal.

21. Does your Member State facilitate the re-entry of seasonal workers?⁷⁴

Yes ☒

No ☐

The Slovak Republic facilitates re-entry of seasonal workers into its territory by means of specific provisions of the Act on Residence of Foreigners and Act on Employment Services mainly by means of imposing shorter time limits in the administrative procedure. This is a so called "accelerated procedure" which results in the decision on work permit or temporary residence.⁷⁵

Within the meaning of Article 22 par. 1 of the Act on Employment Services the Labour Office shall issue or extend the work permit for the purpose of seasonal employment within 10 working days from the receipt of the complete application for granting or extension of the work permit if it concerns a third-country national who had been granted work permit for seasonal employment or temporary residence for the purpose of seasonal employment in the five years period prior to submitting the application. As mentioned before for a seasonal employment not exceeding 90 days temporary permit is not required.

Pursuant to the general provisions of Article 33 par. 8 of the Act on Residence of Foreigners, the competent Police Department shall decide on the application for granting temporary residence within 90 days. However, in the case of a returning seasonal worker the Police Department shall decide on his/her application in a shortened period of time.

A third-country national's application for temporary residence for the purpose of seasonal employment shall be decided on within 30 days from the receipt of the application, complete with all documents as stipulated in relevant legislation, if the applicant performed seasonal work or had temporary residence for the purpose of seasonal employment granted in the five years period prior to submitting the application.⁷⁶

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

Yes ☐

No ☒

No bilateral or multilateral agreements concluded with third countries with the aim to attract third-country national seasonal workers have been identified from sources available. The Ministry of Foreign and European Affairs of the SR does not have required information.⁷⁷

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

⁷¹ Authority of the Central Office pursuant to Article 12 (ai) includes: identification of shortage occupations in districts where the quarterly average unemployment rate does not exceed 5% and publication of the list of said occupations on their website by the end of the calendar month following the quarter in question.

⁷² Shortage Occupations List valid at the time of writing of this study, by regions, is available at: https://www.upsvr.gov.sk/sluzby/zamestnanosti/zamestnavanie-cudzincov/zoznam-zamestnani-s-nedostatkom-pracovnej-sily.html?page_id=806803 (consulted on 23/05/2020)

⁷³ Source: Mészáros S., Oboňová S.: Annual Report on Migration and Asylum in the Slovak Republic in 2018. (April 2019). Available at: https://www.emn.sk/sk/na-stiahnutie-emn/publikacie-emn/item/download/2151_8027118db7f303f825d1bfb714f02cc (consulted on 01/06/2020).

⁷⁴ 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.

⁷⁵ In line with the Article 16, par. 2 letter c) of the Seasonal Workers Directive.

⁷⁶ Source BBFP Questionnaire (of 15/05/2020)

⁷⁷ Source: Response from the Ministry of Foreign and European Affairs of the SR of 20/05/2020.

Major actors relevant for attracting seasonal workers as well as for low-qualified workers to the SR include recruitment and placement agencies which recruit workers directly in the countries of origin (mainly Serbia and Ukraine). However, these agencies often try to evade the law and bring in foreigners to Slovak labour market in the most cheap and fast manner.⁷⁸ No more information is available.

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

Each employer employing a third-country national receives comprehensive information concerning the seasonal work permit application process from the Office of Labour, Social Affairs and Family in charge of the application. Information are available also on the Central Office website in Slovak language.⁷⁹

Pursuant to Article 126 par. 8 of the Act on Residence of Foreigners the Ministry of Interior of the SR and the Ministry of Foreign and European Affairs of the SR shall publish basic information on foreigners' rights and obligations pursuant to said Act, as well as the templates of applications necessary for the procedure pursuant to said Act on their websites; and the information shall be published both in the state language and in English. Thus, the public is informed about the procedures concerning admission of seasonal workers to Slovakia mainly through the Ministry of Interior website, which includes the Act on Residence of Foreigners as well as basic information on the granting of residence for the purpose of employment.⁸⁰

Conditions for hiring third-country nationals for the purpose of seasonal employment that have to be fulfilled by employers are laid down in the Act on Employment Services. According to this Act⁸¹ it is within the scope of authority of the Central Office to publish information on the employment of third-country nationals on its website. Moreover, National Labour Inspectorate and labour inspectorates, within the scope of their consulting activities and during the inspections as such, actively facilitate employment of third-country nationals mainly by advising employers on compliance with legislative requirements resulting from legal norms concerning employing of foreigners.⁸²

Issuance of information bulletins/leaflets is under the responsibility of the Ministry of Labour. For those third country nationals who are interested to work in the SR or already work here, the Ministry of Labour prepared information on legal possibilities to work in the SR and about their labour rights, obligations and social insurance. Based on such information such a foreign worker may find out if he/she works in the SR legally or is in the SR unlawfully.⁸³

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 ☒

Seasonal workers employed in the Slovak Republic for a period of time not exceeding 90 days may change their employer during the course of their stay in the SR only if the conditions laid down in the Act on Employment Services are met. If filing the application for temporary residence for the purpose of employment in the SR (while the new employment would not fall under the provisions of seasonal employment) would not mean breaking the provisions of the Act on Residence of Foreigners, in that case the foreigner would be able to change the employment.⁸⁴

As for longer stays for the purpose of seasonal employment exceeding 90 days, pursuant to Article 31 par. 3 of the Act on Residence of Foreigners in the SR, only the groups of foreigners strictly defined in the Act are entitled to apply for residence while in the SR. Pursuant to Article 31 par. 6 of the Act on Residence of Foreigners, a change of the purpose of stay in the SR is not possible in case of a foreigner who has already been granted temporary residence for the purpose of seasonal employment pursuant to Article 23 par. 4 (temporary residence for 180 days during 12 consecutive months). A third-country national granted temporary residence for the purpose of seasonal employment⁸⁵ is thus not entitled to apply for a change of purpose of their stay to the Police Department in the territory of the SR. In case the third country national with granted temporary residence for the purpose of seasonal employment applies in the SR for the renewal of the purpose for the purpose of

⁷⁸ Prepared based on the information from COLSAF, MoLSAF SR and Department of Risk Analyses and Coordination of BBFP (of 30/06/2020)

⁷⁹ Source: Central Office Questionnaire (of 19/05/2020).

⁸⁰ Source: BBFP Questionnaire (of 15/05/2020).

⁸¹ Provisions under Article 12 (v) (5) of Act on Employment Services.

⁸² Source: MoLSAF SR Questionnaire (of 19/05/2020).

⁸³ Source: <https://www.employment.gov.sk/sk/informacie-cudzincov/zamestnavanie-cudzincov/>, MoLSAF response (of 30/06/2020).

⁸⁴ Source: MoLSAF and Central Office response (of 30/06/2020).

⁸⁵ Pursuant to Article 23 par. 4 of Act on Residence of Foreigners.

employment based on the Article 23 par. 1 or 2 of this Act this is not considered to be a change of purpose. This is the case of a new temporary residence for different purpose as seasonal employment.

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 ☒

Implementation of the Seasonal Workers Directive in the SR has not been evaluated yet.⁸⁶

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 ☒

Neither the National Labour Inspectorate nor the Ministry of Labour has sufficient information or statistical data relevant for this area.⁸⁷

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

Yes ☐

No ☒

Section 3: Protection and rights of seasonal workers

Note: All questions in this section refer to seasonal workers covered by the Seasonal Workers Directive, except question 39 and 40.

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;⁸⁸

Yes ☐

No ☒

Foreigners are considered eligible beneficiaries for childcare allowance⁸⁹ provided a number of conditions are met cumulatively. In order to be entitled to receive the allowance, a foreigner has to perform a gainful activity (or be a full-time secondary school or university student); the childcare has to be provided within the territory of the Slovak Republic; and both the eligible person and the child have to have a permanent or temporary residence in the Slovak Republic.

Child benefit entitlement arises in case a person has permanent or temporary residence in the SR⁹⁰ (or in case of a person pursuant to specific legislation), i.e. it also applies to foreigners.

The same principle also applies to parental allowance⁹¹.

Legislation concerning various family benefits applies only to persons (foreigners or Slovak nationals) with at least temporary residence granted in the territory of the Slovak Republic, therefore, it generally applies that seasonal workers employed for a period of time not exceeding 90 days are not eligible to receive those. However,

⁸⁶ Information provided by the Office of the Minister of Interior of the SR (of 19/05/2020).

⁸⁷ Source: NLI Questionnaire (of 15/05/2020), MoLSAF SR Questionnaire (of 19/05/2020).

⁸⁸ 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 No1231/2010.

⁸⁹ Provisions under Article 4 par. 1 of Act No. 561/2008 Coll. on Childcare Allowance and on changes and amendments to some acts.

⁹⁰ Provisions under Article 7 par. 1 of Act No. 600/2003 Coll. on Child Allowance and on changes and amendments to Act No. 461/2003 Coll. on Social Insurance.

⁹¹ Provisions under Article 3 of Act No. 571/2009 Coll. on Parental Allowance and on changes and amendments to some acts.

in both of the abovementioned cases this is a general condition stipulated in legislation that applies to all applicants for said benefits, including Slovak nationals.

Maternity benefit⁹² entitlement represents an exception from this rule, as it is dependent on a condition other than the place of residence of the applicant. An insured woman who is pregnant or who cares for the child is entitled to receive maternity benefit only if she has had sickness insurance for at least 270 days in the last two years before giving birth. Therefore, even in this case the rule applies to Slovak nationals and foreigners equally. Due to the short-term nature of seasonal stays there is little probability that a seasonal female worker could meet the abovementioned condition during the period of her employment in the SR.

b. Unemployment benefits;

Yes ☒

No ☐

As regards unemployment benefits, although the limitation is not explicitly stipulated in the Act on Social Insurance, the benefits can only be paid to a person if he/she is registered in the jobseekers database and provided he/she meets the general condition of having been insured for at least two years, i.e. 730 days in the course of the last four years preceding his/her registration in the jobseekers database.

Third-country national seasonal workers cannot register in the jobseekers database as only the citizens of the SR, EU/EEA countries and foreigners with long-term residence in the SR are entitled to register there.⁹³

In this case, due to the short-term nature of seasonal migration, seasonal workers do not have access to unemployment benefits, even though they pay unemployment insurance contributions from the first day of their employment in Slovakia. This limitation, however, is in compliance with Article 23(2) of the Seasonal Workers Directive, which allows it.

c. Educational and vocational training not linked to the specific employment activity;⁹⁴

Yes ☐

No ☒

The rights established by the School Act⁹⁵ shall be guaranteed equally to each applicant, child, pupil and student in compliance with the equal treatment in education principle which is established by a specific regulation.

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.⁹⁶

Yes ☐

No ☒

There are two levels of the scope of tax advantages assessment in the SR:

The first is the tax treatment of various benefits, supports, allowances and contributions granted on the basis of legal regulations other than tax regulations, in this case the Act No. 595/2003 Coll. on Income Tax as subsequently amended (hereinafter referred to as the "Act on Income Tax"). In case of the types of income listed it is very likely that these incomes are tax-exempt in the Slovak Republic under Article 9 par. 2 (a) through to (c) of the Act. Pursuant to legislation, tax exemption applies to all taxpayers regardless of the fact whether they are tax residents in the Slovak Republic or not.

The second level concerns "tax advantages" granted pursuant to the Act on Income Tax provisions. In the context of this study, the tax advantages can take the form of, e.g.:

- non-taxable personal allowance (Article 11 par. 1 and 2 of said Act),

⁹² Based on the Act No. 461/2003 Coll. on Social Insurance as subsequently amended.

⁹³ Provisions under Article 2, par. 2 and Article 34, par. 14 k) of the Act on Employment Services.

⁹⁴ 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.

⁹⁵ Provisions under Article 145 par. 1 of the Act No. 245/2008 Coll. on Education and Training (School Act) and on changes and amendments to some acts.

⁹⁶ 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.

- non-taxable dependent spouse allowance (Article 11 par. 3 of said Act),
- a tax-free amount in the form of verifiable payments for spa care and related services (Article 11 par. 12 of said Act),
- tax bonus (Article 33 of said Act), etc.

Upon meeting the statutory conditions each taxpayer – natural person is entitled to claim tax advantages, irrespective of whether they are a person subject to unlimited taxation pursuant to Article 2 (d) of the first clause of the Act on Income Tax or a person subject to limited taxation (hereinafter referred to as a “non-resident taxpayer”) pursuant to Article 2 (e) of the first and second clause of the Act on Income Tax. In order for non-resident taxpayers to be entitled to claim said tax advantages it is imperative that the sum of their taxable incomes from sources in the Slovak Republic (Article 16 of the Act) in the relevant taxable period constitutes at least 90% of the total sum of the taxpayer’s incomes from the Slovak Republic and abroad (i.e. from global sources).

Claiming of tax advantages does not depend on the state in which the taxpayer’s spouse or child, i.e. family members, are tax residents. It thus follows that claiming of tax advantages pursuant to the Act depends on the taxpayer’s tax residence rather than his/her nationality or registered or habitual residence.

This shows that the SR does not apply restrictions to the equal treatment between seasonal workers from third countries and Slovak nationals carrying out comparable employment activities. Taxation rules applicable to seasonal workers are the same as those that apply to other workers under the Act on Income tax.⁹⁷

Even a foreigner with permanent or habitual residence (at least 183 days in the calendar year, continuously or split to several periods of time) in Slovakia may be subject to unlimited taxation. According to this definition, a seasonal worker is a taxpayer subject to limited taxation.

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

Yes ☒

No ☐

This area has not yet been specifically assessed in Slovak conditions. However, based on the studies analysing status of migrants in the SR⁹⁸ it can be assumed that, just as in other categories of migrants, in the case of seasonal workers issues such as insufficient language skills might play an important role in ensuring rights which require activity on the side of the workers (e.g. submitting an application). Similarly, e.g. failure to understand instructions published at the websites of Slovak state authorities or legal norms may put seasonal workers into a vulnerable position, which may influence their equal treatment.

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

If a foreigner performing work in the territory of the Slovak Republic considers that his/her rights or legally protected interests were affected by non-compliance with employment conditions in the territory of the Slovak Republic, he/she can file a complaint either directly or through employee representatives with the competent labour inspectorate authority or take the matter to court and seek legal protection. Labour inspectorates within the scope of their control activities provide the controlled employees with information on the ways to seek protection of their rights.⁹⁹

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

Yes ☒¹⁰⁰

No ☐

Pursuant to Act No. 43/2004 Coll. on the Old-age Pension Saving System and on changes and amendments to some acts and pursuant to Act on Social Insurance (hereinafter referred to as the “Act on Old-age Pension

⁹⁷ Source: Response from the Ministry of Finance of the SR (of 13/05/2020).

⁹⁸ E.g. Blažek M., Andrášová S., Paulenová N.: Skúsenosti migrantov a migrantiek na Slovensku s násilím, IOM, 2013. (Migrants in Slovakia and Their Experience with Violence) Available at: https://www.iom.sk/phocadownload/mic/iom_vyskum-skusenosti-migrantov-s-nasilim_2013.pdf (consulted on 01/06/2020).

⁹⁹ Source: NLI Questionnaire (of 15/05/2020), MoLSAF SR Questionnaire (of 19/05/2020), COLSAF Questionnaire (of 19/05/2020).

¹⁰⁰ Art.23(1) of the Seasonal Workers Directive 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

System") every person insured pursuant to the abovementioned acts is entitled to claim benefits (including old-age pension). This equal treatment principle applicable to the fields of social assistance, social insurance, old-age pension saving system, supplementary pension saving scheme, state social support and social benefits is also confirmed by the Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination and on changes and amendments to some acts (Antidiscrimination Act).

Pursuant to the Act on Old-age Pension System¹⁰¹ payment of a pension, early retirement and survivor's benefits can be transferred to another country outside the EU/EEA countries with the amount reduced by the sum of relevant fees. A third - "authorised" - person (identified by the person insured) can claim the aforementioned benefits¹⁰². It is also possible for a seasonal worker's survivors to inherit the savings in the so-called second pillar of the pension saving system since the saver identifies the authorised person in their old-age pension scheme agreement. In case a saver fails to identify the authorised person in their old-age pension scheme agreement or if such person does not exist, the savings become succession property.

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?

Yes ☐

No ☐

N/A

33. What does your Member State consider an "adequate standard of living" in relation to 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?¹⁰³

Matters pertaining to the existence and appropriateness/adequacy of accommodation for seasonal workers are examined by competent Labour Offices (in case of stays not exceeding 90 days) and Police Departments working in cooperation with municipalities (in case of stays exceeding 90 days) even before the arrival of seasonal workers into the Slovak Republic.

Third-country national seasonal workers are obliged to submit a confirmation of accommodation with their work permit application (in case of shorter stays not exceeding 90 days) or with their temporary residence application (in case of longer stays exceeding 90 days). Confirmation of accommodation shall mean¹⁰⁴:

- a foreigner's affidavit of real estate ownership, or
- a lease agreement with the owner or user of the real estate and the proof of eligibility to use the property in case of a lease agreement with the property user,
- a confirmation by the accommodation facility of the provision of accommodation, or
- an affidavit of a natural or legal person of provision of accommodation to the foreigner in the territory of the Slovak Republic and a proof of eligibility to use the property in case of an affidavit of the property user.

Adequacy of accommodation is assessed within the meaning of relevant legal norms as follows:

A stay not exceeding 90 days

Confirmation of accommodation complying with the minimum standards under the specific regulation for the minimum of the employment duration envisaged represents a compulsory annex to the work permit application (NB: only in case of applicants not subject to visa requirement). Meeting of the minimum standards under specific regulation applicable to accommodation can be audited by a Regional Public Health Authority ("RPHA") however, this does not apply to private accommodation.¹⁰⁵ Offices of Labour refer to the RPHA requests to check the fulfilment of the conditions to provide accommodation when there are doubts about the capacity of the accommodation facility, the facility has a dubious reputation or based on other tips.¹⁰⁶

¹⁰¹ Provisions under Article 41 of Act on Old-age Pension System.

¹⁰² Pursuant to the provisions under Article 40 and 40a of Act on Old-age Pension System.

¹⁰³ 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.

¹⁰⁴ Pursuant to the provisions under Article 122 of Act on Residence of Foreigners.

¹⁰⁵ Source: Central Office Questionnaire (of 19/05/2020).

¹⁰⁶ Response from Central Office (of 30/06/2020).

The body competent to receive the work permit application (including the confirmation of accommodation in case of an applicant not subject to visa requirement¹⁰⁷) from the applicant is the competent Labour Office. In matters concerning adequacy of accommodation the Act on Employment Services refers mainly to the enabling provision in the Act on Protection, Promotion and Development of Public Health¹⁰⁸, based on which the Ministry of Health of the SR is obliged to regulate details of standards applicable to the internal environment of buildings, minimum standards applicable to lower-standard apartments and to accommodation facilities in the form of a Decree. "Aptness" or appropriateness/adequacy of accommodation within the meaning of the abovementioned act is therefore specified in more details in the Decree of the Ministry of Health of the Slovak Republic¹⁰⁹.

A stay exceeding 90 days

Appropriateness/adequacy of accommodation of a seasonal worker applying for temporary residence for the purpose of seasonal employment is reviewed by the Police Force Departments (competent Foreign Police Departments). Within the meaning of the Act on Residence of Foreigners¹¹⁰ temporary residence for the purpose of seasonal employment application must include confirmation of accommodation. If said accommodation fails to meet conditions laid down in the Act on Protection, Promotion and Development of Public Health¹¹¹ and in Article 8 par. 1 of the abovementioned Decree, a Police Force Department shall not grant the third-country national temporary residence. Thus, apart from the confirmation of accommodation, the "level" of said accommodation also ranks among the conditions of temporary residence granting to a seasonal worker.

A Police Force Department in the territory of the Slovak Republic shall not accept a confirmation of accommodation in an accommodation facility if the number of persons granted residence registered in said facility exceeded its capacity.¹¹² Similarly, Police Force Department shall also reject a temporary residence application if it is clear that the accommodation in the territory of the Slovak Republic fails to meet the minimum standards pursuant to a specific regulation¹¹³.

Conditions for accommodating seasonal workers

As can be inferred from the reference to particular provisions of the Act and of the Decree, seasonal workers' accommodation in commercial facilities in the territory of the SR has to meet at least the standards applicable to *lower-standard apartments*, this however does not apply to cases of private premises leased for accommodation purposes. Ministry of Health of the SR set the minimum limit of standards that must be met in case of accommodation (quarters) for seasonal workers. Apart from thermal conditions, humidity, heating conditions and ventilation of the premises, limit values have been set also for factors injurious to health inside of the buildings, such as their pollution by mites or mould spores. Decisive factors in the context of inspecting and reviewing adequacy of accommodation facilities are the dimensions of the living and usable area and the compulsory equipment.

The living area of a lower-standard apartment has to be at least 12 m² per user and 6 m² for every other person living with him/her. The usable area of a lower-standard apartment has to be at least 15 m².

Minimum requirements for the lower-standard apartment equipment are as follows:

- a) connection to potable water supply with the technical possibility of installing of appliances for boiling and heating of water and the possibility for personal hygiene facilities installation,
- b) wastewater discharge with the technical possibility of flush toilet installation,
- c) technical possibility of installing heating equipment for local heating of residential premises.

In other words, a seasonal worker has to have his/her personal space in the facility, as well as secure supply of potable cold and hot water, amenities for cooking and personal hygiene, flush toilet and a possibility to heat the premises, albeit provisional.

It follows that the SR ensures the appropriate/adequate accommodation standards requirement through its national legislation aligned with the requirements laid down in the Seasonal Workers Directive, as well as by field checks carried out by competent Police Departments that are entitled to physically inspect the place of accommodation in order to assess its adequacy pursuant to the Act and Decree mentioned above. In relation to adequacy of accommodation, media sporadically report on seasonal workers' situation, usually within the

¹⁰⁷ Provisions under Article 22 par. 5 of Act on Employment Services.

¹⁰⁸ Provisions under Article 62 (f) of Act No. 355/2007 Coll. on Protection, Promotion and Development of Public Health and on changes and amendments to some acts.

¹⁰⁹ Decree of the Ministry of Health of the Slovak Republic No. 259/2008 Coll. on details of requirements for the internal environment of buildings and on minimum requirements for apartments of lower standard and accommodation facilities.

¹¹⁰ Provisions under Article 32 par. 2 (e) of Act on Residence of Foreigners.

¹¹¹ Provisions under Article 62 (f) of said Act.

¹¹² Source: BBFP Questionnaire (of 15/05/2020).

¹¹³ Provisions under Article 33 par. 6 (h) of Act on Residence of Foreigners.

thematically more complex media coverage, pointing out cases of inadequate conditions pertaining to labour migrants' accommodation in Slovakia.¹¹⁴

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

Yes ☒

No ☐

A work permit applicant (stays not exceeding 90 days) shall submit to the competent Labour Office a document confirming accommodation which fulfils the minimum standards requirements based on the special regulation¹¹⁵, i.e. a decision issued by the competent Regional Public Health Authority on entry into operation of an accommodation facility confirming that it meets the minimum standard of living. However, this does not apply to private premises leased for accommodation purposes.¹¹⁶

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 ☐

National Labour Inspectorate and labour inspectorates, within the scope of their consultancy activities and during the inspections as such, actively facilitate employment of third-country nationals mainly by advising employers on compliance with legislative requirements resulting from legal norms concerning employing of foreigners.¹¹⁷

Pursuant to Article 22 par. 7 second sentence of the Act on Employment Services, information on the rights and obligations of a third-country national (in English and Slovak language) resulting from seasonal employment forms an annex to employment for the purpose of seasonal employment authorisation¹¹⁸. Moreover, publication of information on the employment of third-country nationals on its website is within the scope of authority of the Central Office.¹¹⁹

One copy of a so called „Guidance for the third-country national with granted residence in the Slovak Republic“ is handed over to the third-country national while taking over the document on temporary residence. The handover is confirmed by the third-country national by his/her signature on the other copy of the „Guidance“. The Guidance contains information on rights and obligations of the third-country national in the Slovak Republic.¹²⁰

Published on the official website of the Central Office are several well-arranged and up-to-date instructions concerning work permit applications (stays not exceeding 90 days) or temporary residence for the purpose of seasonal employment applications.¹²¹

In the section entitled “Labour Mobility of Foreigners”¹²² at its website, Ministry of Labour published information leaflets in several languages for nationals of Serbia, Ukraine, the Socialist Republic of Vietnam, North Macedonia and Bosnia and Herzegovina. The leaflet contains basic information on the possibilities of legal employment in Slovakia, on the employment-related rights of workers and on social welfare. The leaflet also includes information on the authorities foreigners can approach in case their employer fails to comply with the obligations resulting to him/her from the employment contract or labour legislation. Based on the information contained in the leaflet a foreigner can establish whether their employment in Slovakia is legal or whether they are residing in the territory of the SR without authorisation.

¹¹⁴ Articles: <https://dennikn.sk/683543/srbsky-reporter-sa-zamestnal-v-nasej-fabrike-pise-o-mizerii-svojich-krajanov/>, <https://www.topky.sk/cl/11/1614281/Slovensky-fasizmus--tema-dna-v-Srbsku--Spinavi-a-nebezpecni--takto-vraj-vidime-ich-robotnikov>, <https://karmina.red/posts/za-pracou-na-slovensko/> (consulted on 01/06/2020)

¹¹⁵ Provision under Article 62 letter f) of the Act No. 355/2007 Coll. on Protection, Promotion and Development of Public Health and on changes and amendments to some acts, at least for the assumed period of the employment duration.

¹¹⁶ Source: Central Office Questionnaire (of 19/05/2020). Article 22, par. 5, letter a) of the Act on Employment Services.

¹¹⁷ Source: NLI Questionnaire (of 15/05/2020).

¹¹⁸ Source: Central Office Questionnaire (of 19/05/2020).

¹¹⁹ Source: MoLSAF SR Questionnaire (of 19/05/2020). Provisions under Article 12 (v) Clause 5 of Act on Employment Services.

¹²⁰ Source: Response of BBFP (of 30/06/2020).

¹²¹ Source: https://www.upsvr.gov.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov/zamestnanie-statneho-prislusnika-tretej-krajiny-na-ucel-sezonneho-zamestnania-alebo-v-ramci-vnutropodnikoveho-presunu.html?page_id=861022 (last accessed on 20/05/2020) and https://www.upsvr.gov.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov/zamestnavanie-cudzincov-s-miestom-vykonu-prace-na-uzemi-sr-od-1.5.2018.html?page_id=363495 (last accessed on 22/05/2020).

¹²² Available at: <https://www.employment.gov.sk/sk/informacie-cudzincov/zamestnavanie-cudzincov/> (consulted on 01/06/2020)

35. Does your Member State have any specific procedures/mechanisms in place to monitor, assess and carry out inspections on whether:¹²³

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 a foreigner performing work in the territory of the Slovak Republic considers that his/her rights or legally protected interests were affected by non-compliance with employment conditions in the territory of the Slovak Republic, he/she can file a complaint either directly or through employee representatives with the competent labour inspectorate authority or take the matter to court and seek legal protection. Labour inspectorates within the scope of their control activities provide the controlled employees with information on the ways to seek protection of their rights.

In scope of their performance of control activities, Labour Office and labour inspectorate auditors monitor, inter alia, also the entities where seasonal work is performed in accordance with the audit plan.¹²⁴ At the same time, within the context of the annual objective to control illegal employment, labour inspectorates focus on monitoring the legality of third-country nationals' employment in general.¹²⁵

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

Yes ☒

No ☐

Control authorities' experience shows that third-country nationals often are not aware of the fact they are performing dependent work in the SR illegally.¹²⁶

Inspections are carried out jointly by labour inspectorates and Foreign Police Departments personnel controlling the length and legality of the stay in the SR.¹²⁷

National Labour Inspectorate in cooperation with the Central Office and with the BBFP prepared methodological guidelines for the coordination of procedures between the labour inspectorates and other control units with the aim to accelerate the process of assessment of third-country nationals employment in the SR legality.¹²⁸

As for the monitoring, assessing and inspecting whether seasonal workers comply with the rules of staying in the SR, Border and Foreign Police Departments carry out checks of foreigners' eligibility to stay in the SR, of their compliance with the conditions of stay and compliance with foreigners' obligations laid down by the Act on Residence of Foreigners, in cooperation with the National Labour Inspectorate and with the Central Office. Also, they carry out regular inspections of business entities in order to detect illegal work and illegal employment cases.¹²⁹

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 ☐

Monitoring activities by the labour inspection authorities carried out in 2019 found that, of the total of 412 detected cases of illegal employment of third-country nationals, the highest number of cases involved nationals of Ukraine (291 persons) and Serbia (87 persons), who were employed illegally mainly in the field of administrative and support service activities (which includes employment by temporary employment agencies);

¹²³ 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).

¹²⁴ Source: Central Office Questionnaire (of 19/05/2020).

¹²⁵ Source: NLI Questionnaire (of 15/05/2020).

¹²⁶ Source: NLI Questionnaire (of 15/05/2020).

¹²⁷ Source: Central Office Questionnaire (of 19/05/2020).

¹²⁸ Source: NLI Questionnaire (of 15/05/2020), MoLSAF SR Questionnaire (of 19/05/2020).

¹²⁹ Source: BBFP Questionnaire (of 15/05/2020).

as well as in the fields of construction and manufacturing. Illegal employment of foreigners most frequently resulted from non-compliance with the conditions for employing of foreigners laid down in the Act on Employment Services. The National Labour Inspectorate does not specifically disaggregate data concerning seasonal workers, therefore these are not available.¹³⁰

Inspections mentioned in items b and c above also aim to identify cases of potential labour exploitation.¹³¹

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

Yes ☐

No ☒

The National Labour Inspectorate does not keep separate statistics on the procedures and mechanisms described in Question no. 35.¹³²

37. How can seasonal workers lodge complaints against their employers?¹³³ Did your Member State set up some specific procedures to protect seasonal workers who lodge complaints?

Yes ☐

No ☒

In the SR, specific procedures for lodging complaints against employers are in place, which also protect seasonal workers and other labour migrants.

If a foreigner performing work in the territory of the Slovak Republic considers that his/her rights or legally protected interests were affected by non-compliance with employment conditions in the territory of the Slovak Republic, he/she can file a complaint either directly or through employee representatives with the competent labour inspectorate authority or take the matter to court and seek legal protection. Labour inspectorates within the scope of their control activities provide the controlled employees with information on the ways to seek protection of their rights. Information on how to lodge a complaint is available at www.ip.gov.sk.¹³⁴ However, the labour inspectorate is not entitled to force an employer to pay any outstanding salary to the worker.

As laid down in the Slovak Labour Code¹³⁵, nobody may be persecuted or otherwise sanctioned in the performance of labour-law relations for lodging a complaint, bringing an action, filing a motion for the initiation of criminal prosecution or for any other notification of criminal activity or another antisocial activity against another employee or the employer.

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 ☐

Sanctions up to 200,000 EUR are imposed on employers within the meaning of the Act on Labour Inspection¹³⁶ in general according to the type, means and severity of the infringement of the legal regulation in question.¹³⁷

Sanctions may also be imposed on employers pursuant to the Act on Employment Services¹³⁸. The sanctions include fines of up to 33,193.91 EUR for the infringement of general obligations as laid down in said Act. Recently, a new provision was introduced which lays down the sanctions for the failure to meet the obligation to report a vacancy¹³⁹ (a fine of up to 300 EUR)¹⁴⁰.

Under said provision, the Central Office and the labour office shall impose a fine:

¹³⁰ Source: NLI Questionnaire (of 15/05/2020), MoLSAF SR Questionnaire (of 19/05/2020).

¹³¹ Source: BBFP Questionnaire (of 15/05/2020).

¹³² Source: NLI Questionnaire (of 15/05/2020).

¹³³ 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.

¹³⁴ Source: NLI Questionnaire (of 15/05/2020).

¹³⁵ Provisions under Article 13 par. 3 of Act No. 311/2001 Coll. Labour Code.

¹³⁶ Provisions under Article 19 of Act No. 125/2006 Coll. on Labour Inspection in the wording of subsequent regulations.

¹³⁷ Source: NLI Questionnaire (of 15/05/2020).

¹³⁸ Provisions under Article 68a par. 1 of Act on Employment Services.

¹³⁹ Obligation laid down in Article 62 par. 6 of Act on Employment Services.

¹⁴⁰ Provisions under Article 68a par. 1 (e)

(a) on an employer for the infringement of the obligations laid down in the Act of up to 33,193.91 EUR unless stipulated otherwise in this Act, (...)

(b) on a legal or natural person for the infringement of the prohibition of illegal employment pursuant to a specific regulation in the amount between 2,000 EUR and 200,000 EUR, and the minimum of 5,000 EUR if it concerns illegal employment of two and more natural persons concurrently.

(e) on an employer for the infringement of the obligation to report a vacancy¹⁴¹ of up to 300 EUR.

It is not possible to establish, for the purpose of this study, how effective, appropriate and dissuasive these sanctions are.

Apart from the abovementioned financial sanctions, an employer is obliged to:

a) pay to the third-country national whose seasonal employment authorisation has been withdrawn a financial compensation in the amount of the salary for the period of time during which he/she would have been entitled to this salary if the employment authorisation has not been withdrawn, or

b) pay to the third-country national whose temporary residence for the purpose of seasonal employment has been revoked as a result of the cancellation of the confirmation of the possibility to fill in a vacancy, financial compensation in the amount of the salary for the period of time during which he/she would have been entitled to this salary if the temporary residence has not been revoked.

Seasonal employment authorisation shall not be granted to an employer on whom sanctions for the infringement of obligations laid down in items a) and b) have been imposed in the period of 5 years prior to the submitting of the application for work permit for seasonal employment. This also applies to cases of issuing of the confirmation of the possibility to fill in a vacancy for a single residence and seasonal employment permit.¹⁴²

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

Yes ☒

No ☐

The National Labour Inspectorate in cooperation with the Central Office and with the BBFP prepared methodological guidelines for the coordination of procedures between the labour inspectorates and other control units with the aim to accelerate the process of assessment of the legality of third-country nationals employment in the SR.¹⁴³

In Slovakia, joint inspections aimed at economic sectors of seasonal nature are carried out with the aim to ensure compliance with legal conditions of employment as well as to detect irregular stays.¹⁴⁴

In the context of monitoring, assessing and inspecting whether seasonal workers comply with the rules of staying in the SR, Police Departments carry out the following activities:

- checking foreigners' eligibility to stay in the SR, their compliance with the conditions of stay and with their obligations laid down by the Act on Residence of Foreigners, and, in cooperation with the National Labour Inspectorate and with the Central Office, also regular inspections of business entities in order to detect illegal work and illegal employment cases.

- Inspections also aim to identify cases of potential labour exploitation.¹⁴⁵

Pursuant to the Act on Employment Services, it is within the scope of authority of the Central Office¹⁴⁶ and Labour Offices¹⁴⁷ to establish compliance with this Act, compliance with generally binding legal regulations issued in accordance with said Act and control illegal work and illegal employment pursuant to Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on changes and amendments to some acts as subsequently amended. Identified cases of illegal work and illegal employment shall be reported to the competent labour inspectorate, Social Insurance Agency and, in case of an illegally employed third-country national, also to the competent Police Department. Pursuant to the Act on Employment Services¹⁴⁸ Police Force shall, upon request, be obliged to ensure

¹⁴¹ Obligation laid down in Article 62 par. 6 of Act on Employment Services.

¹⁴² Source: Central Office Questionnaire (of 19/05/2020).

¹⁴³ Source: NLI Questionnaire (of 15/05/2020).

¹⁴⁴ Source: Central Office Questionnaire (of 19/05/2020).

¹⁴⁵ Source: BBFP (of 15/05/2020).

¹⁴⁶ Provisions under Article 12 (p) of Act on Employment Services.

¹⁴⁷ Provisions under Article 13 par. 1 (v) of Act on Employment Services.

¹⁴⁸ Provision under Article 68 par. 8 of Act on Employment Services.

cooperation and protection of the inspection authority during the inspection; cooperation and protection may be requested if danger to life or health of the person carrying out the inspection or obstruction of the inspection may reasonably be supposed.¹⁴⁹

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

Yes ☐

No ☒

Within the meaning of the methodological guidelines of the National labour Inspectorate, labour inspectors take note of trafficking in human beings identifiers in the course of illegal employment inspections. In case of suspected crimes of exploitation or human trafficking, the labour inspectorates shall lodge a criminal complaint with the competent law enforcement authorities. Subsequently, district labour inspectorates as well as the National Labour Inspectorate cooperate with the law enforcement authorities and provide information and statements acquired during the inspection.

In 2019, no criminal complaints in the matters of suspected exploitation or human trafficking were lodged by labour inspectorates.¹⁵⁰

According to the BBFP position, Police Departments did not record any such cases either in the given period of time.¹⁵¹

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 ☒

The National Labour Inspectorate does not have individual procedure applicable to monitoring seasonal workers' rights. When carrying out inspection, inspectors thus follow the generally applicable rules laid down in the NLI's internal protocols governing and guiding monitoring activities in the SR.¹⁵²

Section 4: Conclusions and lessons learned

Employing seasonal workers to fill in the vacancies which cannot be filled by resident workers is one of the current and widely discussed topics in the EU countries including Slovakia. In the context of seasonal work, many key actors in the SR stress the need to meet the demand for workers with third-country nationals especially in agriculture and forestry, as well as in other sectors. Making the most of various forms of short-term migration is thus one of the possibilities of satisfying the labour shortage in the Slovak labour market. One of the reasons for that is the fact that foreigners using the available legal institutions of residence most frequently usually come from neighbouring countries or from the close by Balkan region (mostly citizens of Ukraine and Serbia) and tend to return to Slovakia repeatedly. Apart from the geographical and language proximity, the main reasons are also cultural and historical ties of these countries with the SR.

In terms of data collection, the Slovak Republic processes information on the country of origin and sex of seasonal workers, but it does not yet have instruments and mechanisms to identify the profile of third-country nationals and, thus, it is not possible to assess effectiveness, effect, relevance, aptness and sustainability of labour mobility policies in this area and analyse labour market needs concerning seasonal employment in a targeted manner. Therefore, the collection of data concerning third-country nationals in Slovakia carried out within the scope of the tasks defined in the *Strategy of Foreigners Labour Mobility in the Slovak Republic* as a policy instrument will also contribute to better identification of the profile of third-country national seasonal workers.

Embedding of equal status of seasonal workers in relation to the Slovak nationals in legislation concerning social security, taxes and education, as well as the embedding of the minimum standards requirements (pertaining to contracts, adequate salary, adequate accommodation, working conditions) in the Slovak legal system are both important pillars of the system ensuring protection of rights and legally protected interests of seasonal workers. However, experience and media discourse indicate the existence of some practical obstacles in the area of execution of said rights, e.g. weak or absent knowledge of the Slovak language, dependency on the employer and the fear of reaching for help resulting from said dependency, or insufficient access to legal aid and legal

¹⁴⁹ Source: MoLSAF SR Questionnaire (of 19/05/2020).

¹⁵⁰ Source: NLI Questionnaire (of 15/05/2020), MoLSAF SR Questionnaire (of 19/05/2020).

¹⁵¹ Source: BBFP Questionnaire (of 15/05/2020).

¹⁵² Source: NLI Questionnaire (of 15/05/2020).

representation. Thus, establishing mechanisms which would help to eliminate known or emerging limitations (such as access to legal aid (or representation for the purpose of judicial proceedings) for foreign workers in vulnerable situations) in the given area represents both a challenge and a need.

Formulation of a united position of the responsible authorities in relation to the third-country national seasonal workers employment can be seen as an overarching challenge identified on the basis of the national report. Related to this is also the subsequent preparation and coordination of procedures implemented by state administration authorities and exchanging information with representatives of employers, entrepreneurs and key players in various economic sectors. The legal system facilitates seasonal employment of foreigners, their admission and repeated return. Introduction of mechanisms for evaluation of the system efficiency (e.g. a possibility to assess whether the system reflects the current labour market needs, whether it helps to satisfy labour demand, whether it protects individuals adequately, or whether the instruments available in the national legislation are functional and sufficiently used) would thus support targeted focusing of both the established and new policies and practical measures concerning seasonal employment of foreigners.

Measures taken by Member States in order to avoid the spread of COVID-19 virus had major effect also to seasonal workers. Thus in this regard it will be very important for policy makers to also deal with questions related to so far unknown effects of the current health crisis on labour mobility and on the lack of seasonal worker, specifically in those sectors which play a major role in provision of critical goods and services in the key economy areas¹⁵³.

¹⁵³ Prepared based on the information from MoLSAF (as of 30/05/2020).

Statistical Annex

The national contact point in the SR submitting the statistics related to seasonal workers to Eurostat is the BBFP. The statistics have been submitted to Eurostat since 2017 (first reference year) and they are a combination of information from two sources: the first source is the BBFP's information system ECU, from which data is drawn on the residence permits issued for the purpose of "Seasonal Work with stay exceeding 90 days" and the second source is the Central Office registry, from which data is drawn on "work permits for seasonal employment with stay not exceeding 90 days".

Statistics provided for the purpose of this study are therefore summary statistics of the Central Office and BBFP.

Table 1: Number of first time authorisations granted to third country nationals for the purpose of seasonal work by citizenship

2017		2018		2019	
Total number of third country nationals	949	Total number of third country nationals	2348	Total number of third country nationals	1978
Serbia	830	Serbia	1098	Ukraine	1691
Ukraine	67	Ukraine	962	Serbia	234
North Macedonia	29	Georgia	119	Georgia	43
Bosnia and Herzegovina	15	North Macedonia	87	Bosnia and Herzegovina	35
Moldova	6	Bosnia and Herzegovina	79	North Macedonia	23

Source: Eurostat (dataset migr_ressw1_1), complemented and validated by BBFP

Note: Data for 2016 are not available. Data extracted on 11 March 2020.

Table 2: Number of first time authorisations granted to third country nationals for the purpose of seasonal work by economic sectors and disaggregated by gender

2017				2018				2019				Comment
	Male	Female	Total		Male	Female	Total		Male	Female	Total	
Total			949	Total	1742	604	2348	Total	1149	827	1978	2019 - 2 unknown sex/gender 2018 - 2 unknown sex/gender
Administrative and support service activities	n.a.	n.a.	588	Manufacturing	1306	516	1822	Manufacturing	802	608	1412	2019 - 2 unknown sex/gender
Manufacturing	n.a.	n.a.	291	Construction	192	6	198	Wholesale and retail trade	60	77	137	
Construction	n.a.	n.a.	42	Wholesale and retail trade	109	36	145	Agriculture, forestry and fishing	58	69	127	
Accommodation and food services	n.a.	n.a.	12	Agriculture, forestry and fishing	55	19	75	Construction	121	4	125	2018 - 1 unknown sex/gender
Transportation and storage	n.a.	n.a.	8	Accommodation and food services	28	24	53	Accommodation and food services	33	51	84	2018 - 1 unknown sex/gender

Source: Eurostat (dataset migr_ressw2), complemented and validated by BBFP

Note: Data for 2016 are not available. Data extracted on 11 March 2020.

n.a. - data not available

Table 3: Number of first time authorisations granted to third country nationals for the purpose of seasonal work by length of validity

	2017	2018	2019
1-90 days	926	2 345	1961
91 days - 6 months	23	3	17
7-9 months	not applicable	not applicable	not applicable

Source: Eurostat (dataset migr_ressw1_1), complemented and validated by BBFP

Note: Data for 2016 are not available. Data extracted on 11 March 2020.

Table 4: Number of third country nationals whose authorisation for seasonal work has been renewed and withdrawn

	2017	2018	2019	Comment
Renewed	0	0	0	In practice these cases are almost non-existent, as instead of extension of seasonal worker permit, foreigners choose another purpose of residence permit (especially employment).
Withdrawn	0	2	8	

Source: Eurostat (dataset migr_ressw1_1), complemented and validated by BBFP

Note: Data for 2016 are not available. Data extracted on 11 March 2020.

Table 5: Number of third country nationals whose authorisation for seasonal work has been renewed by sectors

2017		2018		2019	
Sector 1	0	Sector 1	0	Sector 1	0
Sector 2	0	Sector 2	0	Sector 2	0
Sector 3	0	Sector 3	0	Sector 3	0
Sector 4	0	Sector 4	0	Sector 4	0
Sector 5	0	Sector 5	0	Sector 5	0

Source: Eurostat (dataset migr_ressw1_1), complemented and validated by BBFP

Note: Data for 2016 are not available. Data extracted on 11 March 2020.

Table 6: Number of third country nationals whose authorization for seasonal work has been withdrawn by sectors

2017		2018		2019	
Sector 1	0	Construction	1	Manufacturing	4
Sector 2	0	Accommodation and food services	1	Administrative and support service activities	4
Sector 3	0	Sector 3	0	Sector 3	0
Sector 4	0	Sector 4	0	Sector 4	0
Sector 5	0	Sector 5	0	Sector 5	0

Source: Eurostat (dataset migr_ressw1_1), complemented and validated by BBFP

Note: Data for 2016 are not available. Data extracted on 11 March 2020.