



# ATTRACTING AND PROTECTING THE RIGHTS OF SEASONAL WORKERS IN BELGIUM

January 2021

Authors: Natali Afsar and Jo Antoons  
(Fragomen Global LLP, Brussels)



The European Migration Network Belgium is a multi-institutional entity composed of experts from the Immigration Office, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), Myria - the Federal Migration Centre, and Fedasil - the Federal Agency for the Reception of Asylum Seekers. It is coordinated by the Federal Public Service Home Affairs.

#### EDITORIAL STAFF

Jessy Carton, Camille De Brabant-Bibi, Bram Devos,  
Martine Hendrickx, Isabelle Raes, Bieke Vens

#### RESPONSIBLE PUBLISHER

Philippe Rosseel

#### EMN BELGIUM

Federal Public Service Home Affairs  
1 Rue de Louvain / Leuvenseweg 1  
1000 Brussels  
BELGIUM  
[www.emnbelgium.be](http://www.emnbelgium.be)



*The European Migration Network (EMN) is coordinated by the European Commission with National Contact Points established in each EU Member State plus Norway.*



## BELGIAN STUDY AND EU COMPARATIVE STUDY

### **Belgian report:**

This is the Belgian contribution to the EMN Study “Attracting and protecting the rights of seasonal workers in the EU”. Other National Contact Points (NCPs) produced a similar report on this topic for their (Member) State.

### **Common Template and Synthesis Report:**

The different national reports were prepared on the basis of a common template with study specifications to ensure, to the extent possible, comparability.

### **Synthesis report:**

On the basis of the national contributions of 25 NCPs, a Synthesis Report was produced by the EMN Service Provider in collaboration with the European Commission and the EMN NCPs. The Synthesis Report gives an overview of the topic in all the (Member) States.

### **Scope and aim of the study:**

The study primarily covers third-country nationals who enter and reside in Belgium for the purpose of seasonal work in the framework of the Seasonal Workers Directive 2014/36/EU. The study reflects the most recent developments in terms of legislation and policy on seasonal work in Belgium, largely focussing on 2019. Developments in earlier years are also considered if relevant.

### **Available on the website:**

The Belgian report, the Synthesis report and the links to the reports of the other (Member) States are available on [www.emnbelgium.be](http://www.emnbelgium.be).



# TABLE OF CONTENTS

<b>1.</b>	<b>INTRODUCTION</b>	<b>9</b>
<b>2.</b>	<b>PROFILE OF SEASONAL WORKERS</b>	<b>17</b>
2.1.	Admission of seasonal workers from third countries under the Directive	18
2.2.	Sectors covered by the Seasonal Workers Directive	19
2.3.	Personal characteristics of seasonal workers	20
2.4.	Salary of seasonal workers	21
2.5.	Average duration of stay of seasonal workers	23
2.6.	Seasonal work and irregular migrants	23
<b>3.</b>	<b>POLICIES AND PROCEDURES FOR SEASONAL WORK IN BELGIUM</b>	<b>25</b>
3.1.	Importance of seasonal workers for the labour market	26
3.2.	Fees and duration of the procedure	28
3.3.	Labour market test	29
3.4.	Facilitation of re-entry	29
3.5.	Change of status	30
3.6.	Relevant actors in promoting seasonal work	31
3.7.	Information provided to employers	32
<b>4.</b>	<b>PROTECTION AND RIGHTS OF SEASONAL WORKERS</b>	<b>35</b>
4.1.	Equal treatment of seasonal workers	36
4.2.	Access to adequate housing	38
4.3.	Key actors ensuring the protection of rights	39
4.4.	Complaints against employers	40
4.5.	Sanctions against employers	40
4.6.	Other mechanisms ensuring the protection of rights	41
<b>5.</b>	<b>CONCLUSIONS</b>	<b>43</b>
<b>6.</b>	<b>ANNEXES</b>	<b>47</b>
A	ANNEX A: References	48
B	ANNEX B: Studies and reports of the Belgian contact point of the EMN (2009-2018)	52

# 01

## INTRODUCTION





Until 2014, Belgium's federal government was responsible for the development of all immigration-related legislation and policies, including the legislation and the policies for admitting seasonal workers from third countries. On 1 July 2014, the employment-based immigration policies were transferred to the regions: the Flemish, the Walloon and the Brussels-Capital Region.<sup>1</sup> Belgium's regional governments hence became competent to develop their own work permit policies. Nonetheless, the federal government kept a role in the process. The Federal Public Service Home Affairs, through the Immigration Office, remains responsible for the issuance of residence permits to third-country nationals.

The context of this transfer of competence and its practical implementation, together with Belgium's complicated state structure and political landscape made that the Single Permit Directive (2011/98/EU) was only implemented in Belgium in January 2019, long after the deadline of 25 December 2013. The implementation of the other EU directives related to economic migration, including the Seasonal Workers Directive (2014/36/EU) (hereinafter 'the Directive') was therefore equally delayed. In November 2016, the Commission sent a letter of formal notice to Belgium, followed by a reasoned opinion

in July 2017. On 19 July 2018, as the Belgian government had still not transposed the Directive, the European Commission introduced an infringement procedure against Belgium before the European Court of Justice for failing to fully implement the Directive and proposed a daily penalty of €49 906,50.<sup>2</sup>

Only at the end of 2018 Belgium initiated the implementation process. On 6 December 2018, the regions and the federal authority concluded an Executing Cooperation Agreement defining the common framework for the transposition of the Directive in Belgium (hereinafter 'the Executing Cooperation Agreement').<sup>3</sup> This general framework was transposed into the Belgian Immigration Act (hereinafter 'the Immigration Act') by a federal law adopted on 5 May 2019.<sup>4</sup> In parallel to this common framework agreed on and laid down in the Immigration Act, the regions have in turn adopted a Decision implementing the Directive. Each Decision refers to the common rules laid down in the Immigration Act and sets out the specific measures applicable in their region, including to which economic sector(s) the provisions will apply. The Flemish Region adopted its Decision on 7 December 2018,<sup>5</sup> the Brussels and Walloon Region have each adopted their respective Decisions on 16 May

2019.<sup>6</sup> The German-speaking Community adopted some specific measures by Decision of 23 May 2019.<sup>7</sup> The Flemish and the Walloon Regions decided that the agriculture, the horticulture and the hospitality sectors will be covered by the Directive. In the German-speaking Community, the agriculture and the hospitality sectors are covered by the Directive. The Brussels region limited the coverage of the Directive to the agriculture sector.

The Seasonal Workers Directive entered into force in Belgium on 1 September 2019.<sup>8</sup> On 30 October 2019, the Commission withdrew its action against Belgium before the European Court of Justice for failing to implement the Seasonal Workers Directive.

Although formally the Directive entered into force on 1 September 2019, a piece of the regulatory puzzle with respect to stay and residency was missing. That final piece was only implemented at Federal level with the Royal Decree of 23 March 2020.<sup>9</sup>

At the time of this study, only the Flemish Region had issued work authorisations to seasonal workers under the Directive (in total, 110 seasonal workers had been admitted between the Directive's implementation on 1 September 2019 and 27

May 2020). No seasonal workers had been admitted in Wallonia, Brussels or the German-speaking Community under the Directive since 1 September 2019.

As regards the situation before the entry into force of the Directive on 1 September 2019, there was no specific scheme in place for workers from third countries coming to Belgium to perform seasonal work. Seasonal workers would in principle fall within the 'general' category of third-country workers, i.e. workers from third countries subject to obtaining a work permit called 'permit B', which was granted for a period of employment up to maximum 12 months, linked to a specific employer, and contingent upon a labour market test. The Flemish Region mentioned that in practice, before the implementation of the Directive, work authorisations for the purpose of seasonal work were mostly granted to workers falling within another category, namely third-country nationals with a long-term resident status in another EU Member State coming to perform an activity for which the regional authority considers there is a shortage of workers.<sup>10</sup>

Only the Flemish Region could provide statistical data related to work permits obtained for seasonal work before 1 September 2019. No such data was kept by

1. On 1 January 2016, the Walloon Region transferred its employment-related competences to the German-speaking Community.  
 2. TEuropean Commission, Legal migration: Commission refers Belgium to the Court of Justice for failing to provide common rules for non-EU seasonal workers, 19 July 2018, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4490](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4490); European Commission v Kingdom of Belgium - Case C-676/18.  
 3. Executing Cooperation Agreement of 6 December 2018 between the federal state, the Walloon region, the Flemish region, the Brussels-Capital region and the German-speaking community implementing the cooperation agreement of 2 February 2018 between the federal state, the Walloon region, the Flemish Region, Brussels-Capital Region and the German-speaking Community on the coordination of policies for the granting of work permits and the granting of residence permits, as well as norms relating to the employment and stay of foreign workers, Belgian Official Gazette, 18 July 2019.  
 4. Law of 5 May 2019 modifying the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 22 August 2019.  
 5. Decision of 7 December 2018 of the Flemish Government implementing the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 December 2018.

6. Decision of 16 May 2019 of the Government of the Brussels-Capital Region amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, with regard to work authorisation for activities carried out within the framework of an intra-group transfer, seasonal worker, researcher, trainee, volunteer, or within the framework of the European Blue Card, Belgian Official Gazette, 4 June 2019; Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019.  
 7. Decision of 23 May 2019 of the German-speaking community amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 8 July 2019.  
 8. Executing Cooperation Agreement of 28 May 2019 between the federal state, the Walloon region, the Flemish region, the Brussels-Capital region and the German-speaking community implementing the Cooperation agreement of 2 February 2018 between the federal state, the Walloon region, the Flemish Region, Brussels-Capital Region and the German-speaking Community on the coordination of policies for the granting of work permits and the granting of residence permits, as well as norms relating to the employment and stay of foreign workers, Belgian Official Gazette, 18 July 2019.



the Walloon Region, the Brussels region and the German-speaking Community. As a result, this study will mostly provide an overview of the legislative transposition of the Directive into Belgian law with a limited insight on the practical aspects and consequences of the measures adopted.

It is worthwhile stating that Belgium does not rely on seasonal workers from third-countries to fill its labour market needs. The majority of the seasonal workers in Belgium come from other EU Member States, mainly Bulgaria, Poland and Romania. As a result, no specific measures are or have been in place to attract seasonal workers from third countries.

## IMPACT OF COVID-19 ON SEASONAL WORK IN BELGIUM<sup>11</sup>

As a result of the Covid-19 outbreak, Belgium closed its borders to all non-essential travel. However, the agricultural and horticultural sectors were declared to be essential sectors,<sup>12</sup> and consequently, the government decided to authorise the entry of seasonal workers in the country to avoid labour shortages during the upcoming harvest seasons.<sup>13</sup> In practice, however, it was reported that seasonal workers initially faced issues with entering the country, on the one hand due to the border closure of other countries such as Germany and Hungary, and on the other hand as a result of miscommunications with the Belgian border security officers.<sup>14</sup>

To counter this problem, the Federal Public Service Employment, Labour and Social Dialogue<sup>15</sup> issued a template certificate for seasonal workers coming to Belgium to perform seasonal work. This document, to be presented as proof for seasonal workers crossing the border, was translated into Romanian, Polish, Bulgarian and Hungarian. In addition, on 30 April 2020, a government communication<sup>16</sup> was sent to border controllers and embassies to remind them that seasonal workers were allowed to travel to Belgium to work.

On 9 April 2020, the federal government adopted several measures by Royal Decree in order to respond to the shortage of seasonal workers in the agriculture and horticulture sectors resulting from the Covid-19 outbreak.<sup>17</sup>

From 1 March 2020, seasonal workers working in the agriculture and the horticulture sectors were allowed to work twice the number of days per year they would normally be allowed to under the seasonal work scheme applicable in these sectors: 60 days instead of 30 in the agriculture sector, 130 days instead of 65 in the horticulture sector, and 200 days instead of 100 in some specific

9. Royal Decree of 23 March 2020 modifying the Royal Decree of 8 October 1981 implementing the Law regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 7 May 2020.

10. Art. 9 20° of the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 26 June 1999.

11. This study only discusses Covid-19 measures taken up until June 2020.

12. Ministerial Decision of 3 April 2020 modifying the Ministerial Decision of 23 March 2020 on emergency measures to limit the spread of the Covid-19, Belgian Official Gazette, 3 April 2020.

13. Art. 20 Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019 ; Art. 23 Decision of 7 December 2018 of the Flemish Government implementing the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 December 2018.

14. Art. 29 Decision of 23 May 2019 of the German-speaking community amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 8 July 2019.

15. FR: Service public fédéral Emploi, Travail et Concertation sociale; NL: Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg.

16. Joint communication of 30 April 2020 by the Deputy Prime Minister and Minister of Justice, Koen Geens, the Minister of Social Affairs and Public Health, and Asylum and Migration Maggie De Block, and the Minister of Employment, the Economy and Consumers, Nathalie Muylle.

17. Royal Decree n. 5 of 9 April 2020 modifying certain rules applicable in the agricultural and horticultural sectors in the framework of Covid-19 measures, Belgian Official Gazette, 20 April 2020.

horticultural sectors. From 1 April 2020, the number of days of seasonal work allowed in the fruit sector was also extended under certain conditions.

Under the Belgian seasonal work scheme, it is prohibited to work as a seasonal worker if in the past 180 calendar days, the worker has worked as an employed worker in the agriculture, horticulture or landscaping sector. This rule is commonly referred to as the '180-day rule'. From 1 April 2020, the 180-day rule was limited to the work carried out within one company. In other words, a person who had worked as an employed worker in a different sector or for a different company in the agricultural or horticultural sector over the past 180 calendar days was now able to work as a seasonal worker for another company.

Even though these measures applied to all seasonal workers, both nationals and non-nationals, they specifically aimed at retaining foreign seasonal workers already working in Belgium in order to meet the needs of the agriculture and horticulture sectors in light of the harvest season for strawberries, asparagus, and other fruits and vegetables.<sup>18</sup>

In addition to the above mentioned changes brought to the seasonal work scheme, the federal government also took measures to temporarily suspend the waiting period of 4 months for applicants of international protection to take up jobs in sectors defined as essential in the context of Covid-19, including agriculture and horticulture.<sup>19</sup>

A specific measure was also taken for students working in Belgium, irrespective of their nationality. As a general rule, students in Belgium can work at reduced social security contributions during the first 475 hours of work. After the Covid-19 outbreak however, the government decided that the hours worked in the second quarter of 2020 would not be taken into account. The measure applied to students working in any economic sector, including agriculture and horticulture.<sup>20</sup>

Finally, temporary tax exemption measures were adopted to support economic "critical sectors", including the agriculture and horticulture sectors suffering from the shortage of seasonal workers.<sup>21</sup>

---

18. *Ibidem*, see recitals.

19. Art. 3 of the Special Powers Decree n. 14 of 27 April 2020 taken in execution of Article 5, § 1, 5° of the Law of 27 March 2020 granting powers to the King in order to take measures in the fight against the spread of the coronavirus Covid-19 (II) aimed at ensuring the proper organization of work in critical sectors, Belgian Official Gazette, 28 April 2020.

20. Art. 6 of the Special Powers Decree n. 14 of 27 April 2020.

21. Art. 16 Law of 29 May 2020 laying down various urgent tax measures due to the Covid-19 pandemic, Belgian Official Gazette, 11 June 2020.



# 02

## PROFILE OF SEASONAL WORKERS



This section discusses the profiles of seasonal workers from third countries working and staying in Belgium. Attention is paid to the economic sectors open to seasonal work by third-country national workers and the personal characteristics of these workers, as well as to their minimum salaries and the average duration of their stay. The final part briefly explores the possible linkages between seasonal work and irregular migration. Recent data are provided where available.

## 2.1. ADMISSION OF SEASONAL WORKERS FROM THIRD COUNTRIES UNDER THE DIRECTIVE

From the implementation of the Directive on 1 September 2019 until 27 May 2020, 110 seasonal workers had obtained a work authorisation in the Flemish Region on the basis of the Directive. During this period, no third-country seasonal workers had been admitted in the Brussels Capital Region, the Walloon Region and the German-speaking Community.

## 2.2. SECTORS COVERED BY THE SEASONAL WORKERS DIRECTIVE<sup>22</sup>

Prior to discussing the sectors covered by the Directive, it is worth recalling that economic migration is a regional competence in Belgium. As explained in the introduction above, the federal government transferred its competence on employment-based immigration policies to the regional authorities on 1 July 2014, but remained itself competent for the issuance of residence permits.

For this reason, the regions and the federal authority concluded an Executing Cooperation Agreement on 6 December 2018 defining the general framework for the transposition of the Directive in Belgium. The Executing Cooperation Agreement provides that the regions should each decide to which sector(s) the Directive applies within their jurisdiction.<sup>23</sup>

The Flemish and the Walloon Region decided that agriculture, horticulture and hospitality would be covered by the Directive.<sup>24</sup> In the German-speaking Community, only agriculture and hospitality are covered by the Directive.<sup>25</sup>

Finally, the Brussels-Capital Region limited the coverage of the Directive to the agriculture sector,<sup>26</sup> as the region did not intend to attract seasonal workers from third countries to its metropolitan area. The region stated that it had opted for a restrictive interpretation of the Directive not so much to favour national workers, but rather to prevent the use of the seasonal work scheme by employers to the detriment of other, less precarious schemes where possible.

Before the entry into force of the Seasonal Workers Directive on 1 September 2019, there was no specific scheme in place for workers from third countries coming to Belgium to perform seasonal work. Such seasonal workers would in principle fall within the 'general' category of third-country nationals subject to obtaining a work permit type B. This permit was granted for a period of employment up to 12 months, linked to a specific employer, and contingent upon a labour market test.

22. Art. 2(2) Seasonal Workers Directive.

23. Art. 14 Executing Cooperation agreement of 6 December 2018.

24. Art. 20 Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019; Art. 23 Decision of 7 December 2018 of the Flemish Government implementing the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 December 2018.

25. Art. 29 Decision of 23 May 2019 of the German-speaking community amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 8 July 2019.

26. Art. 30/2 1<sup>o</sup> Decision of 16 May 2019 of the Government of the Brussels-Capital Region amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, with regard to work authorisation for activities carried out within the framework of an intra-group transfer, seasonal worker, researcher, trainee, volunteer, or within the

## 2.3. PERSONAL CHARACTERISTICS OF SEASONAL WORKERS

### TOP COUNTRIES OF ORIGIN

Only the Flemish Region could provide data on work authorisations issued for seasonal work in 2018. In total, 74 work authorisations were granted to seasonal workers in the Flemish Region in 2018. Half of these authorisations (37) were granted to Indian nationals. For 20 work authorisations, the nationality of the seasonal worker was not identified in the regional database. The rest of the authorisations granted (17) were split between nine different countries (Bangladesh, Ghana, Kosovo, Mali, Morocco, Nepal, Nigeria, Pakistan and Sri Lanka).

#### NUMBER OF WORK AUTHORISATIONS GRANTED BY THE FLEMISH REGION TO SEASONAL WORKERS IN 2018 BY NATIONALITY

India	37
Ghana	3
Nepal	3
Bangladesh	2
Kosovo	2
Morocco	2
Nigeria	2
Mali	1
Pakistan	1
Sri Lanka	1
Unknown	20
<b>Total</b>	<b>74</b>

The Walloon Region, the Brussels Region and the German-speaking Community could not provide any statistical data related to work permits obtained for seasonal work before 1 September 2019.

It is worthwhile stating that Belgium does not rely on seasonal workers from third countries to fill labour market needs. The small number of work authorisations issued in the Flemish Region (110 work authorisations issued in total between 1 September 2019 and 27 May 2020 for the purpose of seasonal work) and the lack of applications for seasonal work in the other regions since the implementation of the Directive on 1 September 2019 illustrates this fact. The majority of seasonal workers in Belgium are nationals from other EU Member States, mainly Bulgaria, Poland and Romania.<sup>27</sup>

The regions confirmed that since nationals from Bulgaria, Poland and Romania have access to the Belgian job market, no significant number of work authorisation applications have been filed for seasonal work in Belgium in the past years.

### AGE GROUPS

Only the Flemish Region could provide data related to the age of beneficiaries of work authorisations issued for seasonal work in 2018. For the 74 work authorisations granted, the main age group was 45-49 (15 workers), followed by 35-39 (14 workers).

## GENDER DISTRIBUTION

As regards gender distribution, data could only be provided by the Flemish Region. Out of the 74 seasonal workers that were granted a work authorisation in 2018, only 6 seasonal workers were women, the rest of the workers were men.

### SKILLS LEVEL

At present, there are no data available on the skills levels of seasonal workers in Belgium, e.g. with regard to their education or qualification level, language level or experience as seasonal worker.

## 2.4. SALARY OF SEASONAL WORKERS

There are no data available on the average salary of seasonal workers from third countries in Belgium.

In 2020, the minimum salary in Belgium was €1 593,81 per month (based on a 38-hour week contract). However, specific minimum hourly salaries apply to seasonal workers in Belgium. These minimum hourly salaries are set by the applicable sectorial collective labour agreement.

In the agriculture sector, for 2020, the minimum hourly wage for workers including seasonal workers was €9,45. An exception applied to workers working in the cultivation of flax and hemp for who the minimum hourly salary was €13,19.<sup>28</sup>

In the horticulture sector, the minimum hourly wage for 2020 varied between €9,26 and €11,33, depending on the sub-sector (e.g. €9,26 in fruit growing, €10,12 in floriculture, €11,25 in silviculture, €11,33 in tree nurseries).<sup>29</sup> This wage applies to all workers in the sector including seasonal workers.

In the hospitality sector, the minimum hourly wage is also set by a sectorial collective labour agreement.<sup>30</sup> The collective labour agreement for the hospitality sector provides each year a detailed list of the existing jobs in the sector and deter-

27. Information provided by the Fédération Wallonne de l'Agriculture and confirmed by the Walloon Region.

28. Art. 1 and 2 of the Collective labour agreement of the Joint Committee on agriculture of 9 December 2019.

29. Art. 2 of the Collective labour agreement of the Joint Committee for companies in the horticulture sector of 9 December 2019.

30. Collective labour agreement for the hospitality sector of 14 April 2008.

mines to which category (between I and IX) each listed job belongs to. The minimum hourly salary depends on the category to which the seasonal worker belongs to as well as their seniority level. For 2020, the minimum hourly salary for a seasonal worker in the hospitality sector with one year of seniority varied between €12,1504 (for category I workers, e.g. cafeteria workers) and €18,0369 (for category IX workers, e.g. kitchen chefs). Specific and slightly more advantageous calculation methods apply to seasonal workers in the hospitality sector.<sup>31</sup> These particular calculation methods are defined in the sectorial collective labour agreement. For instance, seasonal workers starting a new job will enter in year one of seniority level after performing 130 days of work, and year two of seniority level after performing 390 days of work.<sup>32</sup>

The abovementioned minimum salaries are gross salaries from which social security contributions and tax withholdings must in principle be deducted.

As a general rule, reduced social security contributions apply to seasonal workers, which are calculated on the basis of a low fixed (standard) daily income instead of the actual income, and determined by the applicable sectorial agreement (e.g.,

in the agriculture sector, an amount of €2,70 per working day must be deducted as social contributions).<sup>33</sup> The vast majority of seasonal workers also benefit from the application of a special social security scheme (called the “work bonus”) aiming to guarantee a higher net salary for workers with low wages. The application of these special schemes usually leads to very low to non-existent social security contributions for seasonal workers.

In addition to social security contributions, a withholding tax on professional income must also be deducted from the gross salary. No specific tax provisions are in place for seasonal workers: they are taxed on their actual income (as opposed to a standard income for social security contributions). In most cases, the withholding tax applied to seasonal workers' income in the agriculture and horticulture sectors is 11,11 %, and 33,31% in the hospitality sector.

The abovementioned rules related to social security and tax contributions applicable to seasonal workers are only general rules indicated here to provide a broad overview on the net income of seasonal workers in Belgium. The Belgian seasonal workers scheme is highly technical with many exceptions that are beyond the scope of this study.

## 2.5. AVERAGE DURATION OF STAY OF SEASONAL WORKERS

There are no data available on the average duration of stay of seasonal workers, nor on the periods of the year for which their work authorisations are granted.

According to the Fédération Wallonne de l'Agriculture, the regions need seasonal workers all year long, but more in particular during spring, summer and autumn. The peak season depends on the specific sector. Winter is considered to be the only off-peak period for seasonal work in Belgium, although in some sectors, such as the Christmas trees sector, the high season is winter.

For the hospitality sector, summer is the peak season in Belgium.

## 2.6. SEASONAL WORK AND IRREGULAR MIGRANTS

According to the Belgian labour inspection services, few cases of seasonal work performed by irregular migrants have been detected in the past years. Between 1 January 2018 and 25 June 2020, out of 1136 inspections conducted on 10 640 workers in the agriculture sector (not limited to seasonal workers), only 26 cases of illegal work have been reported (18 cases of workers without a valid work permit and 8 cases of workers without a valid residence permit).

Fairwork Belgium, the main Belgian non-profit organisation defending the rights of illegal workers, has confirmed that they have received no requests for assistance from irregular migrants performing seasonal work in Belgium in recent years.

31. Art. 15 of the Collective labour agreement for the hospitality sector of 14 April 2008.

32. This applies to seasonal workers who have performed the same job function for 130 days for the same employer under a five-day per week work schedule (Art. 15 §2 of the Collective labour agreement for the hospitality sector of 14 April 2008).

33. Article 2/1 of the Belgian Social Security Act of 27 June 1969, Belgian Official Gazette, 25 July 1969.

28. Art. 1 and 2 of the Collective labour agreement of the Joint Committee on agriculture of 9 December 2019.

29. Art. 2 of the Collective labour agreement of the Joint Committee for companies in the horticulture sector of 9 December 2019.

30. Collective labour agreement for the hospitality sector of 14 April 2008.

# 03

## POLICIES AND PROCEDURES FOR SEASONAL WORK IN BELGIUM





Unlike other Member States, Belgium did not develop specific migration policies to attract seasonal workers from third countries. In accordance with the Directive, it did however set up a framework with regard to the fees and duration of the procedure, the application of labour market tests, the facilitation of re-entry of seasonal workers and the conditions for a change of status. In addition to these procedural aspects, this section also discusses the relevant actors in promoting seasonal work and the information provided to employers.

### 3.1. IMPORTANCE OF SEASONAL WORKERS FOR THE LABOUR MARKET

In Belgium, the entry and stay of seasonal workers from third-countries is not part of the overall migration policies, the focus being primarily on other categories of third-country national workers.

Historically the overall federal migration policy essentially aimed at attracting highly-skilled workers.<sup>34</sup> However, since economic migration became a regional competence, each region started to develop its own migration policy. The recent changes in the policies of both the Flemish and the Walloon Regions show a first opening towards middle-skilled workers.

As a general rule, companies wishing to employ low- or middle-skilled workers from third countries in Belgium need to pass a labour market test.

Since June 2019, the Minister for employment of the Walloon Region publishes yearly a list of shortage occupations for middle-skilled workers for which employers no longer need to prove that they could not find a suitable candidate within a reasonable period of time.<sup>35</sup> The list, applicable since 12 September 2019, includes occupations in the IT, maintenance and construction sectors. Although seasonal work is not listed

as a shortage occupation, the Walloon Region also exempts seasonable workers under the Directive from the labour market test.

In Flanders, a similar shortage occupations list for middle-skilled workers, which includes occupations in the construction, transportation and health care sectors, is applicable since January 2019.<sup>36</sup> The labour market test has been waived for workers mentioned on this list. In Flanders, seasonable workers are not considered to be part of these categories and are still subject to the labour market testing.

The Brussels-Capital Region and the German-speaking Community also have shortage occupation lists, yet these lists only exempt workers from third countries from the labour market testing if they have obtained the EU long-term residency status in accordance with EC Directive 2003/109/CE.<sup>37</sup> The labour market testing therefore also applies to seasonal workers in the Brussels-Capital Region and German-speaking Community. In the latter, a quota is also provided for under the applicable regulation, but no annual quota had been set in practice at the time of writing of this study.

Before the implementation of the Directive and its entry into force on 1 September 2019, there was no specific scheme in place for the entry and stay of seasonal workers from third countries.

Until today, Belgium does not rely on seasonal workers from third countries to fill its labour market needs. The small number of work authorisations issued in the Flemish Region under the Directive (110 between 1 September 2019 and 27 May 2020) and the lack of seasonal work permit applications in the other regions since the implementation of the Directive on 1 September 2019 illustrate this fact (see Section 2).

The Flemish Region and Walloon Region confirmed that the majority of seasonal workers are in fact nationals from other EU Member States. The Walloon Region noted that since nationals from Bulgaria, Poland and Romania have access to the Belgian job market, no significant number of work authorisation applications have been filed for seasonal work in Belgium in the past years.

According to the Walloon Federation of Agriculture (Fédération Wallonne de l'Agriculture, FWA), the current number of seasonal workers coming from other EU Member States is high enough to fill the country's labour market needs. The FWA stated that most farmers encounter no problems in finding seasonal workers in other EU Member States and that the administrative burden related to the seasonal work permit application process usually deters farmers from hiring workers from third countries.

34. EMN, Determining labour shortages and the need for labour migration from third countries in Belgium, 2015, p. 189, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_labour\\_shortages\\_synthesis\\_final.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_labour_shortages_synthesis_final.pdf).

35. Art. 2 §3 of Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019.





### 3.2. FEES AND DURATION OF THE PROCEDURE <sup>38</sup>

In 2018, prior to the transposition of the Directive, the average processing time for work permit applications for seasonal work in Flanders was 40,7 days: an average of 16,7 days between the reception of the application and the start of the processing, and an average of 24 days for the actual processing of the application.

The new scheme transposing the Directive and applicable as of 1 September 2019 provides that a decision on the single permit application for seasonal work must be delivered within 90 days from the notification by the competent regional authority that the application file is considered to be complete, i.e. admissible.<sup>39</sup> However, it should be noted that there are no legal time limits for the initial decision on the admissibility of the case by the regional authority, with the exception of the Flemish Region.<sup>40</sup>

The applicable legislation also provides that if the third-country national applying for a seasonal single permit has been employed as a seasonal worker in Belgium over the past five years, and has fully complied with the conditions applicable to seasonal workers during

their previous stay, the decision must be taken within 60 instead of 90 days.<sup>41</sup> For renewal as well as extension applications, a decision must be delivered within 30 days from the notification from the competent authority that the application file is complete.<sup>42</sup>

As regards the cost of the application, a fee of €350 applies to single permit applications (for stays longer than 90 days) for seasonal work.<sup>43</sup> In addition, some municipalities apply a fee for the renewal, extension or replacement of certain types of residence permits. The municipal fee is limited to an amount of €50 and can be levied only once a year.<sup>44</sup>

38. Art. 18-19 Seasonal Workers Directive.

39. Art. 17 § 1 of the Executing Cooperation Agreement of 6 December 2018; Article 61/29-4 of the Immigration Act.

40. Art. 66 Decision of 7 December 2018 of the Flemish Government implementing the Law of 30 April 1999 on the employment of foreign workers.

41. Article 17 §2 of the Executing Cooperation Agreement of 6 December 2018.

42. Article 17 §3 of the Executing Cooperation Agreement of 6 December 2018.

43. Article 1/1/1 2° a) of the Royal Decree of 8 October 1981 implementing the Law regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 27 October 1981 (Royal Decree implementing the Immigration Act).

44. Royal Decree of 5 March 2017 determining the residence permits for which the municipalities can apply fees for their renewal, extension or replacement and determining the maximum amount mentioned in article 2, § 2, of the Law of 14 March 1968 repealing the Law relating to the residence taxes of foreigners, coordinated on 12 October 1953, Belgian Official Gazette, 20 March 2017.



### 3.3. LABOUR MARKET TEST

In the Flemish Region, the Brussels-Capital Region and the German speaking community, the respective Decisions provide that a labour market test applies to the seasonal workers covered by the Directive. Employers must therefore demonstrate that they cannot find a suitable candidate within a reasonable timeframe in the Belgian and European labour market. Wallonia decided not to apply a labour market test to seasonal workers covered by the Directive.

### 3.4. FACILITATION OF RE-ENTRY <sup>45</sup>

Belgium has adopted measures to facilitate the re-entry of seasonal workers.

According to Article 17 of the Executing Cooperation Agreement and the Immigration Act, if the third-country national applying for a single permit for seasonal work has been employed as a seasonal worker in Belgium over the past five years and has complied with the applicable regulations during their previous stay, the decision on their permit application must be taken within 60 days.<sup>46</sup> This provision is a partial transposition of Article 16 of the Seasonal Workers Directive, which 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. Article 16, 2 (c) of the Directive provides that the facilitation may include an accelerated procedure leading to a decision on the application for a worker permit for seasonal work or a long stay visa.

The Immigration Act further states that when the authorities process a single permit application for seasonal work, the fact that the applicant has been employed as a seasonal worker in Belgium over the past five years and has complied with the regulations applicable to seasonal workers during their previous

45. Art. 16 Seasonal Workers Directive.

46. Art. 61/29-4 §4 of the Immigration Act.



stay must be considered when examining the application.<sup>47</sup> The Walloon Region took a step further by providing that the re-entry of a seasonal worker who has been employed in the European Economic Area as a whole and has complied with the applicable regulations should be facilitated.<sup>48</sup>

Regarding visa applications more specifically, the Immigration Act provides that the executive power can adopt measures derogating from the Immigration Act's general provisions to facilitate the delivery of a visa to third-country nationals who have been employed as a seasonal worker in Belgium or in another EU Member State over the past five years and who have complied with the regulations applicable to seasonal workers during their previous stay.<sup>49</sup>

### 3.5. CHANGE OF STATUS

Third-country nationals in Belgium for the purpose of seasonal work can apply for a change of status while they are in Belgium, assuming that at the time the application is submitted, the third-country national is in legal stay in Belgium, and that the regulation applicable to the permit they apply for does not prohibit the applicant from applying while on the Belgian territory.

As of September 2020, third-country nationals already staying in Belgium can only apply for a single permit if they are holder of a short-term residence permit, a student permit or a researcher permit. For other categories of third-country nationals, applications from the Belgian territory are no longer possible.<sup>51</sup>

47. Art. 61/29-8 §4 of the Immigration Act.

48. Art. 23 Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019.

49. Art. 61/29-3 of the Immigration Act.

50. Art. 61/25-2, §2 Immigration Act, as modified by the Law of 31 July 2020 modifying the Law of 15 December 1980 and the Law of 6 May 2009, Belgian Official Gazette, 28 August 2020.

51. The Collège des Producteurs, Fédération Wallonne Horticole, Fédération Wallonne de l'Agriculture, FUGEA, Bauernbund and Unab.



### 3.6. RELEVANT ACTORS IN PROMOTING SEASONAL WORK

Each of the regions in Belgium has an employment agency: VDAB (Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding) in Flanders, Actiris in Brussels, FOREM (Office Wallon de la Formation Professionnelle et de l'Emploi) in Wallonia and ADG (Arbeitsamt der Deutschsprachigen Gemeinschaft) in the German-speaking Community. Each of these public organisms promotes job offers, including for seasonal work, on their website.

On 8 April 2020, in an effort to address the shortage of seasonal workers resulting from the Covid-19 outbreak, a group of representative organisations in the agriculture and the horticulture sectors in Wallonia<sup>52</sup> launched the website Jobs Easy-Agri,<sup>52</sup> an online platform to connect farmers with candidates for seasonal work. Wallonia confirmed the success of Jobs Easy-Agri, mentioning that 507 candidates for seasonal work had already registered only a couple of days after its launch<sup>53</sup> Shortly after Wallonia, Flanders launched a similar online platform called Help De Oogst ("save the harvest").<sup>54</sup>

It should nevertheless be noted that none of the abovementioned websites (nor the official websites of the abovementioned public organisms for employment) currently have English versions. They are therefore not targeting seasonal workers outside Belgium.

According to the Walloon Federation of Agriculture, word of mouth is the main source of the recruitment of foreign seasonal workers, who represent the majority of seasonal workers in Belgium and are mainly from other EU Member States. The same workers often come back each season and refer other workers to their employers.

52 <https://jobs.easy-agri.com/>

531. <https://borsus.wallonie.be/home/presse--actualites/publications/covid-19--507-inscriptions--la-plate-forme-pour-recruter-du-personnel-saisonnier-rencontre-un-beau-succes.publicationfull.html>

54. <https://www.vdab.be/helpdeoogst>.



### 3.7. INFORMATION PROVIDED TO EMPLOYERS

All the necessary information regarding the procedure for hiring seasonal workers from third countries, including the forms and documents to submit for the seasonal worker's work permit application, can be found on the official website of each region:

- For Flanders:  
<https://www.vlaanderen.be/en/working>
- For Wallonia:  
<https://emploi.wallonie.be>
- For the German-speaking Community:  
<https://www.ostbelgienlive.be>
- For Brussels:  
<http://werk-economie-emploi.brussels>

Representative organisations also provide information on the procedure for hiring seasonal workers through information available on their websites and their regular publications. In addition, some of these organisations, such as the Fédération Wallonne de l'Agriculture in Wallonia and the Boerenbond in Flanders, provide counselling services to their members who can address them legal or human resource-related questions.

# 04

## PROTECTION AND RIGHTS OF SEASONAL WORKERS





This fourth section describes the rights of seasonal workers from third countries in Belgium compared to the rights of national workers. The section also focuses on the key actors and mechanisms ensuring the protection of these rights.

#### 4.1. EQUAL TREATMENT OF SEASONAL WORKERS<sup>55</sup>

The Directive provides for **equal treatment** of seasonal workers and nationals in relation to nine categories of rights.<sup>56</sup> The provisions include a right to receive statutory pensions based on previous employment and acquired in accordance with EU legislation<sup>57</sup> under the same conditions and at the same rates as nationals when they move to a third country. In Belgium, the Royal Decree of 23 April 2018 set up a framework for the transfers of pension contributions to the countries of origin of third-country national workers.<sup>58</sup> Third-country nationals from countries with which Belgium has concluded a social security agreement can apply through their local social security authority. Third-country nationals from other countries can send an application by registered mail to the Federal Pensions Service.<sup>59</sup>

According to the Directive, Member States may however **restrict** equal treatment of third-country nationals by limiting their access to certain of the rights mentioned, notably family and unemployment benefits, educational and vocational training and tax benefits.

Belgium applies a restriction to the equal treatment between seasonal workers from third countries and nationals who

carry out comparable employment activities only with regard to family benefits. In Belgium, single permit holders – including seasonal workers – are not entitled to family benefits if their single permit is issued for a maximum period of 6 months.<sup>60</sup>

Belgium does not apply any formal restrictions with regard to **unemployment benefits**. It is important to note though that a person should be in legal stay in order to claim these benefits. As the residence rights of third-country nationals temporarily staying in Belgium end simultaneously with the work rights, these persons would in principle not be entitled to unemployment benefits. Single permit holders, whose work rights have been terminated prior to the expiry of the single permit, are nonetheless entitled to unemployment benefits for a maximum of 60 days after the termination of the employment agreement.<sup>61</sup>

In addition, in order to be eligible for unemployment benefits in Belgium, a worker must have worked for a specific number of days over a determined period of time preceding the period of unemployment. The number of days that a third-country national worked in the country of origin will in principle not be taken into account.<sup>62</sup> As a result, the majority of third-country national workers in Belgium do not benefit from the same rights as national workers when it comes to unemployment benefits.

Finally, while not mentioned as such in the Directive, it should be noted that third-country nationals doing seasonal work in Belgium may be particularly vulnerable to exploitation or human trafficking. In 2019, 35 workers in the agricultural and horticultural sectors, and 31 workers in the hospitality sector have been identified as potential victims of trafficking in human beings by the labour inspectorate.<sup>63</sup> However, these data do not specify whether these workers were seasonal workers.

55. Art. 23(1) Seasonal Workers Directive.

56. Seasonal workers are moreover entitled to receive

57. Art. 3 Regulation (EC) No 883/2004 on the coordination of social security systems.

58. Royal Decree of 23 April 2018 modifying Art. 65 of the Royal Decree of 21 December 1967 laying down general rules for the scheme of retirement and survivor's pensions, Belgian Official Gazette, 2 May 2018.

59. FR: Service fédéral des pensions; NL: Federale Pensioendienst.

60. Executing Cooperation Agreement of 17 June 2016 between the Flemish Community, the Walloon Region, the Common Community Commission and the German-speaking Community concerning the transposition into family law of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 establishing a single application procedure for the issuance of a single permit authorizing third-country nationals to reside and work in the territory of a Member State and establishing a common set of rights for workers from third countries legally residing in a Member State, Belgian Official Gazette, 1 July 2016.

61. Art. 69 of the Royal Decree of 25 November 1991 on the regulation of unemployment, Belgian Official Gazette, 31 December 1991.

62. Exceptions apply to a very limited number of countries, such as Bosnia and Herzegovina and Macedonia, resulting from the application of bilateral agreements.

63. Federal Migration Centre Myria, Rapport annuel traite et trafic des êtres humains – Jaarverslag mensenhandel en mensensmokkel,





## 4.2. ACCESS TO ADEQUATE HOUSING<sup>64</sup>

Under the Directive, EU Member States are obliged to require evidence that the seasonal workers benefit from accommodation that ensures an adequate standard of living for the duration of their stay. For the application of the Directive, the Belgian legislation refers to the relevant housing legislation to define the “adequate standard of living”.<sup>65</sup>

Like economic migration, housing is a regional competence in Belgium. Each region has a Housing Code laying down detailed rules related to security, sanitation and equipment to improve the living conditions of tenants. Each local authority competent for the application of the Directive therefore refers to its local Housing Code.

Documents proving the adequate accommodation must be attached to the single permit application.<sup>66</sup> The Immigration Office is in charge of examining these documents in the framework of the residence aspects of the single permit application.<sup>67</sup> In the draft version of the Royal Decree implementing the Directive, a provision was added that in case of doubt on the adequacy of the accommodation, the Immigration Office could request the opinion of the regional administration in charge of implementing the Housing Code. This provision was

removed from the final version of the Decree after it was pointed out during the adoption process that the Executing Cooperation Agreement did not empower the federal government with the authority to entrust the regional organisations in charge of applying the Housing Code with a new mission.<sup>68</sup>

64. Art. 20 Seasonal Workers Directive.

65. Art. 16 of the Executing Cooperation Agreement of 6 December 2018.

66. Art. 16(3) of the Executing Cooperation Agreement of 6 December 2018; Art. 61/29-8 4° of the Immigration Act.

67. Ibidem.

68. Council of State, Advice 66.622/4, 5 November 2019, p. 11-12 (Art. 105/43).



## 4.3. KEY ACTORS ENSURING THE PROTECTION OF RIGHTS

In Belgium, the rights of seasonal workers are protected by a range of actors, including the labour inspectorates, trade unions and organisations defending the rights of foreign nationals.

In terms of cooperation between national authorities, it should be noted that until recently the Belgian Immigration Office<sup>69</sup> and the national labour authorities<sup>70</sup> used to cooperate in an ad hoc manner. On 8 May 2018, these authorities decided to formalise their cooperation by signing a Cooperation protocol. The authorities agreed to give each other access to their databases in order to better combat social fraud and human trafficking. In addition to this exchange of information, the authorities also agreed to integrate information related to single permits into the existing online platform of the Belgian social security authority<sup>71</sup> for the declaration of foreign workers coming to work on a temporary basis in Belgium, known as the ‘Limosa declaration’. The Cooperation protocol specifically mentions the potential usefulness of this last measure for employers of seasonal workers in the agricultural and horticultural sectors.

Beyond national authorities, important actors protecting the rights of seasonal workers in Belgium are the trade unions

(such as the Fédération générale du travail de Belgique FGTB Horval, the main trade union representing workers from the agriculture, horticulture and hospitality sectors in Belgium) and organisations defending the rights of foreign nationals (such as Fairwork Belgium or Coordination et initiatives pour réfugiés et étrangers CIRE).

69. FR: Office des Etrangers; NL: Dienst Vreemdelingenzaken.

70. FR: Service d'information et de recherche sociale (SIRS); NL: Sociale inlichtingen- en opsporingsdienst (SIOD). The SIRS-SIOD coordinates the social inspection services in Belgium.

71. FR: Office National de Sécurité Sociale (ONSS); NL: Rijksdienst voor Sociale Zekerheid (RSZ).



#### 4.4. COMPLAINTS AGAINST EMPLOYERS <sup>72</sup>

In order to facilitate the lodging of complaints by seasonal workers against their employer, the Executing Cooperation Agreement provides that seasonal workers may be represented before the Belgian Courts by representative organisations of workers, trade unions or any other institutions or associations aiming to defend the interests of third-country nationals in Belgium (subject to the consent of the worker).<sup>73</sup>

The Walloon Decision transposing the Directive explicitly states that the Government must ensure that seasonal workers have equal access to all measures related to their protection against any unfavourable treatment by the employer resulting from a complaint or a legal action introduced by them.<sup>74</sup>

72. Art. 25 Seasonal Workers Directive.

73. Art. 23 of the Executing Cooperation Agreement of 6 December 2018.

74. Art. 25 Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019.

75. Art. 17 Seasonal Workers Directive.

#### 4.5. SANCTIONS AGAINST EMPLOYERS <sup>75</sup>

The Walloon Region introduced a specific sanction for employers who failed to fulfil their obligations toward seasonal workers. Its Decision provides that if the authorisation for the purpose of seasonal work is withdrawn, the employer shall be liable to pay compensation to the worker. Any liability shall cover any outstanding obligations which the employer would have had to respect if the authorisation for the purpose of seasonal work had not been withdrawn.<sup>76</sup>

Brussels, Flanders and the German-speaking Community did not put in place any specific sanction against employers who did not comply with their duties under the Directive. Only the general provisions of the Belgian Social Penal Code, including the specific sanctions in respect of the refusal or withdrawal of permits, apply. For instance, according to the Social Penal Code, an employer who does not respect the limitations of the work authorisation, such as the duration of the work, or who employs personnel whose authorisation has been withdrawn, can receive an administrative fine between €400 and €4 000 or be condemned to pay a criminal fine between €800 and €8 000,<sup>77</sup> to be multiplied by 8 pursuant to the Law of 5 March 1952 relating to the additional decimals<sup>78</sup> on criminal fines.<sup>79</sup>

#### 4.6. OTHER MECHANISMS ENSURING THE PROTECTION OF RIGHTS

Until today, Belgium did not adopt any specific procedures or mechanisms to ensure that seasonal workers and their employers are informed of their rights and duties.<sup>80</sup>

Belgium did not set up any specific procedures or mechanisms to monitor and carry out inspections to verify the exercise of seasonal workers' rights and compliance with the rules by both the seasonal workers and their employers.<sup>81</sup>

76. Art. 22 Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019.

77. Art. 175 (2) Belgian Social Penal Code.

78. FR: opdécimes; NL: opdecimen.

79. Art. 1 Law of 5 March 1952 relating to the additional decimals on criminal fines, Belgian Official Gazette, 3 April 1952.

80. Art. 11 Seasonal Workers Directive.

81. Art. 24 Seasonal Workers Directive.



# 05

## CONCLUSIONS



The Directive entered into force in Belgium only on 1 September 2019. At the time of the drafting of this study, Belgium had not yet admitted any third-country seasonal worker under the Directive, making it difficult to fully assess its transposition. Nevertheless, some observations can already be made.

It can first be argued that the freedom given to Member States to list the sectors to which the Directive will apply can result in a situation where the Directive is formally transposed into the legislation, but not applied in practice. The Brussels Region, which has decided that only the agriculture sector will be covered by the Directive while this economic sector is not active in the region (unlike, for example, the hospitality sector, which is not covered in the region by the Directive) can be cited as an example.

As regards the protection of seasonal workers' rights, Belgium has not yet fully implemented some of the Directive's provisions. The legislation currently in place does not provide for sanctions such as the exclusion of employers who are in serious breach of their obligations under the Directive from employing seasonal workers, as required by Article 17 (1) of the Directive. Only Wallonia provides for the specific sanction under Article 17 (2) of the Directive, namely the liability to pay compensation to the seasonal worker if the authorisation is withdrawn in specific circumstances listed under Article 9 (2)

and points (b), (c) and (d) of Article 9 (3) of the Directive. Brussels, Flanders and the German-speaking Community have not put in place any specific sanction against employers who have not fulfilled their duties under the Directive. Only the general provisions of the Belgian Social Penal Code and the general sanctions in respect of refusal or withdrawal of work permits apply. In addition, Belgium does not have any specific procedures or mechanisms in place to monitor, assess and carry out inspections to prevent abuses and to sanction infringements of the Directive, as prescribed by Article 24 of the Directive.

Although each region in Belgium has different needs and consequently different employment policies, it can be safely predicted that in the nearby future, the impact of the Seasonal Workers Directive in Belgium will be limited. At this time, Belgium does not rely on seasonal workers from third countries to fill its labour market needs. The majority of seasonal workers in Belgium are foreigners coming from other EU Member States, mainly from Bulgaria, Poland and Romania. The Walloon Region confirmed that no significant number of work authorisation applications have been filed since Bulgaria and Romania benefit from the EU freedom of movement and have access to the EU job market. According to sectorial representatives such as the FWA, the number of seasonal workers coming from other EU Member States is usual-

ly high enough to fill the country's labour market needs, and the administrative burden related to the work and single permit application process usually deters farmers from hiring seasonal workers from third countries.

However, markets are subject to change and the workforce can fluctuate. If the number of seasonal workers available from other EU member states come to decrease in the future, the Directive could come to play a more important role.



## ANNEXES



## ANNEX A: REFERENCES

### LEGISLATION

#### European

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, Official Journal of the European Union, 28 March 2014.

#### Federal

Law of 31 July 2020 modifying the Law of 15 December 1980 and the Law of 6 May 2009, Belgian Official Gazette, 28 August 2020.

Law of 29 May 2020 laying down various urgent tax measures due to the Covid-19 pandemic, Belgian Official Gazette, 11 June 2020.

Law of 5 May 2019 modifying the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 22 August 2019.

Belgian Social Penal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010.

Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 31 December 1980 (Immigration Act).

Belgian Social Security Act of 27 June 1969, Belgian Official Gazette, 25 July 1969.

Law of 5 March 1952 relating to the additional decimals on criminal fines, Belgian Official Gazette, 3 April 1952.

Special Powers Decree n. 14 of 27 April 2020 taken in execution of Article 5, § 1, 5° of the Law of 27 March 2020 granting powers to the King in order to take measures in the fight against the spread of the coronavirus Covid-19 (II) aimed at ensuring the proper organization of work in critical sectors, Belgian Official Gazette, 28 April 2020.

Royal Decree n. 5 of 9 April 2020 modifying certain rules applicable in the agricultural and horticultural sectors in the framework of Covid-19 measures, Belgian Official Gazette, 20 April 2020.

Royal Decree of 23 March 2020 modifying the Royal Decree of 8 October 1981 implementing the Law regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 7 May 2020.

Royal Decree of 23 April 2018 modifying Art. 65 of the Royal Decree of 21 December 1967 laying down general rules for the scheme of retirement and survivor's pensions, Belgian Official Gazette, 2 May 2018.

Royal Decree of 5 March 2017 determining the residence permits for which the municipalities can apply fees for their renewal, extension or replacement and determining the maximum amount mentioned in article 2, § 2, of the Law of 14 March 1968 repealing the Law relating to the residence taxes of foreigners, coordinated on 12 October 1953, Belgian Official Gazette, 20 March 2017.

Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 26 June 1999.

Royal Decree of 25 November 1991 on the regulation of unemployment, Belgian Official Gazette, 31 December 1991.

Royal Decree of 8 October 1981 implementing the Law regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 27 October 1981 (Royal Decree implementing the Immigration Act).

Ministerial Decision of 3 April 2020 modifying the Ministerial Decision of 23 March 2020 on emergency measures to limit the spread of the Covid-19, Belgian Official Gazette, 3 April 2020.

#### Regional

Decision of 23 May 2019 of the German-speaking Community amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 8 July 2019.

Decision of 16 May 2019 of the Government of the Brussels-Capital Region amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, with regard to work authorisation for activities carried out within the framework of an intra-group transfer, seasonal worker, researcher, trainee, volunteer, or within the framework of the European Blue Card, Belgian Official Gazette, 4 June 2019.

Decision of 16 May 2019 of the Walloon Government relating to the occupation of foreign workers and repealing the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 relating to the occupation of foreign workers, Belgian Official Gazette, 19 June 2019.

Decision of 7 December 2018 of the Flemish Government implementing the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 December 2018.

### Interfederal

Executing Cooperation Agreement of 28 May 2019 between the federal state, the Walloon Region, the Flemish Region, the Brussels-Capital Region and the German-speaking Community implementing the Cooperation agreement of 2 February 2018 between the federal state, the Walloon Region, the Flemish Region, Brussels-Capital Region and the German-speaking Community on the coordination of policies for the granting of work permits and the granting of residence permits, as well as norms relating to the employment and stay of foreign workers, Belgian Official Gazette, 18 July 2019.

Executing Cooperation Agreement of 6 December 2018 between the federal state, the Walloon Region, the Flemish Region, the Brussels-Capital Region and the German-speaking Community implementing the cooperation agreement of 2 February 2018 between the federal state, the Walloon Region, the Flemish Region, Brussels-Capital Region and the German-speaking Community on the coordination of policies for the granting of work permits and the granting of residence permits, as well as norms relating to the employment and stay of foreign workers, Belgian Official Gazette, 18 July 2019.

Executing Cooperation Agreement of 17 June 2016 between the Flemish Community, the Walloon Region, the Common Community Commission and the German-speaking Community concerning the transposition into family law of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 establishing a single application procedure for the issuance of a single permit authorizing third-country nationals to reside and work in the territory of a Member State and establishing a common set of rights for workers from third countries legally residing in a Member State, Belgian Official Gazette, 1 July 2016.

### PARLIAMENTARY AND POLICY DOCUMENTS

Council of State, Advice 66.622/4, 5 November 2019 on the Draft version of the Royal Decree of 23 March 2020 modifying the Royal Decree of 8 October 1981 implementing the Law regarding the entry, residence, settlement and removal of foreign nationals.

### EMN STUDIES

Determining labour shortages and the need for labour migration from third countries in Belgium, 2015, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_labour\\_shortages\\_synthesis\\_final.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_labour_shortages_synthesis_final.pdf).

### OTHER DOCUMENTS

Collective labour agreement of the Joint Committee on agriculture of 9 December 2019.

Collective labour agreement of the Joint Committee for companies in the horticulture sector of 9 December 2019.

Collective labour agreement for the hospitality sector of 14 April 2008.

European Commission, Legal migration: Commission refers Belgium to the Court of Justice for failing to provide common rules for non-EU seasonal workers, 19 July 2018, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4490](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4490).

Federal Migration Centre Myria, Rapport annuel traite et trafic des êtres humains – Jaarverslag mensenhandel en mensensmokkel, 2019.

## ANNEX B: STUDIES AND REPORTS OF THE BELGIAN CONTACT POINT OF THE EMN (2009-2018)

The present annex lists the national studies and reports published by the Belgian Contact Point of the EMN between 2009 and 2018. The other EMN National Contact Points (NCPs) produced similar reports on these topics for their (Member) State. For each study, the EMN Service Provider, in cooperation with the European Commission and the EMN NCPs, produced a comparative Synthesis Report, which brings together the main findings from the national reports and places them within an EU perspective.

The Belgian studies and reports mentioned below are available for download on [www.emnbelgium.be](http://www.emnbelgium.be)

The studies and reports from the other NCPs as well as the Synthesis Reports are available on [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm)

2009	
April 2009	The Organisation of Asylum and Migration Policies in Belgium
June 2009	Annual Report on Asylum and Migration Policy in Belgium – 2008
July 2009	Unaccompanied Minors in Belgium <i>- Also available in French and Dutch</i>
October 2009	Programmes and Strategies in Belgium Fostering Assisted Voluntary Return and Reintegration in Third Countries <i>- Also available in French and Dutch</i>
December 2009	EU and Non-EU Harmonised Protection Statuses in Belgium
2010	
January 2010	Annual Report on Asylum and Migration Policy in Belgium – 2009
August 2010	Satisfying Labour Demand Through Migration in Belgium
2011	
January 2011	Temporary and Circular Migration in Belgium: Empirical Evidence, Current Policy Practice and Future Options
March 2011	Annual Report on Asylum and Migration Policy in Belgium – 2010
May 2011	EU and Non-EU Harmonised Protection Statuses in Belgium (update)
October 2011	Visa Policy as Migration Channel in Belgium

2012	
January 2012	Practical Measures for Reducing Irregular Migration in Belgium
March 2012	Annual Report on Asylum and Migration Policy in Belgium – 2011
April 2012	Misuse of the Right to Family Reunification : Marriages of Convenience and False Declarations of Parenthood in Belgium <i>- Also available in French and Dutch</i>
September 2012	Establishing Identity for International Protection: Challenges and Practices in Belgium <i>- Also available in French and Dutch</i>
September 2012	The Organisation of Migration and Asylum Policies in Belgium (update)
October 2012	Migration of International Students to Belgium, 2000-2012

2013	
May 2013	Annual Report on Asylum and Migration Policy in Belgium – 2012
July 2013	Attracting Highly Qualified and Qualified Third-Country Nationals to Belgium
August 2013	The Organisation of Reception Facilities in Belgium
October 2013	The Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures in Belgium

2014	
February 2014	Migrant Access to Social Security – Policy and Practice in Belgium <i>- Also available in French and Dutch</i>
June 2014	Good Practices in the Return and Reintegration of Irregular Migrants: Belgium's Entry Bans Policy and Use of Readmission Agreements
June 2014	The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Belgium
July 2014	Annual Report on Asylum and Migration Policy in Belgium – 2013
October 2014	Policies, Practices and Data on Unaccompanied Minors in Belgium (2014 Update)
December 2014	Admitting Third-Country Nationals for Business Purposes in Belgium

2015	
June 2015	Determining Labour Shortages and the Need for Labour Migration from Third Countries in Belgium <i>- Also available in French</i>
July 2015	Annual Report on Asylum and Migration Policy in Belgium - 2014
August 2015	Dissemination of Information on Voluntary Return: How to Reach Irregular Migrants not in Contact with the Authorities in Belgium

## 2016

May 2016	Changes in Immigration Status and Purposes of Stay in Belgium
May 2016	Integration of Beneficiaries of International Protection into the Labour Market in Belgium
June 2016	Annual Report on Asylum and Migration Policy in Belgium - 2015
December 2016	Returning Rejected Asylum Seekers: Challenges and Good Practices in Belgium
December 2016	Resettlement and Humanitarian Admission in Belgium

## 2017

June 2017	Annual Report on Asylum and Migration Policy in Belgium - 2016
July 2017	Family Reunification of Third Country Nationals in Belgium
July 2017	Illegal Employment of Third Country Nationals in Belgium
December 2017	Challenges and good practices for establishing applicants' identity in the migration process in Belgium

## 2018

May 2018	Changing influx of asylum seekers in 2014-2016: Belgium's responses
July 2018	Effectiveness of return in Belgium: challenges and good practices linked to EU rules and standards
August 2018	Annual report on asylum and migration in Belgium – 2017
September 2018	Labour market integration of third-country nationals in Belgium
September 2018	Impact of visa liberalisation on countries of destination
December 2018	Socio-Economic Profile and Socio-Economic Careers of People Granted International Protection in Belgium, 2001-2014

## 2019

June 2019	Annual Report on Asylum and Migration Policy in Belgium – 2018
June 2019	Beneficiaries of International Protection Travelling to their Country of Origin: Challenges, Policies and Practices in Belgium

## 2020

May 2020	Comparative overview of national protection statuses in Belgium 2010-2019
June 2020	Annual Report on Asylum and Migration Policy in Belgium – 2019
June 2020	Migratory Pathways for Start-ups and Innovative Entrepreneurs in Belgium
July 2020	Pathways to Citizenship in Belgium



## EMN Belgium

1 rue de Louvain 1000 Brussels  
emn@ibz.fgov.be  
+32 (0)2 500 23 94  
[www.emnbelgium.be](http://www.emnbelgium.be)



Funded by the European Union's Asylum,  
Migration and Integration Fund.