

EUROPEAN



# POLICY BRIEF



## EU DIRECTIVE ON SEASONAL WORKERS

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### BACKGROUND

The Directive started to be prepared in 2010. However, EU's interest in this kind of mechanisms comes from afar, as shows The Hague programme adopted by the EU Council in 2004 and the financing of the "AENEAS-Cartaya" project in Huelva (Spain), the same year, that was conceived as an experiment to test the viability of such initiatives.

Located in Southern Spain, only 300 km far from Morocco, Huelva was selected as the perfect place to test programmed circular migration. The region's main economic activity was purely seasonal – strawberry harvesting– and demanded over 60,000 workers each year during a short period of time, from February to June. Workforce's shortage has been a traditional problem since local agriculture passed from a traditional peasant and family farm model to an industrial one in the 70's. Today, Huelva's region is the second world's largest strawberry producer after California.

The Aeneas project helped financing the recruitment of Moroccan farmworkers to supply Huelva's fields during the campaign. Their selection in the country of origin, their transportation to their workplaces and their accommodation, were provided by employers and controlled by the police. Several International Organizations considered that program as an example of good practices (López-Sala, 2016) thanks to its "triple win" focus that conceived seasonal jobs as co-development opportunity for origin countries (Macías-Llaga *et al.*, 2016), and, at the same time, guaranteed a high return rate (around 80%). Promoting the "Huelva model" in other Member States became an objective for EU Commission, and the Directive 2014/36/EU can be largely see as a result of this process.

At the time when the Directive was being discussed (2010-2014), the context of Seasonal Migration in Huelva, but also in Spain, and moreover in Europe, was radically different than when the AENEAS Cartaya program was tested, ten years ago. The EU was now facing the worst economic crisis in decade, especially in Southern Europe. A common reaction to the recession context was closing borders in order to face growing unemployment rates, this was the case of Spain, France or Italy (López-Sala *et al.*, 2016). Considering the example of Huelva, the number of seasonal workers coming under its “model program” progressively decreased passing from its maximum peak, attained in 2007, when 40.491 workers were recruited under the program, to drop below the 2.000 authorizations issued in 2013. So, when Europe was trying to reply Huelva’s model at the European level including most of its characteristics in the Directive, the socio-political context was completely different than the one when the program demonstrated to be successful.

Data from Eurostat also shows that the number of seasonal workers during the period 2008-2016 decreased in all the EU, from 56.042 seasonal workers in 2008 to 11.415 in 2016. However, these figures are much lower than the real EU’s seasonal workforce needs, principally in agriculture, which suggest little success of the Seasonal Workers Directive in fueling the promotion of circular migration and temporary seasonal workers’ programs.

Table 1. Permits issued for seasonal work reasons in EU-28 and in the top five hosting countries 2008-2016

	2008	2009	2010	2011	2012	2013	2014	2015	2016
European Union (28 countries)	56.042	54.972	119.664	27.951	20.323	17.092	188.152	333.362	458.194
European Union (28 countries excluding Poland)	56.042	54.972	46.508	27.951	20.323	17.092	12.030	12.348	11.415
Spain	18.254	5.314	8.741	4.507	3.780	3.127	3.075	2.900	2.841
France	3.860	2.236	1.061	1.059	1.115	1.000	1.205	1.539	1.654
Italy	8.423	23.034	22.345	15.204	9.715	7.560	4.805	3.570	3.520
Poland	0	0	73.156	0	0	0	176.122	321.014	446.779
Sweden	3.739	6.879	4.373	2.442	5.349	4.980	2.662	4.008	3.309

Source: Eurostat, first permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc].

Moreover, the previous figures in the Polish case in particular also illustrate another serious limitation related to European Statistics. As Eurostat says in its Methodological Guidelines:

“In the absence of the common European legislative framework and common definition of the Seasonal workers this category include all 'third-country nationals, who retain their legal domicile in a third country but reside temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between the third country national and the employer established in a Member State.”<sup>1</sup>

This implies that Member States can decide what they consider as “seasonal workers” because there is no common definition and numerical instrument allowing to evaluate the same phenomenon making data on EU’s seasonal workers incomparable within countries. The Polish case is very illustrative of the deficiencies of the actual European statistical system where, for instance, real data on seasonal workers for certain countries coexist with data on the number of Declarations received under the Polish Declaration System that are just intentions to hire foreigners, but not effective work or residence permits.

<sup>1</sup> See [http://ec.europa.eu/eurostat/cache/metadata/Annexes/migr\\_res\\_esms\\_an5.pdf](http://ec.europa.eu/eurostat/cache/metadata/Annexes/migr_res_esms_an5.pdf)

## IMPLEMENTATION OF THE DIRECTIVE

The work done under the TEMPER project can be useful to understand why the Directive have had so little impact in the configuration of Spain, Italy and France's<sup>2</sup> migratory policies (López-Sala *et al*, 2016). These countries are extremely relevant as according to Eurostat data, in 2008 they represented 54,5% of the total seasonal permits issued that year in the Union and in 2016 (excluding Poland) they represented 70,2%.

One of the principal deficiencies that were identified in TEMPER is that the Directive's wording is too vague and gives too much space for interpretation. This fact directly implied that several States' legislations already contained legal provisions that could be interpreted as being in accordance with the Directive, provoking that a majority of States did not need to do big modifications or add anything to their laws. The cases of Italy or Greece reflect this fact as they only transposed 1 measure into their national laws after the approval of the Directive<sup>3</sup>.

In the case of Spain, it is easy to understand why the Directive has not implied big changes. As it took Huelva's program as model, the Spanish legislation was already prepared for the Directive.

France also had already its own program since the 60's (popularly known as the OMI and then the OFII program) so its legislation also contained most of the Directive's provisions.

Italy's case is slightly different. While the country had a seasonal work permit since 1995, the reforms of 1998 (Turco Napolitano law) and 2002 (Bossi Fini Law) also introduced many of the aspects contained in the Directive, so the Italian legislation was already respecting its content in 2014. But the existence of this permit has never driven the creation of a seasonal workers program in the country, showing that the respect of the Directive does not automatically imply a promotion of circular migration (Molinero and Avallone, 2017).

After the transposing period ended, by September 2016, the national laws of EU's countries are all in accordance with the Directive's content, but the fact that opposite models like the Spanish and Italian ones can still fit in the same architecture, shows that the Directive has a structural problem of inconsistency.

## WHY THE DIRECTIVE IS NOT SO EFFECTIVE?

- **Target Population:** The Directive only targets a small (and practically irrelevant) part of seasonal workers: third country nationals leaving outside of the EU and coming to do seasonal work for a maximum period of 9 months per year.

The closing of the programs provoked by the economic crisis coincided in time with Romania and Bulgaria's access to the EU so an important number of employers decided to recruit seasonal workers from these countries for several reasons. Among the principal ones it can be highlighted the fact that employing Romanians or Bulgarians was much easier than employing Third Country Nationals living outside the EU, as they did not need residence permits or work authorizations. The cost of their transport (possible by road) was lower than paying boats or planes and finally, their EU citizenship did not oblige farmers to limit their work to 5, 6 or 9 months. Nowadays Romanian farmworkers are the first national group working in the Spanish, Italian or British agriculture but they are not covered by the Directive.

Thanks to this phenomenon and the lack of Temporary Migration Programs in some countries, like Italy for example, with the definition of the Directive, only a residual part of Seasonal Workers in certain EU countries is covered. Similarly, in Spain, the Directive's provisions can be applied only to those entering in the programs, so, just taking the province

<sup>2</sup> These countries were the three of the four destination countries of study in the TEMPER project

<sup>3</sup> See <https://eur-lex.europa.eu/legal-content/en/NIM/?uri=celex:32014L0036>

of Huelva as an example, in 2016 it was covering around 3% of the Seasonal Workers coming to the Province. In the case of France, the growing employment of Posted workers coming from Spain is reducing each year its target population (Mésini, 2015)

- **Guidelines:** The fact that the Directive did not say how it had to be implemented by Member States, gave too much space for interpretation and most of EU Members could justify that their migratory policies were already respecting it so its transposition had practically no effects (Medland, 2017).
- **Mobility vs. Rights:** The Directive is too much focused in promoting circularity to regulate worker's mobility but is not built on a strong rights-based approach. While Chapter IV of the Directive contains worker's rights, its limited scope and the lack of enforcement mechanisms has not led to a better protection for migrants and an important number of employers (in agriculture) still prefer employing irregulars.
- **Statistics:** The lack of reliable and comparable data makes impossible to measure the phenomenon at EU level and between countries. The definition of Seasonal Work is too general and open to all sectors, when agriculture or tourism are very different and practically have no characteristics in common.

## RECOMMENDED ACTIONS

### Structural reforms:

1. Focus on regulating Seasonal Agricultural Work, that is more than 90% of Seasonal Work. The current general definition does not allow to create specific tools for this concrete sector that absorbs the majority of seasonal workforce.
2. Homogenization of the concept of seasonal work and further harmonization of conditions across Member States.
3. Inclusion of complementary measures to cover also EU's Nationals' Seasonal Workers' Rights and not just Third Country Nationals living outside the EU.
4. Better connection with other Directives to avoid overlaps that favor spaces where its provisions can be evaded. A better communication between Directives is required and their effectivity has to be checked regularly on the ground.

### Improvements for Migrants:

1. The Directive should make training in skills and local languages compulsory and paid by employers.
2. The Directive must ensure some routes towards permanency like, for instance, counting the time spent as a seasonal worker for the application to a permanent permit.
3. The Directive should offer the possibility to decide whether migrants want to contribute to the Social Security of the destination country or transfer their contribution to the Social Security of their origin countries; or even allow reception of their contribution in money once they leave the country (this possibility existed in the Italian legislation until 2003).
4. The Directive should allow switching employers no matter if workers have suffered some kind of abuse or not.
5. The Directive has to specifically ban sexual discrimination in the recruitment processes by introducing gender quotas.
6. Trade Unions should have guaranteed free access to the workplaces to check that labor and health conditions are respected. As well, they must have permanent delegates between migrant workers to facilitate denouncing in cases of exploitation.
7. The possibility of accompanying spouses/children revealed as a central point for migrants in all interviews. Even if the idea behind banning this possibility is that keeping their families in origin will ensure their return, the case of the "Spanish grape pickers Scheme" in France in

the 60's, showed that coming with their families can improve seasonal workers' productivity (Décosse, 2017).

### Improvements for Employers

1. The Directive must ensure the simplification of recruitment processes to make the instrument useful also for small growers and not just for large companies or cooperatives
2. Should harmonize Member States' legislations ensuring that in all the EU, employers will be allowed to hire workers for 9 months, not less.
3. Should guarantee the possibility for employers to select their workers, as pre-selection processes done by States are slow and unproductive.
4. Should allow them hiring seasonal workers from other EU countries with the same conditions as the ones for third country nationals.

### Transparency Measures

1. The Directive must make the issuing of reliable and public data an obligation to all Member States. The number of issued visas, their duration and the nationality of applicants has to be easily accessible by internet.
2. Data from Eurostat must reflect the real inflow of seasonal workers in each EU country following homogeneous criteria set by the Directive in order to avoid having non-comparable figures.
3. Should request compulsory annual reports prepared by independent evaluators and published by each Member State studying the evolution of the programs.

## CONCLUSION

The failures identified in this Policy Brief show that the Directive has not promoted the implementation of more Seasonal Workers Programs and has not become a real alternative for employers and workers to the current prevailing logics in EU's labor market, principally in agriculture. Applying the proposed amendments may improve its functioning by broadening its scope and impact. A structural reform is required if the EU wants to convert the Directive in a useful tool to avoid labor shortages while offering a better protection to workers' rights that can potentially lead to the end of exploitation in sectors like agriculture, but not exclusively, and by so, becoming a real co-development tool.

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## PROJECT IDENTITY

<b>PROJECT NAME</b>	Temporary vs. Permanent Migration (TEMPER)
<b>COORDINATOR</b>	Amparo González Ferrer, Spanish National Research Council (CSIC), Madrid, Spain, <a href="mailto:amparo.gonzalez@cchs.csic.es">amparo.gonzalez@cchs.csic.es</a>
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**BUDGET**

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**WEBSITE**

<http://www.temperproject.eu/>

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**FOR MORE  
INFORMATION**

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**FURTHER READING**

Molinero, Yoan and Avallone, Gennaro. 2018 “Migration and Labour Force needs in contemporary agriculture: what drives states to implement temporary programs? A comparison among the cases of Huelva, Lleida (Spain) and Piana del Sele (Italy)”, *Quality of Life*, XXIX (1) [forthcoming]

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