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2020:1

# Attracting and Protecting Seasonal Workers from third Countries in the EU – National Report Sweden



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**EMN study 2019:**

Attracting and Protecting Seasonal Workers from third Countries in the EU  
- National Report Sweden

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Editor: Jonas Hols

Diarienummer: 2.2.1-2018-50160

Contact: [emn@migrationsverket.se](mailto:emn@migrationsverket.se)

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Contact:

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## Executive summary

Whilst Sweden transposed the Seasonal Workers Directive in 2018, seasonal workers have been admitted to the country for several years prior to that via the country's mainstream system for labour immigration. Ukraine (by the Directive) and Thailand (by national legislation) are the major countries of origin of seasonal workers in Sweden. Seasonal workers have primarily been employed in the agriculture and forestry sectors. With regard to the picking of wild berries, an absolute majority of seasonal workers have originated from third countries and particularly Thailand. For several years up until the 2020 season berry pickers were by far the major category of seasonal workers in Sweden. In 2020, the Covid-19 pandemic has affected the possibilities for seasonal workers from third countries to come to Sweden. On 17 March, the government decided to ban temporarily non-essential travel to Sweden from all countries except Member States and members of the EEA and Switzerland in order to mitigate the effects of the spread of Covid-19 and reduce the outbreak. The ban has been in effect since 19 March. Following recommendations from the EU Commission, it has currently been extended until 22 December. Seasonal workers in the agricultural, forestry and horticulture sectors are listed as examples of persons who could be considered to be carrying out essential functions in Sweden and thus be exempted from the travel ban.

The Directive covers ten sectors of employment in Sweden. These include crop and animal production, forestry and logging, and accommodation and food service activities. The demand for seasonal workers is highest in the summer season. Data up to 2020 is incomplete with regard to in which sectors seasonal workers were admitted under the rules of the Directive. However, the major occupations were workers in forestry, berry picking and planters, and market gardeners and crop growers. Interestingly, the majority of seasonal workers admitted to Sweden in the past few years have fallen out of the scope of the application of the Directive. Wild berry pickers from Thailand have by far been the major group of seasonal workers in recent years. Nearly all of these are hired by Thai staffing agencies while performing their work for berry companies in Sweden, which is the reason why they fall outside the scope of the Directive. Overall, the berry picking industry displays several particular traits that distinguishes it from other seasonal work sectors in Sweden. For example, it is based on the picking of wild berries, which are free to pick due to the right of public access in Sweden. Over the past few years, the Swedish Migration Agency has introduced more stringent requirements for the issuing of work permits for wild berry pickers.

Sweden does not have a minimum salary set in law. However, according to jurisprudence an applicant for a work permit needs to have been offered a salary of at least SEK 13 000 (approximately € 1 236) in order to support herself/himself. In addition, salary, insurance and overall employment conditions offered must be at least on par with those set by collective agreements or with what is customary within the occupation or industry. Salary levels for seasonal workers set in collective agreements are normally higher than SEK 13 000.

Sweden does not apply a labour market test to seasonal workers and the re-entry of seasonal workers is prioritised under certain conditions. There is no migration policy in place from the government to attract seasonal workers specifically, but Sweden's comparatively liberal labour immigration system itself might serve to attract sea-

sonal workers. Networking by individual companies plays a role in attracting seasonal workers, as does staffing agencies, particularly with regard to the recruitment of berry pickers in Thailand. The Swedish Migration Agency's website is the primary source for information for employers on hiring seasonal workers. Employer organisations in seasonal sectors often disseminate information on the rules for hiring foreign labour to its member companies and provide advice on good practices. There is no concrete information on any misuse in the application of the Directive.

A number of different actors play a role in the protection of the rights of seasonal workers. The Migration Agency provides information on its website pertaining to employment conditions and other rights. The Swedish Work Environment Authority is a government agency mandated to oversee that companies comply with laws on work environment and working hours. The Swedish Police Authority collaborates with a number of other government agencies in performing work place inspections and in other efforts to counter irregularities in working life. Finally, trade unions follow closely employment and working conditions for seasonal workers, in particular for berry pickers and forestry workers. Trade unions also have the possibility to make a statement on the employment conditions offered as part of an application for a work permit.

The Migration Agency informs seasonal workers and their employers of their rights and duties via its website and in targeted information attached to the work permit decision. In case the Migration Agency finds that seasonal workers are overstaying, the Police Authority would be contacted. Furthermore, the Migration Agency performs controls that are more stringent before issuing work permits for occupations in certain sectors, some of which include seasonal work. The Swedish Tax Agency plays an important role in monitoring and assessing employer compliance that can affect workers' overall working conditions. Seasonal workers can lodge complaints against employers; such disputes can be brought before the Swedish Labour Court. The question of exploitation of seasonal workers in the berry picking industry has received particular attention, for example with regard to long working hours. There is no evidence of seasonal workers from third countries having fallen victims of human trafficking. The bulk of research reports and evaluations in Sweden deal with seasonal workers in the berry industry. Positive developments in recent years include the emergence of collective agreements between social partners and the introduction of social standards for berry buyers. Additionally, some employer organisations in the green sector provide advice and good examples to its member companies on hiring and welcoming foreign labour. Finally, a number of eco labels set out requirements for employers on social corporate responsibility.

## Sammanfattning på svenska

Säsongsanställningsdirektivet genomfördes i Sverige 2018, men säsongsarbetare har tagits emot under flera år dessförinnan genom de nationella reglerna för arbetskraftsinvandring. Ukraina (direktivets regler) och Thailand (nationella regler) är de två största ursprungsländerna för säsongsarbetare i Sverige. Säsongsarbetare har framför allt anställts inom jordbruk och skogsbruk. När det gäller bärplockare har en absolut majoritet kommit från tredjeland och speciellt Thailand. Under flera år fram till säsongen 2020 var bärplockare den absolut största kategorin säsongsarbetare i Sverige. Under 2020 har Covid-19 pandemin påverkat möjligheterna för säsongsarbetare från tredje land att ta sig till Sverige. Den 17 mars beslutade regeringen att tillfälligt förbjuda icke nödvändiga resor till Sverige från alla länder utom EU:s medlemsländer, länderna i EES samt Schweiz i syfte att begränsa påverkan av spridningen av Covid-19 och begränsa utbrottet. Förbudet har varit i kraft sedan den 19 mars. Efter rekommendationer från EU-kommissionen har det förlängts till den 22 december. Säsongsarbetare inom jordbruk, skogsbruk och trädgårdsskötsel är exempel på personer som kan anses utföra nödvändiga funktioner i Sverige och därmed är undantagna från inreseförbudet.

I Sverige omfattar direktivet tio sysselsättningsområden. Bland dessa finns jordbruk, skogsbruk samt hotell- och restaurangverksamhet. Efterfrågan på säsongsarbetare är som högst under sommarsäsongen. Statistiken fram till 2020 är ofullständig när det gäller inom vilka sysselsättningsområden säsongsarbetare beviljats tillstånd enligt direktivets regler. De största yrkesgrupperna har dock varit skogsarbetare, bärplockare- och plantörer samt växtodlare inom jordbruk- och trädgård. Intressant nog har majoriteten av säsongsarbetare som kommit till Sverige under senare år inte omfattats av direktivet. Bärplockare från Thailand har varit den absolut största gruppen säsongsarbetare under senare år. Nästan alla av dessa är anställda av thailändska bemanningsföretag när de utför sitt arbete i Sverige, vilket är skälet att de inte omfattas av direktivet. På det hela taget har bärindustrin flera speciella drag som skiljer den från andra branscher för säsongsarbete i Sverige. Inte minst förutsätter den tillgång på vilda bär som kan plockas fritt i Sverige tack vare allemansrätten. Migrationsverket har under senare år infört hårdare krav för att utfärda arbetstillstånd till bärplockare.

Sverige har ingen lagstadgad minimilön. Enligt rättspraxis måste däremot en person som söker arbetstillstånd ha erbjudits en lön på minst 13 000 kr för att kunna försörja sig. Lön, försäkring och arbetsvillkor som erbjuds måste dessutom vara minst i nivå med de som finns i kollektivavtal eller med vad som är brukligt i yrket eller branschen. Lönenivåerna för säsongsarbetare satta i kollektivavtal är vanligen högre än 13 000 kr.

Sverige har ingen arbetsmarknadsprövning när det gäller säsongsarbete och om vissa förutsättningar är uppfyllda prioriteras återkommande ansökningar. Det finns inga speciella åtgärder från regeringens sida att attrahera just säsongsarbetare, men Sveriges relativt liberala regelverk för arbetskraftsinvandring kan i sig antas attrahera säsongsarbetare också. Nätverkande från enskilda företag spelar en roll för att attrahera säsongsarbetare och det gör även rekryteringsfirmor, särskilt när det gäller bärplockare från Thailand. Migrationsverkets hemsida är den huvudsakliga informationskanalen för arbetsgivare som anställer säsongsarbetare. Arbetsgivarorganisationer i branscher för säsongsarbete ger ofta ut informationsmaterial till sina medlemsföretag om reglerna för att anställa utländsk arbetskraft och ger råd och

synliggör goda exempel. Det finns ingen konkret information om missbruk av hur direktivet tillämpas.

Fler olika aktörer spelar en roll för hur säsongsarbetares rättigheter tillvaratas. Migrationsverket informerar på sin hemsida om arbetsvillkor och andra rättigheter. Arbetsmiljöverket är en myndighet som har i uppdrag att se till att företag och organisationer följer lagar om arbetsmiljö och arbetstider. Polisen samarbetar med andra myndigheter för att genomföra arbetsplatsinspektioner och andra åtgärder för att motverka oegentligheter i arbetslivet. Slutligen finns fackliga organisationer som följer anställnings- och arbetsvillkor, inte minst för bärplockare och skogsarbetare. De fackliga organisationerna har som en del av processen hos Migrationsverket även möjlighet att lämna in ett yttrande över de anställningsvillkor som erbjuds i en ansökan om arbetstillstånd.

Migrationsverket informerar säsongsarbetare och arbetsgivare om deras rättigheter och skyldigheter genom sin hemsida och riktad information som bifogas i beslutet om arbetstillstånd. Om Migrationsverket får information om säsongsarbetare som stannar kvar efter det att tillståndet gått ut kontaktas Polisen. Migrationsverket genomför även mer noggranna kontroller innan arbetstillstånd utfärdas för yrken i vissa branscher, och här omfattas några branscher som inkluderar säsongarbete. Skatteverket spelar en viktig roll för att övervaka och bedöma regelefterlevnad hos arbetsgivare som kan påverka de övergripande villkoren för arbetstagare. Säsongsarbetare kan inte klagomål mot sina arbetsgivare; sådana tvister kan avgöras i Arbetsdomstolen. Frågan om exploatering av säsongsarbetare inom bärindustrin har fått speciell uppmärksamhet, till exempel i fråga om långa arbetsdagar. Det finns inga belägg för att säsongsarbetare från tredje land har fallit offer för människohandel. Merparten av den forskning och de utvärderingar som genomförts i Sverige när det gäller säsongarbete handlar om bärindustrin. En positiv utveckling i den branschen under senare år är att kollektivavtal etablerats och att sociala koder för bäruppköp tillkommit. Arbetsgivarorganisationer i de gröna näringarna ger även råd och visar på goda exempel för sina medlemmar när det gäller att anställa och välkomna utländsk arbetskraft. Avslutningsvis finns det ett antal miljömärkningar som ställer krav på arbetsgivare att leva upp till samhällsansvar.

# 1 Introduction

## 1.1 Study aims

The aim of this study is to provide an overview of national experiences with admitting seasonal workers from third countries, six years following the adoption of the Seasonal Workers Directive (2014/36/EU) and four years after its deadline for implementation by Member States. It does so by mapping the profile of seasonal workers and the sectors they work in, as well as analysing the extent to which measures are in place to attract seasonal workers and fulfil labour market needs of Member States. Lastly, the study aims to analyse the application of the protective aspects of the Seasonal Workers Directive concerning the rights of seasonal workers. The latter aspect is particularly important, as the Directive leaves some room for interpretation regarding the rights and standards to be granted to seasonal workers, possibly leading to diverging practices at national level.

The study will thus focus on the following main questions:

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

## 1.2 Scope of the report

The study primarily covers third-country nationals who enter and reside in an EU Member State for the purpose of seasonal work within the framework of the Seasonal Workers Directive. In a few instances, also those who may be considered seasonal workers but who are not covered by the Directive are considered.

As far as policies and legislation regarding seasonal workers is concerned, this study reflects the most recent situation and developments in Member States, largely focussing on 2019. Policy and legal developments over the past five years are also considered if relevant. As regards statistics, the period 2016-2019 is covered.

This study refers to 'authorisations' in line with the Seasonal Workers Directive, to cover all types of documents issued to seasonal workers under the Directive allowing third-country nationals to reside and work as seasonal workers. This encompasses short-stay visas, work permits, long-stay visas and residence permits.



The study was carried out in the EU Member States, the UK and Norway. Findings drawn from national contributions were compiled in a comparative synthesis report. Sweden's national contribution was compiled by experts at the Swedish National Contact Point for the EMN. It was primarily based on desk research as well as some interviews with stakeholders such as government agency experts, social partners and researchers.

### 1.3 Rationale and EU policy context

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

A key development in this area is the Seasonal Workers Directive (Directive 2014/36/EU), adopted in 2014, which aims to support the effective management of migration flows for this specific category of seasonal temporary migration and to ensure decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers, while at the same time providing for incentives and safeguards to prevent over-staying or temporary stay from becoming permanent. This is to be achieved through clearer and more harmonised admission rules and working conditions set out in the Directive, to help prevent exploitation and protect the health and safety of seasonal workers. The Directive also encourages the circular movement of seasonal workers between the EU and their countries of origin through the introduction of a facilitated re-entry procedure for subsequent seasons.

Since the adoption of the Directive, Member States are no longer permitted to implement parallel national schemes for the admission of seasonal workers covered by the Directive. Member States may regulate the volumes of admission for seasonal workers in line with Article 79(5) of the Treaty on the Functioning of the European Union. As the Directive gives Member States some flexibility to determine which sectors they consider "seasonal", it is possible that third-country nationals who are working in a sector considered as seasonal in one Member State would not be considered as seasonal workers in another Member State, and therefore would not be covered by the Directive. In such a case, those third-country nationals are instead covered by national schemes.

The ongoing Covid-19 pandemic has also affected the area of seasonal work, particularly given the ongoing travel restrictions. While it is too early to predict any long-term impacts on national policies related to seasonal workers, the study briefly outlines the immediate consequences on the labour market and specific measures taken by Member States as a result of the pandemic.

1 [European Commission: Migration and Home Affairs, legal migration - work.](#)

2 [Eurofund: Seasonal Work, 16 January 2018.](#)

## 2 Impact of COVID-19 on seasonal work

The Covid-19 situation has not affected the Swedish labour migration policy, i.e. seasonal workers from countries outside of the EU/EEA-area can still be granted a residence and work permit in Sweden. Traveling to Sweden for work could however prove more difficult for several reasons, including limited air traffic and travel restrictions in other countries. On 17 March, the Swedish government decided to ban temporarily non-essential travel to Sweden because of the Covid-19 pandemic, following the EU Commission's recommendations.<sup>3</sup> The decision entered into force 19 March and has since been extended until 22 December, following recommendations from the EU Commission. Exceptions from the temporary entry-ban can be made for example for foreigners who are to carry out essential functions in Sweden. Seasonal workers in the agricultural, forestry and horticulture sectors are currently listed as examples of people who could be considered to be carrying out essential functions in Sweden and thus be exempted from the travel ban. It is a matter for the enforcing authorities, primarily the Swedish Police Authority, to determine in each individual case how the exemptions are to be interpreted and applied.<sup>4 5</sup>

At the time of the entry into force of the temporary travel ban, the Swedish Migration Agency had already finalised upwards of 75 per cent of work permit applications from seasonal workers to be examined under the rules of the Directive for the 2020 season. The Migration Agency has continued to examine and take decisions in new applications for work permits following the temporary entry-ban. The Migration Agency maintains a close dialogue with stakeholders in the green sector with regard to the Covid-19 situation and its effect on the entry of seasonal workers.<sup>6</sup>

### 2.1 Measures regarding seasonal work taken as a result of Covid-19

On 27 May 2020, the government announced targeted measures to support the green sector in order to mitigate the consequences for businesses due to the shortage of seasonal workers following the Covid-19 pandemic. The government has pledged SEK 11 million (approximately € 1 050 000 million) to facilitate the matching of unemployed people to the green industries. The additional funding is set to reinforce an already ongoing collaborative effort between stakeholders in the sector.<sup>7</sup>

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<sup>3</sup> [Swedish government: Extension of temporary entry ban to Sweden until 22 December 2020, published 22 October 2020.](#)

<sup>4</sup> [Polisen: Travel to Sweden from outside EU during the corona outbreak \(updated 2020-11-02\).](#)

<sup>5</sup> [Swedish government: Amendments to the temporary ban on entry into Sweden, published 4 June 2020.](#)

<sup>6</sup> [Migrationsverket: Osäkert kring bärplockning och andra säsongsarbeten, published 12 May 2020](#)

<sup>7</sup> [Swedish government: Unemployed people matched to green industries, published 27 May 2020](#)

There is a specialised website for jobs in the green sector entitled "gronajobb.se".<sup>8</sup> In order to better facilitate matching between employers and job seekers in the light of the Covid-19 situation, the search tool of the portal was improved and refined. Similarly, the Swedish Public Employment Agency [Arbetsförmedlingen] has collected tips for job seekers in the green sector on a designated page under the heading "Så hittar du de dolda gröna jobben", i.e. "How to find hidden green jobs". The article makes reference to the experienced shortage of foreign seasonal workers in Sweden in the wake of the Covid-19 pandemic.<sup>9</sup>

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8 [Gröna jobb](#)

9 [Arbetsförmedlingen: Så hittar du de dolda gröna jobben](#), published 14 May 2020

## 3 Profile of seasonal workers

### 3.1 Admission of seasonal workers under the Directive

In connection with Sweden's transposition of the Directive, the government proposed that the Swedish Migration Agency would be responsible for drawing up a list of sectors of employment, which are dependent on the passing of the seasons. The government bill on the transposition of the Directive was adopted by parliament 25 April 2018.<sup>10</sup> The Migration Agency's list (soft law) was drawn up in consultation with social partners and published 4 June 2018.<sup>11</sup> The sectors of employment are based on the Swedish Standard Industrial Classification (SNI 2007) and include the following:

1. Crop and animal production, hunting and related service activities (A01), but not inclusive of Hunting, trapping and related service activities (A017)
2. Forestry and logging (A02)
3. Accommodation and food service activities (I)
4. Tour operator activities (N 79.12)
5. Other reservation service and related activities (N 79.9)
6. Landscape service activities (N 81.3)
7. Support activities to performing arts (R 90.02)
8. Operation of ski facilities (R 93.111)
9. Operation of golf courses (R 93.112)
10. Activities of amusement parks and theme parks (R 93.21)

Sweden's transposition of the Seasonal Workers Directive entered into force 1 June 2018. There is no complete data pertaining to seasonal workers admitted in 2018 and 2019 under the rules of the Directive. However, the major occupations were workers in **forestry, berry pickers and planters, and market gardeners and crop growers**. Given the fact that the rules entered into force well into the summer season in 2018 there is reason to believe the number of seasonal workers admitted according to the rules of the Directive was small that year. Outside the application of the Directive, berry pickers and planters<sup>12</sup> was the major occupation category in which seasonal workers were employed.

10 Preparatory work in advance of Sweden's transposition of the Directive including the memorandum, the report from the round of consultations, as well as the government bill and parliament's decision are available at: [Regeringen: Utökade möjligheter till arbetsplatsinspektioner, Prop 2017/2018:176](#).

11 The list, which is entitled Migrationsverkets föreskrifter om förteckning över de sysselsättningsområden inom vilka det förekommer säsongsarbete MIGRFS 2018:7, is available at: [MIGRFS 2018:7](#)

12 The Swedish Migration Agency registers occupations (Swedish Standard Classification of Occupations, SSYK 2012). Berry pickers and planters form a mutual category in this classification. As mentioned, the list of sectors of seasonal work of the Directive is based on the Swedish Standard Industrial Classification (SNI 2007). Since this classification is not registered by the Migration Agency in individual files for work permits, it is currently challenging to extract information with regard to which sectors seasonal workers are employed.



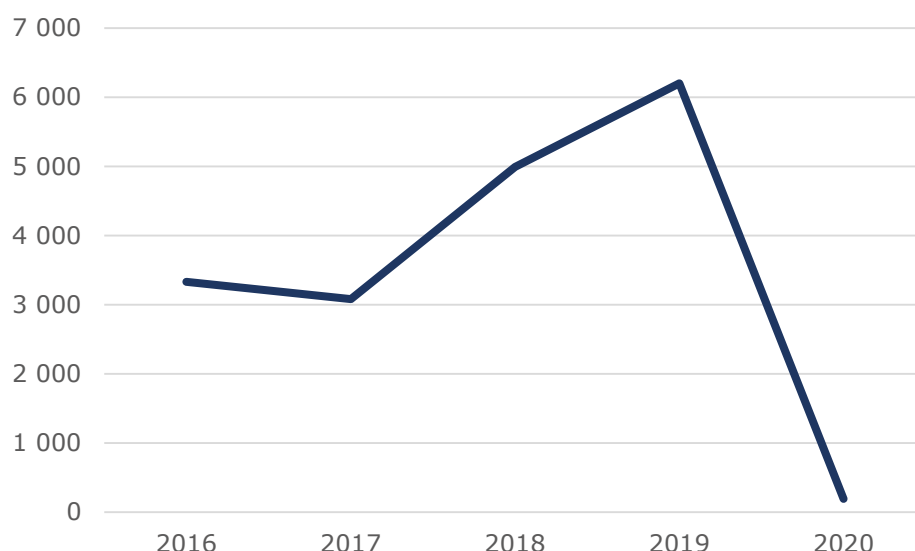
Available data indicate that **Ukraine, Thailand, Turkey, Serbia and Bosnia and Herzegovina** were the top-5 countries of origin for seasonal workers in 2019 and 2020. Seasonal workers from Ukraine were particularly prevalent in the forestry sector. Estimations show that a large majority of seasonal workers are male.

### 3.2 Work permits for seasonal work by application of national legislation

Over the course of the period covered by this study, the majority of seasonal workers admitted to Sweden were issued permits based on national legislation. This situation is partly due to the fact that the Directive was transposed late in the study period, i.e. 1 June 2018. More importantly, however, the majority of seasonal workers in Sweden are Thai berry pickers and in most cases they fall outside the scope of the Directive since the employer is not established in Sweden (art. 3 (b) of the Seasonal Workers Directive).<sup>13</sup>

Sweden has a general system for the admission of workers from third countries. There are no specific rules for seasonal workers, apart from those resulting from the Seasonal Workers Directive. Seasonal workers who do not fall within the scope of the Directive can therefore apply for a work permit in accordance with the general national scheme. On average, 5 000 such applications were received each year in 2018 and 2019 for picking wild berries. By estimation, berry pickers constituted approximately 75 per cent or more of the overall caseload of seasonal workers in both 2018 and 2019.

**Figure 1. Work and residence permits issued to berry pickers and planters**



As shown in figure 1 above, there was an almost consistent increase in the number of berry pickers and planters issued work permits from 2016 to 2019. Additionally, the Covid-19 situation had a major impact on the numbers arriving in 2020 when only 195 permits were issued. This number was a very small fraction compared to

<sup>13</sup> See for example Hedberg C. (2014), "Thailändska bärplockare: Hushållsstrategier på en global arbetsmarknad" in Arbetskraft från hela världen, Delmi rapport 2015:9, Stockholm 2015, and Hedberg C., Axelsson L. and Abella, M. (2019), Thai berry pickers in Sweden – a migration corridor to a low-wage sector, Delmi report 2019:3, Stockholm 2019.

2019 when 6 199 permits were issued, which was the top year in the study period.

The berry picking industry also hires third-country nationals that work in various support jobs, such as interpreters, cooks, and mechanics. The absolute majority of berry pickers are Thai nationals, a phenomenon that dates back to the 1980s. The current practice where berry pickers are hired and employed by Thai staffing agencies started developing around 2007.<sup>14</sup> Research reports show that berry picking is a predominantly male occupation (even if some women are employed) and that this is a perception that is very strong amongst local recruiters in Thailand. A succinct description found is that:

“[t]he typical berry picker is a married male, middle-aged farmer with low education and a family left in the sending region. More precisely, the survey shows that more than 90 percent of the workers were men.../...Berry picking is considered by the villagers as male work due to the physical endurance required (Hedberg, 2016). The workers were mostly middle aged, in their 40s.”<sup>15</sup>

Finally, research on Thai berry pickers has also studied the overall role of Thai women in the berry picking industry in Sweden as well as the impact of gender on earnings.<sup>16</sup>

### 3.3 Employment conditions for seasonal workers

Sweden does not have a minimum salary set in law. However, according to the Aliens Act, a permit for seasonal work shall be issued if the applicant was offered a position that will enable her/him to support herself/himself.<sup>17</sup> The Migration Court of Appeal [Migrationsöverdomstolen] has ruled that a salary of at least SEK 13 000 (approximately € 1 236) per month before taxes is required. Furthermore, the salary, insurance and the overall terms of employment offered must be at least on par with those set by Swedish collective agreements or with what is customary within the occupation or industry. Salary levels established by collective agreements are the most important for the examination of work permit applications. In practice, the SEK 13 000 threshold is applicable primarily for the examination of work permit applications for part time employment.

For seasonal workers employed by a company with operations in Sweden, there are a number of collective agreements between the Swedish Municipal Workers' Union [Kommunal] and the Swedish Federation of Green Employers (formerly the Federation of Swedish Forest and Agricultural Employers) [Gröna arbetsgivare]. For example, the agreed minimum monthly wage under the most recent agreement for workers in agriculture [Jordbruksavtalet] is SEK 20 009 (approximately € 1 903) per month. The agreement also contains information about the minimum hourly wage.<sup>18</sup>

Furthermore, for workers employed by a foreign company with no operations in

14 Hedberg C. et al. (2019), p.37. See also Hedberg C. (2014), p.128.

15 Hedberg C. et al. (2019), p.15.

16 Hedberg C. et al (2019), p.56 in particular.

17 The Aliens Act [Utlänningslagen, statute 2005:716], section 6c, paragraph 2.

18 E-mail communication with The Swedish Municipal Workers' Union 10 June 2020 and Färm, D. (2020) SVENSKARNA FÖRST (NYA OCH GAMLA) - En åtstramad och uppstyrd arbetskraftsinvandring för att minska utnyttjande, lönedumpning och arbetslöshet, Rapport Nr 2 2020, Tanke- medjan Tiden, p.31. Available at: [Tankesmedjan Tiden: Svenskarna först \(nya och gamla\), rapport 2020](#)

Sweden, such as a temporary staffing agency, the temporary staffing agreement is valid. Under the most recent such agreement, the minimum wage is SEK 22 049 per month (approximately € 2 096).<sup>19</sup> This agreement, for which there is an affiliated collective agreement [hängavtal], is used for pickers of wild berries.

### 3.4 Differences between migrant workers covered by the Directive and those not covered

As mentioned previously, the majority of seasonal workers in Sweden who are not covered by the Directive are berry pickers. The main difference between them and seasonal workers covered by the Directive is the type of employment they have. Thai berry pickers are employed by staffing agencies in their country of origin while seasonal workers covered by the Directive have their employer in Sweden.

The berry picking industry displays several particular traits that distinguishes it from other seasonal work sectors in Sweden. Firstly, it relies on the picking of wild berries, which can be harvested freely in forests due to the right of public access in Sweden. Secondly, in principal, all workers are foreign seasonal workers and a majority are third-country nationals from Thailand. Furthermore, there is a number of different modes of employment/economic models in the berry picking industry in Sweden. Whilst the majority of workers are employed by staffing agencies, a small number are employed under conditions where the Directive is applicable. Moreover, while collective agreements that set a guaranteed wage for berry pickers have been the norm in the past few years, many workers opt working for a piece rate instead. Finally, there are "independent" berry pickers that are not employed, but rather sell their yields to companies to which they do not have a formal association. Berry pickers in this group are often from Ukraine. The size of this group is difficult to estimate, not least since visa liberalisation entered for Ukraine in 2017, but according to research reports they have been estimated to number up to 5 000 individuals in a season.<sup>20</sup>

Seasonal workers admitted under the Directive comes across as a more homogenous group with regard to forms of employment. As mentioned previously, the majority of seasonal workers are employed in the forestry sector.

The need for seasonal workers in Sweden is largely concentrated to the summer season and into the shoulder season. Berry pickers often arrive somewhat in advance of the berry season and are staying for the picking of several berries that are in consecutive seasons (bilberry, cloudberry and lingonberry). Since berry pickers make up the absolute majority of seasonal workers in Sweden, it is reasonable to conclude that seasonal workers are mostly needed for that period of the year.

The list of sectors covered by the Directive in Sweden similarly includes a number of sectors where the need for seasonal workers is concentrated to the summer season. However, it also includes sectors where the need is potentially more likely to occur in winter, in particular with regard to the operation of ski facilities.

<sup>19</sup> The most recent temporary staffing agreement [Bemanningsavtalet] concluded by Almega – the Employers' Organisation for the Swedish Service Sector [Kompetensföretagen Almega, formerly Bemanningsföretagen] and the Swedish Trade Union Confederation [LO] entered into force 1 May 2017 and was in force until 30 April 2020.

<sup>20</sup> This paragraph primarily builds on Hedberg C. (2014), Hedberg C. et al. (2019) and Färm D. (2020).

## 4 Attraction of seasonal workers to address labour market needs

### 4.1 Labour migration policy

The entry and stay of seasonal workers from third countries forms part of Sweden's overall migration policy. Sweden has a general labour immigration system where the same rules apply for all labour migrants (rules based on EU-Directives excluded). There is no policy in place aimed at seasonal workers specifically, but the system is devised to meet the demand of all kinds of employers in Sweden.

Sweden relies on seasonal workers from third countries to fill labour market needs, particularly in some sectors. Seasonal workers have mainly been admitted for the purpose of picking wild berries, planting trees and working on agricultural farms. In 2019, more than 6 000 permits were issued for berry pickers and planters and more than 1 000 permits for forestry work (based on both the Directive and the national scheme). When it comes to the agriculture and forestry sector, workers from other Member States as well as third countries fill labour market needs in Sweden.

The Swedish labour immigration system, introduced in 2008, was developed to address the needs of the Swedish labour market and facilitate for employers who are not able to find the competence they need in Sweden or other Member States. The Covid-19 situation has also showed that companies in the agricultural and forestry sectors in Sweden rely heavily on workers from other Member States and third countries. The need for seasonal workers in those sectors has been widely discussed in Sweden lately.

### 4.2 Procedure and processing of applications for seasonal work

The general rule in migration governance in Sweden is that a residence and work permit should be applied for and issued before entry in Sweden. However, some exceptions apply. Seasonal workers are among those that may be issued a residence and work permit while remaining in the country if they meet the conditions in the individual case.<sup>21</sup> In practice, however, such cases are rare.

Sweden does not apply a labour market test for seasonal workers. There is one national scheme that covers workers who perform temporary work of a cyclical nature, i.e. the general labour migration scheme in place for all third-country nationals coming to Sweden for work. There is no national scheme in place for seasonal workers specifically. The largest group of seasonal workers admitted under the national scheme are berry pickers who work for employers established outside of Sweden (according to art. 3 (b) of the Seasonal Workers Directive).

A subsequent application for seasonal work from a third-country national that was previously granted a work permit for seasonal work in Sweden shall be prioritised

21 The Aliens Act [Utlänningslagen, statute 2005:716], section 5, paragraphs 5, 10 and 18a.



under certain conditions.<sup>22</sup> The requirements are that the applicant was issued a work permit for seasonal work in the past five years and that he/she complied with the conditions for the permit. Such applications are to be prioritised (fast tracked) and finalised in a shorter period than 90 days.

Applications for work permits are received and processed by the Swedish Migration Agency. Appeals are handled by the Migration Courts [Migrationsdomstol] and the Migration Court of Appeal. The average processing time for applications from this group in 2019 was 56 days (57 days for extensions)<sup>23</sup> with a set maximum processing time of 90 days. The application fee is SEK 2 000 (approximately € 181).

In 2018 the overall average costs for the processing of a case amounted to SEK 2 797 (approximately € 266).<sup>24</sup> The total costs for the processing of all work permits amounted to SEK 219 970 000 (approximately € 20 916 000).<sup>25</sup> Average costs include all expenses for processed work permit applications per the total number of processed work permit applications.

### 4.3 Relevant actors in attracting seasonal workers

The Swedish Federation of Green Employers is one of the major employer organisations in the agriculture and forestry sectors in Sweden, and its members are often dependent on hiring seasonal workers. However, the federation of Green Employers is not directly involved in activities that aim at attracting seasonal workers. While recruitment agencies can play a role in attracting seasonal workers, more often the member companies themselves play a greater role in this regard. Often, seasonal workers come back to the same small or medium sized businesses year after year. Furthermore, "word of mouth" is a phenomenon, i.e. that friends/family in the countries of origin of seasonal workers are attracted to come to Sweden for work in the same sector.<sup>26</sup>

With regard to Thai berry pickers, there is a highly developed network of actors involved in attracting workers. For example, there are close ties between the Swedish berry industry and the staffing agencies that recruit and hire seasonal workers on location in Thailand.<sup>27</sup> Overall, however, research reports suggest that the role of recruitment agencies for attracting seasonal workers is limited.<sup>28</sup>

### 4.4 Information to employers about the procedure for hiring seasonal workers

The Migration Agency's website is a primary source for information to employers regarding the employment of seasonal workers. On the website, there is detailed information on the requirements that employers need to meet in order to hire sea-

22 The Aliens Ordinance [Utlänningsförordningen, statute 2006:97], section 5c, paragraph 1.

23 Swedish Migration Agency Statistics.

24 This information refers to the processing of a work permit as such, i.e. not specifically a permit for seasonal work (either by national rules or by the rules of the Directive).

25 Swedish Migration Agency Annual Report [Årsredovisning] 2018, p.31.

26 Telephone interview with representative from the Swedish Federation of Green Employers, 20 May 2020.

27 Hedberg C. (2014), Hedberg C. et al. (2019).

28 Herzfeld Olsson P. "Empowering Temporary Migrant Workers in Sweden – a call for unequal treatment" in Temporary Labour Migration in the Global Era: The regulatory challenges, Joanna Howe and Rosemary Owens (ed.), Oxford and Portland, Oregon: Hart Publishing (2016).

sonal workers. There is separate information on rules pertaining to seasonal workers admitted by application of the Directive<sup>29</sup> and seasonal workers that are berry pickers.<sup>30</sup> There are FAQs (Frequently asked questions) aimed at employers. Furthermore, applications can be submitted online and there is information to employers on what the requirements are for using the “e-service”. For example, employers can create an offer of employment for seasonal workers by using the e-service. Similarly, there are e-services aimed at representatives of berry pickers. Information is available in Swedish, English and Thai, the latter with regard to berry pickers only. Finally, there is a video guide on how to use the e-service.

A group of social partners, namely the Swedish Federation of Green Employers, the Swedish Municipal Workers Union and the Swedish union of forestry, wood and graphical workers [GS-facket – Facket för skogs, trä och grafisk bransch] where seasonal workers are particularly important, have joined in a collaborative project. It has a view to disseminate information on the rules for hiring foreign labour and runs in 2019-2020.<sup>31</sup> Furthermore, the Federation of Green Employers has developed guidelines for its members with information on hiring foreign labour, including seasonal workers.<sup>32</sup>

#### 4.5 Good practices and challenges

No formal evaluations or reports appear to have been published that specifically discuss such measures with regard to seasonal workers admitted by application of the Directive. Sweden’s framework for labour immigration does not comprise particular policies for attracting workers, other than the framework itself. Some stakeholders argue that the overall conditions for seasonal workers in the berry industry has improved in the past few years. For example, the Migration Agency introduced tougher requirements on employers, collective agreements were concluded between social partners and guidelines have emerged for berry buyers that buy yields from “independent” berry pickers. While these examples are not per se aimed at attracting seasonal workers, they nonetheless serve to make employment and working conditions more attractive, which might be of importance with regard to how seasonal work in Sweden is perceived from abroad.

The Federation of Swedish Farmers [Lantbrukarnas riksförbund] and the Swedish Federation of Green Employers both stated that it is common that seasonal workers return to the same employers year after year, which indicates that job satisfaction and mutual trust are important factors in the individual case.<sup>33</sup> Reasonably, these conditions are of even more importance in small and medium sized businesses in the green industry, where employers and employees often work side by side.

Turning to indications of any misuse, for example employers hiring third-country seasonal workers for non-seasonal work, in the application of the Directive, there appears to be few reports of such challenges. The Swedish Municipal Workers Union,

29 More information available at: Migrationsverket: [Employing a seasonal worker](#), last accessed 19 May 2020.

30 More information available at: [Migrationsverket: Hiring berry pickers who have a representative](#), last accessed 19 May 2020, and

31 More information available at: Gröna arbetsgivare: [Lobbying för mer utländsk arbetskraft](#), last accessed 19 May 2020.

32 More information available at: [Gröna arbetsgivare: Att anlita utländsk arbetskraft](#), last accessed 19 May 2020.

33 Email-communication with The Federation of Swedish Farmers, 25 May 2020, and telephone interview with a representative of the Swedish Federation of Green Employers, 22 May 2020.

which formally represents berry pickers, was not aware of any systematic misuse even if the organisation had received information about a small number of work places where misuse was reported.<sup>34</sup> Employer organisations such as the Federation of Green Employers stated they had no reports on misuse of this type.

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<sup>34</sup> E-mail communication with the Swedish Municipal Workers Union 18 March 2020.

## 5 Protection and rights of seasonal workers

### 5.1 Equal treatment between nationals and seasonal workers from third countries

Third-country nationals working temporarily in Sweden enjoy the same rights, regardless of whether they fall under the scope of the Directive or the general Swedish labour migration system. With regard to the Directive, Sweden does not apply restrictions to the equal treatment between seasonal workers from third countries and Swedish nationals who carry out comparable employment activities. This applies particularly with regard to family benefits, unemployment benefits, educational and vocational training not linked to the specific employment activity and tax benefits. There are no practical difficulties to ensuring equal treatment in the areas defined in the Directive.

### 5.2 Actors involved in the protection of seasonal workers' rights

The Swedish Migration Agency provides detailed information on its website aimed at both employees and employers. For example, there is information on the rights of seasonal workers and links to other government agencies that have a formal role in safeguarding or monitoring these rights, such as the Swedish Work Environment Authority [Arbetsmiljöverket] as well as social partners like the Swedish Municipal Workers Union.<sup>35</sup> There are also FAQs aimed at berry pickers and seasonal workers (the Directive). All information pertaining to berry pickers is available in English, Swedish and Thai.<sup>36</sup> Information on seasonal work is available in English and Swedish.

The Swedish Work Environment Authority is a government agency mandated to oversee that companies and organisations comply with laws on work environment and working hours. For example, it carries out inspections at workplaces and disseminates information on the Work Environment Act [Arbetsmiljölagen]. The Work Environment Authority has a range of information materials aimed specifically at employers in the "green sector" which arguably is the sector that employs the largest number of seasonal workers. A number of fact sheets, guidelines and other supporting materials are provided on the work environment responsibility of employers in the green sector (highlighting measures/employer responsibility to prevent accidents and injuries).<sup>37</sup> Furthermore, the Work Environment Authority has developed a targeted information leaflet aimed at berry pickers.<sup>38</sup> The leaflet provides information

35 The Swedish Migration Agency's website, available at: [Migrationsverket: Work permit for seasonal workers](#), last accessed 12 May 2020.

36 The Swedish Migration Agency's website, available at: [Migrationsverket: Frequently asked questions about work permits for berry pickers](#), last accessed 12 May 2020.

37 More information available at: [Swedish Work Environment Authority: Work environment responsibility for foreign workers in the green sector](#), last accessed 19 May 2020.

38 The leaflet, entitled Information for foreign berry pickers, is available at: [Swedish Work Environment Authority: Information for foreign berry pickers](#), last accessed 12 May 2020.



on employment and working conditions and other fundamental rights in Sweden for berry pickers.

Moreover, the Work Environment Agency can perform work place inspections which are carried out in cooperation with other government agencies such as the Swedish Tax Agency [Skatteverket] and the Swedish Police Authority. The Tax Agency collects taxes on business activities and the social fees that are charged on all remuneration for work. Since employers pay social fees on behalf of employees, the Tax Agency serves as a control mechanism for employers' obligations in this context.

Additionally, the Police Authority was conferred greater powers 1 July 2018 to perform work place inspections in the form of random checks (spot checks). Such checks can be performed in sectors of activity where there is a perceived risk of illegally working/staying third-country nationals, which include sectors where seasonal workers potentially can be employed. In contrast to previous legislation, there is now no prerequisite of suspicion of crime necessary for these checks to be performed. Ultimately, checks have the purpose to investigate whether employed third-country nationals have a legal stay and are entitled to work. Meanwhile, the new provision has made it easier for the Police Authority to detect dishonest employers that are hiring workers without a legal stay and a work permit that can easily fall victims to exploitation.

Finally, social partners, particularly some trade unions, follow closely employment and working conditions for seasonal workers, and in particular berry pickers. The Swedish Municipal Workers Union organises seasonal workers and works to protect their rights in relation to employers. This trade union also disseminates information aimed at berry pickers to raise awareness of their rights and terms of employment.<sup>39</sup> Similarly, the Swedish union of forestry, wood and graphical workers follow closely the working and employment conditions of third-country nationals in the forestry sector.

### 5.3 Framework enabling the transfer of pension contributions to countries of origin

At the time of Sweden's transposition of the Directive in 2018, the government stated in its bill to parliament that the requirements of the Directive pertaining to equal treatment with regard to statutory pensions would not require any changes in national legislation since existing legal provisions already provided for these rights.<sup>40</sup> Eligibility for pensions in Sweden is not determined by nationality or whether the beneficiary was entered into the population registry. Any third-country nationals, including seasonal workers that have had legal employment and paid income tax are in principle eligible. However, the person needs to apply for pension in order to have that money paid if/when they are residing in their country of origin. An applicant that resides outside of the EU/EEA-area would apply to the Swedish Pensions Agency

<sup>39</sup> The leaflet, entitled Your rights as a berry picker in Sweden, is available at the website of the Swedish Municipal Workers union, at: [Kommunal: Your rights as a berry picker in Sweden](#), last accessed 12 May 2020.

<sup>40</sup> Government bill Regeringens proposition 2017/18:108 Genomförande av säsongsanställningsdirektivet, p. 93.

[Pensionsmyndigheten] by using a special form.<sup>41</sup>

## 5.4 Seasonal workers' right to an adequate standard of accommodation

A provision on the accommodation requirement for seasonal workers was entered into the Aliens Act when the Directive was transposed into national legislation.<sup>42</sup> The specified accommodation standards are set out in soft law.<sup>43</sup> The applicant needs to demonstrate that he/she will have access to accommodation of a suitable standard at latest by the point in time when he/she will enter Sweden.<sup>44</sup> Art. 20(1) provides that Member States shall require evidence that the seasonal workers will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker. More specifically, applicants are required to provide written documentation pertaining to their accommodation situation, for example, by submitting a rental agreement or certificate from a property owner or housing agency for an upcoming contract. Finally, seasonal workers are not allowed to stay with friends and family members in Sweden.

The rental agreement or accommodation certificate should state:

- the address of the accommodation
- the rent
- the living area (square meters)
- number of rooms and kitchen/WC
- the terms of the rental contract (period of validity and period of notice)
- the contact details of the landlord and tenant
- the signatures of the landlord and tenant

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41 Supplementary information in this reply was provided by the Swedish Pensions Agency via email communication 4 May 2020. Art.23(1) provides that seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.

42 The Aliens Act [Utlänningslagen, statute 2005:716], section 6c, paragraph 2, sub paragraph 4.

43 Migrationsverkets föreskrifter om vad som ska anses vara en bostad med lämplig standard enligt 6 c kap. 2 § första stycket 4 utlänningslagen (2005:716), MIGRFS 2018:6, 5 June 2018, available at: [MIGRFS 2018:6](#), last accessed 13 May 2020. Art. 20(1) provides that Member States shall require evidence that the seasonal workers will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.

44 Government bill prop. 2017/2018:108, p. 41.

## 5.5 Procedures to inform about rights and duties

There are a number of government agencies, including the Swedish Migration Agency, which disseminates information to both seasonal workers and their employers of their rights and duties.

In addition to targeted information on its website, the Migration Agency includes information on the rights and duties of both workers and employers in an appendix to the work permit decision. The appendix contains information on the basic requirements for the permit, health insurance and accommodation. Furthermore, it explains the reasons for the temporary duration of the permit and other particular conditions, for example that the permit is restricted to a certain occupation and employer. In addition, there is information on how to apply for an extension and that salary and other conditions of employment will be checked as part of that procedure. Finally, it has information on the withdrawal of permits, on the requirements for obtaining a permanent residence permit and on leaving Sweden. Information is provided in Swedish and English.

Swedish missions abroad inform applicants regarding work permits when they visit a mission, for example when applying or when leaving biometry. Applicants who apply online and do not need a visa to travel to Sweden generally have no need to come to a mission. Approximately 50 per cent of applications for seasonal work are submitted on paper, the remainder use the e-service. Regarding berry pickers, the employer is required to submit information to the Swedish Migration Agency regarding what information ("memorandum of understanding") the berry pickers have received (working hours, insurances, working conditions, costs, right of public access etc.). All applications for berry pickers are processed via the e-service.

## 5.6 Procedures to ensure rule compliance

The Swedish Migration Agency does not check systematically that seasonal workers abide by the rules. In case the Migration Agency finds (or receives information) that seasonal workers are overstaying, the Migration Agency contacts the Police Authority.<sup>45</sup> If the employee applies for an extension of the work permit, the Migration Agency checks that the applicant has complied with the requirements during the period of the first permit's validity. The Police Authority does not systematically perform controls of rule compliance amongst seasonal workers. However, irregularly staying third-country nationals, including seasonal workers, might be detected as part of internal checks on foreigners or in connection with temporary intra-Schengen border controls.

A number of government agencies are involved in monitoring and assessing rule compliance amongst employers. The Migration Agency is obligated to take action to prevent abuse of rules and contribute to the work against human trafficking and similar crimes. Procedures for examining first-time applications and extensions have integrated checks to safeguard that employers abide by the rules. Furthermore, certain sectors are subject to controls that are more stringent. These are performed by the Migration Agency in order to counteract abuse of the system and form part of the application procedures for a work permit in these sectors. Some of these are sectors where seasonal workers are employed. These include hotels and restaurants (accommodation and food service activities per the list of sectors for seasonal work in Sweden) and agriculture and forestry (forestry and logging per the list of sectors

<sup>45</sup> The Aliens Act [Utlänningslagen, statute 2005:716], section 20, paragraphs 1 and 3.

for seasonal work in Sweden).<sup>46</sup>

Employers in these economic sectors are required to:

- prove that their business can guarantee a salary for at least three months for the person who is applying for a work permit. In order to substantiate this, the employer needs to submit, for example, bank statements and previous and current income statements and balance sheets
- businesses that have previously hired third-country nationals issued a work permit also need to supply monthly tax account statements from their business
- businesses with operations in Sweden in these sectors that are registered in third countries must have a branch registered in the country

The Swedish Tax Agency plays an important role in monitoring and assessing employer compliance that can affect workers overall employment conditions. Ultimately, it is the Swedish Police Authority that investigates reports of suspected violations, economic crime etc. In case the Migration Agency detects employers that do not abide by the rules, the Police Authority will be contacted.<sup>47</sup> The Police Authority, in collaboration with other government agencies, performs work place inspections.

The Swedish labour market builds largely on the formal role of social partners and the collective agreements set up between these. In particular, trade unions play a role in monitoring whether employers abide by the rules. Ultimately, there is a special court, the Swedish Labour Court [Arbetsdomstolen] that hears and rules on labour-related disputes. Only social partners (employee and employer organisations) or employers that have entered into a collective agreement on an individual basis can lodge a claim before this court.<sup>48</sup>

At the time of Sweden's transposition of the Directive in 2018, the government stated in its bill to parliament that the requirements of the Directive pertaining to effective mechanisms through which seasonal workers may lodge complaints against their employers already were provided for in national legislation.<sup>49</sup> Hence, there are no specific procedures for seasonal workers.

Employers are obliged to provide correct information on employment conditions and accommodation, under criminal responsibility. Employers that provide incorrect information or deliberately withhold information of significance can be fined or sentenced to prison.<sup>50</sup> In case an employer does not comply with the obligation to provide information, applications work permits for seasonal work at that employer may be refused, withdrawn or not be extended. Consequently, the employer may be excluded from the possibility to hire seasonal workers.<sup>51</sup>

46 More information (in English) available at: [Migrationsverket: Certain industries are subject to more stringent control](#), last accessed 22 May 2020.

47 The Aliens Act [Utlänningslagen, statute 2005:716]), section 20, paragraphs 3.

48 More information on the website of the Swedish Labour Court, available at: [Arbetsdomstolen, English presentation](#), last accessed 22 May 2020.

49 Government bill Regeringens proposition 2017/18:108 Genomförande av säsongsanställningsdirektivet, p. 81.

50 The Swedish Penal Code [Brottsbalken], Chapter 15, section 10.

51 The Aliens Act, Chapter 6c, sections 6 and 10, and sections 12 and 13, and the Aliens Ordinance Chapter 5c, sections 5 and 7.



Additionally, a seasonal worker whose permit was withdrawn due to shortcomings caused by the employer is entitled to compensation from the employer.<sup>52</sup> The compensation, which the employer may be liable to pay, must correspond to salary and other remuneration from the employer that the seasonal worker had been entitled to in his/her employment in the course of the work permit if it would not have been withdrawn.

## 5.7 Cooperation between stakeholders in relation to monitoring

In 2017, the government tasked a number of public agencies to join in a collaborative effort to counter irregularities in working life.<sup>53</sup> This programme is not specifically focused on any particular sector. However, employers that hire seasonal workers can potentially be subject to these joint checks. The participating government agencies are the Swedish Migration Agency, the Swedish Tax Agency, the Police Authority, the Swedish Social Insurance Agency [Försäkringskassan], the Swedish Work Environment Authority, the Swedish Public Employment Service, the Swedish Gender Equality Agency [Jämställdhetsmyndigheten] and the Swedish Economic Crime Authority [Ekobrottsmyndigheten].

The assignment runs over the 2018-2020 period. For example, the task involves developing mutual control mechanisms to counter irregularities, breaches of rules and crime in the working life. In addition, the effort is expected to produce annual situation reports and develop methodological support for inter-agency collaboration. These agencies share information on employers with due consideration to applicable secrecy legislation and jointly selects which employers shall be subject to work place inspections. The Tax Agency, the Police Authority and the Work Environment Authority primarily perform such inspections. The latter two perform checks according to their government assignments and report to the other agencies in the group. These checks are mostly aimed at employers, but the Police Authority checks whether third-country nationals in work places have a legal stay and a work permit.

Finally, social partners have an integral and formal role in the Swedish labour market. In this context and in terms of cooperation it should be added that trade unions are entitled to submit their statement on the employment conditions offered by an employer who wants to hire a third-country national. This mechanism serves as well to protect the rights of seasonal workers.

## 5.8 Good practices and challenges

There is little, if any, research/evaluation findings specifically with regard to seasonal workers admitted by application of the rules of the Directive. The bulk of research reports deal with berry pickers (wild berries) and particularly Thai berry pickers.

Looking first at **good practices** identified, there seems to be agreement among stakeholders that there has been positive developments in the berry industry in the past few years with regard to ensuring the rights of seasonal workers in that sector. From the point of view of the application procedure for work permits at the Swed-

<sup>52</sup> The Aliens Act, Chapter 6c, section 13.

<sup>53</sup> "Uppdrag om metodutveckling för myndighetsgemensam kontroll för att motverka fusk, regelöverträdelser och brottslighet i arbetslivet", commissioned by the government 21 December 2017. More detailed information on the government's website, available at: [Regeringen: Uppdrag om metodutveckling för myndighetsgemensam kontroll för att motverka fusk, regelöverträdelser och brottslighet i arbetslivet, published 21 December 2017](#), last accessed 13 May 2020.

ish Migration Agency, a number of measures were put into place in the past few years, some of which have already been highlighted in the study. Other important measures were agreed between social partners and/or taken by actors in the berry industry.

As explained previously, certain sectors, including some where seasonal workers are hired in large numbers (for example agriculture and forestry), are subject to targeted controls. Inter alia, employers need to prove they can guarantee salary payments to prospective employees in order for a work permit to be granted.

While there is no per se minimum wage in Sweden, by jurisprudence SEK 13 000 (approximately € 1 236) constitutes a minimum wage in practice. In addition, trade unions are entitled to make a statement on employment conditions offered in an application for a work permit.

The emergence of collective agreements between social partners was an important step in safeguarding the rights of seasonal workers, and particularly in the berry industry. Trade unions such as the Swedish Municipal Workers' Union and the Swedish union of forestry, wood and graphical workers have played important roles in this development and they continue to safeguard the rights of workers from third countries. Particularly with regard to berry pickers, the Migration Agency introduced (2015) more stringent requirements in order for work permits to be issued. For example, employers that have previously employed berry pickers need to prove that their salaries were paid, and staffing agencies were required to have registered branches in Sweden. Importantly, companies are required to show how they will manage to pay the offered monthly salary even in the event of poor berry yields and in case the employee is unable to pick berries corresponding to the monthly salary offered. Overall requirements on employers to inform workers on employment conditions and other important circumstances related to their work and stay in Sweden were tightened.<sup>54</sup> Arguably, these measures have contributed to seasonal workers receiving a more accurate idea on what to expect from their work in the country and reduced the risk taking and overall vulnerability.

The Swedish Food Retailers Federation [Svensk Dagligvaruhandel] and the Swedish Food Federation [Livsmedelsföretagen] established social standards for responsible berry purchases [Riktlinjer för ansvarsfulla bäruppköp] in 2015.<sup>55</sup> These are aimed at berry buyers that buy wild berries from "independent berry pickers" that are not employed by a company in Sweden. These standards aim to ensure greater legal certainty and improved conditions for pickers in this group and to contribute to a sustainable business. Berry buyers (companies) that choose to adhere to the standards are offered training in the standards after which they receive a certificate.<sup>56</sup> Berry buyers are also recommended to cooperate with the authorities if berry pickers are found to be in a difficult situation or subjected to crime. Arguably, these social standards have served to improve conditions of a particularly vulnerable group of berry pickers and might as well have had an overall positive influence on the sector.

<sup>54</sup> The Swedish Migration Agency's website at: [Migrationsverket: Hiring berry pickers who have a representative](#), last accessed 26 May 2020.

<sup>55</sup> Livsmedelsföretagen and Dagligvaruhandeln: Riktlinjer för ansvarsfulla bäruppköp, maj 2015 (senast reviderad maj 2016), available at: [Livsmedelsföretagen and Dagligvaruhandeln: Riktlinjer för ansvarsfulla bäruppköp 2016](#), last accessed 25 May 2020.

<sup>56</sup> Livsmedelsföretagen and Dagligvaruhandeln: Utbildning för bäruppköp, text M. Wingborg, juni 2015, available at: [Livsmedelsföretagen and Dagligvaruhandeln: Utbildning i bäruppköp 2016](#), last accessed 27 May 2020.

The Swedish Environmental Protection Agency [Naturvårdsverket] has published information on the right of public access in Sweden, specifically aimed at foreign berry pickers. The right of public access is a basic principle in Sweden which allows the general public access to forests and fields that are in private hands, for example to pick wild berries. While this right is a prerequisite for picking wild berries, there are as well basic rules that must be respected. This information is collected in a reader friendly leaflet in multiple EU and non-EU languages.<sup>57</sup> Reasonably, the dissemination of such basic information to the target group and in multiple relevant languages has contributed to improving the overall conditions for workers.

The Federation of Swedish Farmers has guidelines aimed at member enterprises that aim to hire foreign labour. For example, farms are recommended to supply migrant workers with a welcome package in the native language of the workers and in Swedish. These should include vital information such as a map of the work place facilities, presentations and contact information of management and staff, any risks involved while carrying out the duties, public service information and good examples of work place instructions.<sup>58</sup>

In addition to the social standards discussed above, the national “Krav” label has gradually introduced principles for social responsibility and these include the agricultural industry’s use of wild berries picked berry pickers that are formally employed. “Krav” was established in 1985 and is the most well-known ecolabel among consumers in Sweden.<sup>59</sup> In addition, many companies in Sweden’s agricultural food industry are certified by KIWA, which sets out rules for social corporate responsibility.<sup>60</sup> Finally, “Sigill” is certification system for Swedish food and flowers, which also includes requirements for employers with regard to employment and working conditions.<sup>61</sup>

Turning to **challenges** such as exploitation of workers and the question of human trafficking, there are some limitations of data. The Swedish Migration Agency has stepped up its efforts to detect victims of human trafficking in the past few years, but there is no information from the Migration Agency on seasonal workers having been victims of human trafficking. Furthermore, the Swedish Police Authority does not have such data. The Swedish Gender Equality Agency publishes annual data on suspected cases of trafficking in human beings.<sup>62</sup> The agency’s 2019 report shows that the majority of victims were trafficked because of sexual purposes. Approximately 15 individuals were suspected to have been subject to trafficking for labour (exploitation), but there is no information or indication that seasonal workers from third countries were suspected victims.<sup>63</sup> Social partners and other stakeholders

57 The Swedish Environmental Protection Agency: Picking berries in Sweden, available at: [Naturvårdsverket: Picking berries in Sweden](#), last accessed 26 May 2020.

58 Lantbrukarnas Riksförbund: Guide för dig som har utländsk arbetskraft. Additional support materials and advice available at: [Lantmännen: Att anlita utländsk arbetskraft](#), last accessed 3 June 2020.

59 More information on KRAV’s website (some information in English), available at: [Krav English website](#), last accessed 27 May 2020.

60 More information on KIWA’s website, available at: [Kiwa](#), last accessed 27 May 2020.

61 More information on Sigill’s website, available at: [Sigill kvalitetssystem](#), last accessed 11 June 2020.

62 The Stockholm County Administrative Board held a national assignment on prostitution and human trafficking for sexual and other purposes until 2017. On 1 January 2018, the national assignment on was transferred to the Swedish Gender Equality Agency and made permanent.

63 The Swedish Gender Equality Agency: [Statistik misstänkta fall för människohandel i Sverige 2019, Vuxna](#), last accessed 17 November 2020.

reported that to the best of their knowledge that human trafficking was not common in their sectors.

The government's 2018 Action plan to combat prostitution and trafficking in human beings highlighted that the number of suspected cases of trafficking for other purposes than sexual purposes has increased in recent years. Berry picking is mentioned in the plan as one of a number of situations where workers could potentially be more at risk of becoming subject to trafficking.<sup>64</sup> Furthermore, the 2011 National guidelines to combat prostitution and trafficking in human beings for sexual purposes similarly list berry picking as an example of a context where trafficking could take place. However, the guidelines emphasise that the situations listed are mere examples and that they are to serve as possible indicators for stakeholders in their efforts to identify and combat these crimes.<sup>65</sup> While there is no data on third-country nationals working in seasonal work that have fallen victim to human trafficking, these action plans none the less indicate that the government seems to have identified berry picking as a challenging area.

Meanwhile, public and policy debate on the exploitation of seasonal workers in the Swedish berry industry has been topical in the past several years. A number of research reports as well as other reports and articles in the media have highlighted this issue.<sup>66</sup> Not least, trade unions and debaters have been critical of the living and working conditions of berry pickers. Long working hours often in breach of collective agreements and risk taking in relation to the actual income earned by workers (which depends on the supply of berries, and taking into account that berry pickers as a rule have borrowed money to fund their work/stay in Sweden) are some of the major issues that have been raised. Similarly, trade unions such as the Swedish union of forestry, wood and graphical workers report that workers from third countries often work longer hours than those set out in collective agreements in the sector and that they often are not aware of their rights with regard to working hours and pay<sup>67</sup>.

64 Regeringskansliet, Socialdepartementet: Handlingsplan mot prostitution och människohandel, bilaga till regeringsbeslut 2018-02-08 nr II:1, p. 9, available at: Regeringen: [Handlingsplan mot prostitution och människohandel 2018](#), last accessed 25 May 2020.

65 Nationellt Metodstödsteam mot Prostitution och Människohandel (NMT) and Länsstyrelsen: Nationella riktlinjer för arbetet mot prostitution och människohandel för sexuella ändamål, 2011, available at: [Länsstyrelsen: Nationella riktlinjer mot prostitution och människohandel för sexuella ändamål](#), last accessed 25 May 2020.

66 See for example Hedberg C. (2014), Hedberg C. et al. (2019), Wingborg M. "Allt hårdare villkor för thailändska bärplockare" in Dagens Arena 1 September 2019, available at: ["Allt hårdare villkor för thailändska bärplockare" in Dagens Arena, 1 September 2019](#), last accessed 22 May 2020, and Färm D. (2020)

67 Telephone interview and e-mail communication with the Swedish union of forestry, wood and graphical workers, 5 June 2020.

## 6 Conclusions and lessons learned

Whilst Sweden transposed the Seasonal Workers Directive only in 2018, seasonal workers have been admitted to the country for several years prior to that. As explained in the study, the agriculture and forestry sectors are the two primary economic sectors for seasonal work in Sweden.

Since the transposition of the Directive dates back to 1 June 2018, there is limited statistics and experience to draw from as regards its application in Sweden. Furthermore, data for 2018 and 2019 pertaining to the Directive is incomplete. At the time of the transposition, the government stated that national rules already provided good opportunities for third-country nationals to be admitted as seasonal workers. Moreover, the government reasoned that the transposition of the Directive would not lead to an increase in foreign labour. Finally, since the majority of seasonal workers, i.e. berry pickers hired by staffing agencies, would not be included in its application it was concluded that the new rules would be applied to a limited extent.<sup>68</sup> The government's assessment in 2018 proved particularly accurate for the following year when the number of berry pickers from Thailand reached an all-time high of more than 6 000 and the remaining share of seasonal workers admitted by the rules of the Directive were few by comparison. Consequently, the overall trend with regard to seasonal workers in Sweden was that berry pickers were the major category before the transposition of the Directive and remained the major category in the ensuing years. Hence, it is impossible to discuss seasonal work in Sweden without delving into the particulars of the picking of wild berries.

As discussed in the study, seasonal work in the berry industry displays a number of interesting and arguably unique traits and comes across as a rather complex ecosystem. It relies on the supplies of wild berries that can be picked freely due to the public right of access in Sweden and the business has been dependent on seasonal workers flying in from Thailand. In addition to the Thai work force, a small number of berry pickers are hired under employment conditions where the Directive is applicable and finally there are sizeable number of "independent pickers", often from third countries, that make up the labour force. Overall, it is a multifaceted situation with regard to employment and working conditions. With the Covid-19 pandemic currently greatly affecting in particular the practical possibilities for seasonal workers from third countries to come to Sweden, there is reason to believe that the berry industry will be more drastically affected due to its heavy reliance on one group of workers. It remains to be seen how and to what extent the admission of seasonal workers as berry pickers will change in the aftermath of the Covid-19 pandemic.

Many debaters seem to agree that the overall working conditions for seasonal workers in the berry industry have improved in the past few years. This development applies particularly to those admitted as employed workers. Interestingly however, social standards have emerged for "independent pickers". These standards are not specifically for pickers from third countries, but according to reports a sizeable number are from third countries such as Ukraine. As explained in the study, these berry pickers are not employed, but rather sell their yields to berry buyers. Hence, they principally fall outside the scope of the study, but the magnitude of this phenomenon

<sup>68</sup> Government bill Regeringens proposition 2017/18:108 Genomförande av säsongsanställningsdirektivet, p. 109f.

appears to be such that it should be discussed.

As regards the application of the Directive, it is clear that nationals from Ukraine account for two thirds of seasonal workers, and nationals from Thailand by far account for the bulk of the remaining number. There is unfortunately no data on in which sectors seasonal workers are admitted per Sweden's list of ten economic sectors by application of the Directive. Hence, a lesson learned from the study is that the sectors of employment reflecting these economic sectors should be fully registered in the applications/decisions of work permits processed by the Swedish Migration Agency. Currently only occupations are registered. The latter data reveal that forestry workers, berry pickers and planters, and market gardeners and crop growers are the major occupations. In addition to these occupations, a large number of various occupations are represented, but there are no real discernible trends.

As already stated, it is clear that the need for seasonal work in Sweden is primarily in the "green sector" and largely in the summer season. Several of the other sectors listed for seasonal work do not seem to attract workers other than in limited numbers. Furthermore, there are no real trends with regard to remaining nationalities even if Turkey and some of the Western Balkan countries account for some numbers. Overall, stakeholders indicate that the green sector in Sweden is rather dependent on foreign labour as a whole, and while there is no exact data on the share of third-country nationals, it is reasonable to conclude that they account for a sizeable number.

With regard to the maximum duration of stay for seasonal work per the rules of the Directive, Sweden opted for a maximum stay of six months. At the time of the transposition of the Directive, the government stated that six months stay in a twelve month period was reasonable to ensure that seasonal workers were not employed for non-seasonal work in violation of the purpose of the Directive. Furthermore, six months was deemed reasonable considering that July to September is the primary period for seasonal work. Meanwhile, in the consultations round in advance of the government bill, some stakeholders argued that nine months would be more suitable.<sup>69</sup> Some employer organisations retain the view that nine months would have been more suitable, since it more accurately reflects the needs of the forestry sector and the different durations of the growing seasons in the whole of the country.

The Migration Agency introduced a certification system for employers a few years ago. Briefly, the system offers shorter application processing times for work permit applications for positions at employers that fulfil certain criteria. The Confederation of Swedish Enterprise [Svenskt Näringsliv] has argued that employers that hire seasonal workers should have the possibility to become certified. Furthermore, major employer organisations in the seasonal sector, such as the Federation of Green Employers, have argued that the application procedure for work permits for seasonal work can be rather challenging. Many businesses in the green sector are small or medium sized enterprises that have limited resources at their disposal in the recruitment and application procedures (often no human resources officer for example), which can pose a challenge.

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69 Government bill Regeringens proposition 2017/18:108 Genomförande av säsongsanställningsdirektivet, p. 70.



#### About the EMN

The European Migration Network (EMN) is an EU funded network, set up with the aim of providing up-to-date, objective, reliable and comparable information on migration and asylum for institutions of the European Union, plus authorities and institutions of the Member States of the EU, in order to inform policymaking. The EMN also serves to provide the wider public with such information. The EMN was established by Council Decision 2008/381/EC adopted on 14 May 2008. The Swedish Migration Board is the Swedish National Contact Point (NCP) for the EMN.

Migrationsverket • 601 70 Norrköping  
phone +46 (0)771-235 235 • e-mail [emn@migrationsverket.se](mailto:emn@migrationsverket.se)  
[www.migrationsverket.se](http://www.migrationsverket.se) • [www.emnsweden.se](http://www.emnsweden.se)

