

## ETUC Comments on the Commission Guidelines on Seasonal Workers

The COVID-19 outbreak has exposed and exacerbated the deplorable working and living conditions of hundreds of thousands of seasonal workers in the EU, the vast majority of whom are cross-border and migrant workers. The pandemic is a wake-up call to recognise the pressing need to improve the conditions of vulnerable yet essential workers in sectors such as agri-food. The lessons learnt should pave the way for actions to address the shortcomings of the current legal framework in times of crises as well as in everyday working life of seasonal workers.

On 16 July 2020, the European Commission issued [Guidelines on Seasonal Workers](#) in the EU in the context of the COVID-19 outbreak. These Guidelines complement the Commission Guidelines concerning the exercise of the [Free Movement of Workers](#) during the COVID-19 outbreak published on 30 March. They respond to a call of the European Parliament in its [Resolution](#) of 19 June 2020 on the protection of cross-border and seasonal workers. The ETUC has been stressing the urgency of the situation, and together with EFFAT published a [Briefing Note on Seasonal Workers](#) and COVID-19 on 18 May. The ETUC supports the assessment made by [EFFAT](#) in reaction to the Commission Guidelines on 16 July.

**The ETUC welcomes the Commission Guidelines on Seasonal Workers, and calls on Member States and employers to vigorously apply and effectively enforce existing rules** to safeguard the protection of all seasonal workers and ensure their access to fair and decent living and working conditions. The Guidelines are a step in the right direction, but do not remove the urgency of the situation and the need for further action.

The Guidelines provide guidance to national authorities, labour inspectorates and social partners on issues relating to the rights of seasonal workers to take up work in an EU Member State, to enjoy decent living and working conditions, including occupational health and safety and adequate accommodation, to access to social security and declared work, as well as the need for clear communication for workers to be aware of their rights and to employers about their obligations. The Guidelines address the rights and conditions of both EU seasonal workers and third-country national seasonal workers in the EU.

The Guidelines illustrate the complexity of the situation, in so far as the rights of seasonal workers may differ depending on whether they are EU citizens or third-country nationals. In addition, both EU and third-country seasonal workers may be employed through different intermediaries, including posting arrangements, temporary work agencies and subcontracting practices. In this regard, the Commission commits to conduct a study to collect data on intra-EU seasonal work and identify the main challenges faced including during the COVID-19 pandemic. **The ETUC calls for action at EU level to prevent abusive practices in supply chains, including through subcontracting and temporary agency work.**

Mobility and labour migration must be both fair and safe. Unclear or missing information about the rights of seasonal workers and obligations of their employers has a negative and direct impact on their protection. The Guidelines stress the need to strengthen the enforcement and combat abuse by increased labour inspections, including with the support of the European Labour Authority (ELA). **The ETUC calls on the ELA to become operational as a matter of**

**priority so as to develop strategies for risk-assessment and targeted cross-border inspections in the agri-food sectors, as well as dedicated information to EU and third-country national seasonal workers about their rights and how to enforce them and report abuse.**

The Commission calls on the Member States to ensure EU seasonal workers enjoy full equal treatment in accordance with Article 45 TFEU and Directive [2014/54/EU](#) on the Free Movement of Workers, and to make sure they do not suffer any discrimination based on nationality. Once in employment, EU seasonal workers are subject to the laws and relevant collective agreements of the host Member State and must be treated equally to nationals as regards their working conditions including remuneration, dismissal and occupational safety and health. Similarly, the Seasonal Workers Directive [2014/36/EU](#) grants third-country nationals equal treatment as regards terms of employment, minimum working age, working conditions, including pay and dismissal, working hours, leave and holidays, as well as occupational health and safety measures. Despite these guarantees for equal treatment, the Directive has proven inadequate in ensuring that the rights of migrant workers are fully respected. **The ETUC welcomes the assessment of the transposition of the Seasonal Workers Directive being carried out by the Commission in order to assess if it adequately protects third-country seasonal workers, including their right to equal treatment.**

The Guidelines recognise the deplorable working and living conditions of seasonal workers, and highlight that they should enjoy the same rights and protection of their occupational safety and health as other workers of the host Member State, regardless of whether they are EU citizens or third-country nationals. Employment contracts and instructions should be provided in a language that seasonal workers can understand. However, trade unions are often the only ones informing seasonal workers about their rights. In the COVID-19 crisis, unions have played a crucial role in providing information to and reporting abuses of seasonal workers. **The ETUC calls for a correct, timely and ambitious transposition of Directive [2019/1152](#) on Transparent and Predictable Working Conditions.**

Member States should make sure employers fulfil their obligations to provide seasonal workers with the necessary information, equipment and training in order to guarantee their health and safety and mitigate risks, in particular bearing in mind their vulnerable situation due to language barriers and discontinuous working schemes. Employers must respect these obligations, regardless of the size of their business. Particular attention should be paid to specific challenges related to vulnerable groups, such as women, young and older workers and workers suffering from particular health conditions. The Commission also points to healthier and safer workplaces as an inherent part in ensuring fair, healthy and environmentally-friendly food systems and further strengthening the protection of public health. **The ETUC calls on the Commission to address the need for safe and healthy conditions for seasonal workers in the forthcoming EU Strategic Framework on Health and Safety at Work. The ongoing revision of the Common Agricultural Policy (CAP) must equally be used to improve the living and working conditions of workers in the sector. CAP funding should only go to beneficiaries that respect international, European and national rules, standards and collective agreements.**

All seasonal workers should benefit from accommodation to a reasonable cost and corresponding to an adequate standard according to national law and practice during their stay in the host Member State. The accommodation and transport means for seasonal workers should meet the health and safety standards in force in the Member State concerned, including the social distancing and health and safety measures applicable in view of COVID-19. However, the Commission acknowledges that while the Seasonal Workers Directive and the revised Posting of Workers Directive do include rules on conditions of accommodation, there

is no legislation in place to guarantee decent accommodation conditions for EU seasonal workers. The **ETUC supports EFFAT in its call for legally binding measures at EU level to make sure employers provide for decent accommodation and do not deduct rent automatically from the wage of seasonal workers. Better legal guarantees for decent living and working conditions must be coupled with vigorous enforcement, including dedicated labour inspections.**

The Commission recalls that seasonal workers should have access to social protection at the same level as other insured persons in the competent Member State in accordance with EU social security coordination rules and the Seasonal Workers Directive. This entails the obligation of the employers to fulfil all requirements in relation to his/her employees in accordance with the applicable legislation of the competent Member State. In this regard, the **ETUC calls for the introduction of a digital European Social Security Number to ensure fair mobility, legal certainty for mobile worker as well as effective protection and enforcement of their rights.**

Beyond the generally precarious conditions of seasonal workers, moreover the COVID-19 outbreak has left undeclared seasonal workers in a particularly vulnerable situation without rights or access to social protection. The **ETUC encourages the ELA to step up its efforts in tackling undeclared work, effectively enforcing the obligations of employers to end the exploitation and declare and regularise their workers. In cases of undocumented seasonal workers, firewalls between labour inspectorates and migration authorities should be introduced to ensure their rights are respected.**

As a next step, the Commission has announced a hearing with European social partners on seasonal work. The **ETUC stands ready to engage with the Commission to improve the working and living conditions of all seasonal workers in Europe. We equally encourage Member States to actively engage with national social partners to effectively address the challenges faced by seasonal workers.**