

INFORM # 3 – MAINTAINING LABOUR MIGRATION IN ESSENTIAL SECTORS IN TIMES OF PANDEMIC

SERIES OF EMN-OECD INFORMS ON THE IMPACT OF COVID-19 IN THE MIGRATION AREA

2020

1. KEY POINTS TO NOTE

- Across EU and OECD countries, the spread of COVID-19 resulted in the imposition of restrictions on admission. As foreigners (third-country nationals in the EU) were subject to more restrictions, entry of new workers was sharply curtailed in most countries.
- Despite the general restrictions, most EU and OECD countries identified specific occupational sectors that were considered as essential or ‘key’ and that justified continued admission during the COVID-19 crisis, based on specific Guidelines. In the EU, for example, many Member States applied the European Commission’s guidance or adapted and/or drew on some of the occupations included in their national Guidelines to meet labour market needs. A small number of countries did not establish a list of key occupational sectors; however, measures to facilitate the admission of third-country national workers to those sectors were applied. Such discretionary exemptions appear in a number of non-EU OECD countries for occupations considered essential or in the “national interest”.
- In a small number of countries, new policies or procedures entered into force, concerning mainly workers in the health, agriculture and transport sectors.
- The majority of EU and OECD countries applied some exemptions from health measures for migrant workers in essential occupations/sectors to facilitate entry into the territory and rapid access to the labour market. Such exemptions included shorter or no quarantine periods, alternative types of quarantine (e.g. self-isolation but able to work; avoiding contact with vulnerable categories) or less strict health measures (e.g. proof of negative test results substituting quarantine).
- Several countries implemented measures which aimed at facilitating access to the labour market for foreigners (in the EU, third-country nationals)¹ already residing in their territory in order to address labour shortages in essential sectors, especially agriculture and healthcare. A few of them granted or extended the right to work in essential sectors to asylum seekers; facilitated changes in status (for example from student to work status); or introduced flexibilities to improve access to work in key sectors. Regularisation of third-country nationals who had been employed in certain key sectors was also permitted in a limited number of cases.
- Many countries reported that when they introduced temporary measures, they were not prompted by the COVID-19 pandemic to also change the underlying policy for management of legal migration flows (for previously identified essential sectors).
- Low skilled workers from third-countries are especially over-represented in a number of key occupations that are vital in the fight against COVID-19, underscoring their often-neglected value within European economies.

¹ In addition, specific measures addressed at intra-EU mobile citizens were put in place but are not covered in this Inform.



2. BACKGROUND AND CONTEXT

2.1. AIM AND SCOPE OF INFORM

The outbreak of the COVID-19 pandemic and the substantial measures taken by EU and OECD countries to stem the spread of the virus are having direct and indirect impacts on the migration field. While the long-term consequences are difficult to predict, the immediate impacts are already visible. For example, the sudden plunge in economic activities significantly reduced the demand for work in sectors where migrant workers are disproportionately employed in many Member States, e.g. in the tourism or hospitality sector. For many firms across the economy, international recruitment was suspended or reduced, in light of economic uncertainty, restrictions on travel, and the shift to telework. At the same time, as the result of travel restrictions imposed, several countries experienced labour shortages, particularly in seasonal agricultural work.

This Inform covers third-country nationals who planned to enter the EU and migrants entering non-EU OECD countries as workers in some essential sectors (e.g. health- and care-workers, auxiliary hospital staff, agricultural workers etc.) as well as those already residing on a temporary or renewable basis in the EU and other OECD countries. EU mobile citizens are excluded from the scope of the EMN's mandate, and thus also from this Inform.

The Inform examines whether workers in certain occupational sectors – essential or otherwise – were exempted from general mobility restrictions at the external and internal borders of the EU or in non-EU OECD countries, resulting from policies to contain the pandemic. In addition, it reviews the measures implemented as a response to the COVID-19 crisis at national level to facilitate the entry into the territory and access to the labour market of migrant workers in essential occupations/sectors. The Inform reviews

cases where undocumented third-country nationals in the EU have been offered a possibility to regularise their status for employment specifically in essential sectors. Finally, the Inform focuses on measures for seasonal agricultural workers given their importance to that sector in many countries.

The Inform covers developments in EU countries between March and July 2020, and through August 2020 for non-EU OECD countries.

This Inform is based on a) information collected by the EMN National Contact Points (NCPs) via a common questionnaire through the EMN Ad-Hoc Query (AHQ) tool;^{2 3} and b) information collected for OECD countries via the OECD Working Party on Migration (March to June 2020) and the OECD policy brief on managing international migration under COVID-19 in OECD countries, as well as subsequent analysis. This Inform also drew on information provided by the Joint Research Centre (JRC) on labour demand in agriculture in times of COVID-19⁴ and the contribution of migrant (key) workers to Europe's COVID-19 response.⁵ Information regarding EU Member States, Norway and the United Kingdom has been sourced from the EMN, while information on OECD Member States outside of the EU has been provided by the OECD.

This Inform is part of a series of EMN-OECD Informs addressing further topics exploring the impact of COVID-19 in the migration area. These include other topics such as:

- Residence permits and migrant unemployment;
- Impact on international students;
- Reduction or loss of remittances; and
- Impact on return procedures.

² EMN Ad Hoc Query, '2020.50 - Maintaining flows of legal migrant workers in essential sectors in times of pandemic (Part 1)', and EMN Ad Hoc Query, '2020.51 - Maintaining flows of legal migrant workers in essential sectors in times of pandemic (Part 2)' launched on 9 July 2020; Responses were provided by the EMN National Contact Points (NCP) from the following countries: AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, MT, LV, NL, PL, PT, SE, SI, SK and NO, UK

³ Following the United Kingdom's departure from the European Union on 31 January 2020, the EMN National Contact Point of the UK is participating in selected EMN outputs during the transition period.

⁴ Kalantaryan, S., Mazza, J. and Scipioni, M., Meeting labour demand in agriculture in times of COVID 19 pandemic, EUR 30235 EN, Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-19174-2 (online), 978-92-76-19175-9 (print), doi:10.2760/686549 (online), 10.2760/837597 (print), JRC120800.

⁵ Fasani F., Mazza J., 'Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response', 2020. Available at: https://ec.europa.eu/knowledge4policy/sites/knowledge4policy/files/key_workers_covid_0423.pdf

2.2. ANALYSIS OF THE MEASURES TAKEN AT THE EUROPEAN LEVEL - AS A RESPONSE TO THE COVID-19 OUTBREAK - FOR MAINTAINING FLOWS OF LEGAL MIGRANT WORKERS IN ESSENTIAL SECTORS

On 16 March 2020, the European Commission published two documents: Guidelines mostly focused on the internal borders and the free movement of persons and goods⁶ and a Communication focused on the external borders and recommending a temporary restriction of non-essential travel from third-countries into the EU.⁷ The Commission recommended that some categories were exempted from this restriction: EU citizens and third-country nationals returning to their homes in the EU, and their family members, as well as travellers with an essential function or need, including:

- Healthcare professionals, health researchers, and elderly care professionals;
- Frontier workers;
- Transport personnel engaged in haulage of goods and other transport staff to the extent necessary;
- Diplomats, staff of international organisations, military personnel and humanitarian aid workers in the exercise of that function;
- Passengers in transit;
- Passengers travelling for imperative family reasons;
- Persons in need of international protection or for other humanitarian reasons.

At the end of March 2020, the European Commission published two additional Communications setting out Guidelines concerning the exercise of the free movement of workers during the COVID-19 outbreak⁸ and a Guidance on the implementation of the temporary restriction on non-essential travel to the

EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy.⁹

The Guidance on the implementation of the temporary restriction on non-essential travel to the EU extended the list of categories of travellers with an essential function or need by adding the category of seasonal workers in agriculture.

It also provided advice and practical instructions to implement measures adopted by the EU Member States and Schengen Associated Countries, notably with regard to the temporary travel restriction applying to all non-essential travel from third-countries to the EU+ area; the facilitation of transit arrangements for the repatriation of EU citizens and their family members stranded in third-countries; and dealing with overstay caused by travel restrictions, including for visa-waived third-country nationals.

In conclusion, the Commission emphasised the key importance of transborder mobility to ensure that key sectors of the economy remained appropriately staffed, especially those in which migrant workers were overrepresented.

On 11 June 2020, the Commission published its third assessment of the application of the temporary restriction on non-essential travel to the EU,¹⁰ in which the Commission underlined that most Member States had re-opened their internal borders and strongly encouraged the remaining Member States “to finalise the process of lifting the internal border controls and restrictions to free movement within the EU by 15 June 2020”. The Commission also recommended to prolong the travel restriction until 30 June 2020, and from 1 July 2020, to lift travel restrictions on non-essential travel for a number of third-countries and categories of persons.

On 30 June 2020, the Council adopted a Recommendation on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction,¹¹ advising Member States to gradually lift the travel restriction with regard to residents of a number of third-countries.¹² In addition, where temporary travel restrictions continued to apply to a third-country, some categories of persons were to be exempted, independent of the purpose of

6 COVID-19: Guidelines for border management measures to protect health and ensure the availability of goods and essential travel, C(2020)1753, 16.3.2020,

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200316_covid-19-Guidelines-for-border-management.pdf

7 Communication from the Commission to the European Parliament, the European Council and the Council, COVID-19: Temporary Restriction on Non-Essential Travel to the EU, COM(2020)115 final, 16.3.2020,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1600950786921&uri=CELEX:52020DC0115>

8 Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak, C(2020)2051, 30.3.2020, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0330\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0330(03))

9 Guidance on the implementation of the temporary restriction on non-essential travel to the EU, on the facilitation of transit arrangements for the repatriation of EU citizens, and on the effects on visa policy, C(2020) 2050 of 30.3.2020 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200327_c-2020-2050-report.pdf

10 Communication from the Commission to the European Parliament, the European Council and the Council On the third assessment of the application of the temporary restriction on non-essential travel to the EU, COM (2020)399 final, 11.6.2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1600955240950&uri=CELEX:52020DC0399>

11 Council Recommendation on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction, document 9208/20, 2020/0134(NLE), 30.06.2020

12 Algeria, Australia, Canada, Georgia, Japan, Montenegro, Morocco, New Zealand, Rwanda, Serbia, South Korea, Thailand, Tunisia, Uruguay, China (subject to confirmation of reciprocity)

travel: EU/EEA citizens and their family members as well as third-country nationals holding a residence permit or a long-term visa, issued under an EU Directive or national law. Finally, essential travel was to be allowed for some specific categories of travellers with an essential function or need. The Recommendation's list of those categories built on the list included in the Communication and Guidance issued in March 2020, and added some new categories:

- Seafarers;
- Third-country nationals travelling for the purpose of study; and
- Highly qualified third-country workers if their employment was necessary from an economic perspective and the work could not be postponed or performed abroad.

In July 2020, the European Commission published Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak.¹³ They aimed at providing guidance to national authorities, labour inspectorates, and social partners to guarantee the rights, health and safety of seasonal workers, and at ensuring that seasonal workers were aware of their rights. The need for these Guidelines came from the fact that the temporary nature of their work made seasonal workers more likely to experience precarious working and living conditions, something that the COVID-19 crisis revealed and exacerbated. In particular, the (sometimes poor) living and working conditions experienced by seasonal workers could increase the risk of COVID-19 clusters developing.

2.3. IMPACT ON LABOUR DEMAND IN THE AGRICULTURE SECTOR AND THE CONTRIBUTION OF MIGRANT (KEY) WORKERS TO EUROPE'S LABOUR MARKET DURING THE PANDEMIC

The COVID-19 crisis has impacted the labour market in multiple dimensions, including labour migration

flows in essential sectors of the European economy. According to the JRC analysis,¹⁴ in the EU, migrants (i.e. defined in this report as both non-EU born and mobile EU workers) account for the 13% of workers that are deemed 'essential' to keep the EU economies running. In particular, the share of foreign-born workers constitutes up to a third of the total in essential low skilled professions, including cleaners and helpers, and labourers in mining and construction.

According to the same report, despite natives making up the majority of key workers (which constitute approximately 31% of employed working-age individuals), non-EU born migrants and EU mobile citizens are essential in filling vital roles. While EU mobile workers are generally contributing in equal measure to key occupations compared to natives, non-EU migrant workers are overrepresented in low-skill key professions such as personal care workers in health services, drivers, transport and storage labourers and food processing workers. The COVID-19 crisis has brought a new emphasis to the relevance of the role played by a significant share of migrants performing low-skilled occupations within EU societies and their economies, especially during periods of forced closure.

One essential sector strongly impacted by the COVID-19 crisis is agriculture. Mobility restrictions cut off the usual seasonal inflows of workers from third-countries, curbing the sector's productivity, since native workers can only partially replace third-country national seasonal workers, particularly in countries such as Italy and Spain where they play a key role.¹⁵

Faced with a shortage of essential workers due to mobility restrictions, many EU Member States took swift action to mobilise migrants currently in their territory by facilitating their access to the labour market, changing their status (for example, from student to worker), allowing seasonal workers who already were in the Member State to extend their residence status or in some cases by granting temporary status to those in an irregular situation.

¹³ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1342

¹⁴ Fasani F, Mazza J, 'Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response', 2020. Available at: https://ec.europa.eu/knowledge4policy/sites/know4pol/files/key_workers_covid_0423.pdf

¹⁵ Kalantaryan, S., Mazza, J. and Scipioni, M., Meeting labour demand in agriculture in times of COVID 19 pandemic, EUR 30235 EN, Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-19174-2 (online),978-92-76-19175-9 (print), doi:10.2760/686549 (online),10.2760/837597 (print), JRC120800.



3. ENTRY OF THIRD-COUNTRY NATIONALS DURING THE COVID-19 CRISIS

On the one hand, the economic effects of the COVID-19 pandemic during the time period covered by this Inform¹⁶ caused a reduction in the demand for certain occupations in which migrants are disproportionately represented, such as the different activities linked to tourism.¹⁷ On the other hand, the need for additional workers increased in other sectors such as healthcare. In addition, travel restrictions made it difficult for Member States to maintain migration flows from third-countries to cover the needs of essential sectors of the economy such as in seasonal work.

This section focuses on how EU and OECD Member States responded to the need to prevent labour market shortages during the COVID-19 crisis. In particular, this section identifies what were considered to be the essential occupational sectors and then looks into specific measures that countries implemented in order to facilitate the entry of migrants (or third-country nationals in EU countries) working in those essential occupations.

3.1. ESSENTIAL OCCUPATIONAL SECTORS DURING COVID-19

The European Commission, in its Guidelines concerning the implementation of the temporary restriction on non-essential travel to the EU, and on the effects on visa policy, identified a range of workers in essential occupations, which were allowed to enter the EU. Some EU Member States implemented the recommendations issued by the Commission and authorised third-country nationals working in these occupational sectors to enter the territory of the host Member State despite the closure of borders.¹⁸ The permitted occupational sectors in Finland were grouped in three categories and closely reflect the Commission Guidelines.

The rest of the reporting EU Member States did not explicitly follow the Guidelines, but did put in place measures to exempt several categories of essential workers from general mobility restrictions.¹⁹ For example, even though Estonia and France did not establish a precise list of sectors considered as essential, both Member States applied exemptions for most of the occupations listed in the Commission Guidelines from the beginning of the COVID-19 outbreak. In most cases, Member States limited the

number of those categories to what was considered most essential given their national priorities and needs. In Lithuania, the movement of goods was considered a priority and, accordingly, exemptions were applied to third-country national workers working in related sectors. In Spain, a number of exceptions to these restrictions have been provided on the basis of the essential or key nature of the passenger category in question. Since 24 May 2020, seasonal workers were allowed to enter by any type of border (land or air and sea). This list was expanded, including highly qualified workers whose work was necessary and could not be postponed or carried out remotely, and included participants in high-level sports tests taking place in Spain. A protocol was also established for the entry of highly qualified professionals who planned to develop a professional activity in the audio-visual sector.

In mid-March, Norway implemented an extensive set of regulations (similar to the EU Guidelines for essential workers) that prohibited non-essential traffic with the exception of certain categories of positions carrying out critical public functions.²⁰

Only Hungary reported that during the closure of EU borders, the police provided exemption for third-country nationals based on leniency, with such applications examined on a case-by-case basis. Poland and the Slovak Republic did not identify occupational sectors to be considered officially as 'essential' during the COVID-19 crisis; nonetheless both Member States applied exemptions for seasonal workers (see also section 5.1). In addition, in Poland, exemptions were also applied in some other cases such as for third-country nationals working in the transportation sector (people and goods), as well as for diplomats and migrants working in the agricultural holding that operates on both sides of the Polish border.

Even though Ireland is not part of the Schengen area and the Irish border has not been closed during the pandemic, processing of visa applications stopped except for some third-country national categories, including workers in the healthcare and transport sector, diplomats or international organisations' personnel. In addition, applications from medical personnel were prioritised under the atypical working scheme and the employment permits system.

¹⁶ This Inform covers the period March-July 2020.

¹⁷ <https://www.oecd.org/coronavirus/policy-responses/tourism-policy-responses-to-the-coronavirus-covid-19-6466aa20/>

¹⁸ BE, CZ (with a few exceptions), DE, EL, HR, LV (partially), SI.

¹⁹ AT, BG, CY, EE, EL, ES, FR, HU, IE, LT, LU, MT, NL, PL, PT, SE, SK and NO.

²⁰ Norway defined a number of exemptions regarding border restrictions/regulations which allowed essential foreign nationals entry after Corona outbreak for those who worked in the following critical public functions: Administration and crisis management, Defence, Law and order, Health and care services, Rescue service, Digital security in the civilian sector, Nature and the environment, Security of supply, Water and wastewater, Financial services, Power supply, Electronic communications, Transport, Satellite-based services, Pharmacy and Maintenance. The underlying categories were reviewed and adjusted through the spring and summer of 2020.

The United Kingdom followed a similar approach, exempting from the general border rules some categories such as transport, food processing or critical infrastructure workers. Health professionals and care workers were deemed essential workers, but they were not exempt if they were third-country nationals with restrictions on their stay.

3.2. POLICY MEASURES TO FACILITATE THE ENTRY OF THIRD-COUNTRY NATIONALS WORKING IN ESSENTIAL SECTORS

Most EU and OECD countries did not introduce new policies or procedures to facilitate the entry of third-country nationals working in essential occupations to ensure that labour market needs were being met during the COVID-19 crisis.²¹ However, some of those countries in practice did introduce general adaptations for example by facilitating the issuance of permits/visas or expediting processing.²²

Specific policies or procedures to facilitate the entry of essential workers from third-countries were introduced in five EU Member States.²³ For example, in Spain, streamlining and prioritisation measures were introduced in the processing of all files of foreign nationals with a professional profile in the agricultural and health sectors. In Hungary, new provisions enabled citizens of neighbouring countries and Hungarian citizens working in the agricultural sector but without a Hungarian address, to enter the territory collectively in groups in an organised, prearranged way at certain border crossing points. In Lithuania, according to a new order, the procedure for issuing temporary residence permits to foreigners during the quarantine period was approved, and it provided for certain exceptions to the issue and renewal of temporary residence permits for foreigners working in Lithuanian companies engaged in international commercial/freight transport of goods by all types of vehicles and holding a document certifying their right to stay or reside in Lithuania. In France, new measures were introduced to authorise seasonal workers in the medical sector to work or to continue to work in the country. For example, non-EU qualified practitioners were temporarily authorised to continue their probationary period in a new hospital to extend the duration of their permit. Moreover, the government relaxed the conditions of practice for foreign doctors, in particular by authorising those who were not entitled to practise to carry out non-medical functions (e.g. care assistant, reception and orientation, etc.) to support health care teams involved in managing the crisis. In France, non-EU seasonal workers legally residing in an

EU Member State were authorised to work as from 20 May 2020 if the employer respected several health measures. In the healthcare sector, the activity of non-EU qualified practitioners, already in practice or on probation, was temporarily extended during the health crisis. Finally, foreign doctors with refugee status may be recruited by public health establishments under the status of associated contract worker, without having passed the knowledge verification tests.

Outside of the EU, most OECD countries granted exemptions to general entry bans on the basis of individual exemptions decided on a discretionary basis, either by consular or border officials, under guidance from national authorities. For example, the United States of America (USA) clarified exemptions to the general entry ban on 12 August 2020.²⁴ For H-1B specialty occupations – the skilled temporary visa – exceptions included several categories: public health or healthcare, medical research; government-sponsored applicants whose entry was considered critical for foreign policy, treaty or contractual obligations, or essential to a government agency; plus workers returning to an employer by whom they were previously employed. There was also a category of those “necessary to facilitate the immediate and continued economic recovery”. Criteria for this category included employer need which could not be met remotely (especially for those labour markets tested after July 2020); significant contribution to critical infrastructure, in either senior management or key qualifications; higher wage (at least 15% above prevailing level); unusual expertise; and financial hardship to employer if denied. Also included were “a public health or healthcare professional, researcher to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit.” This included those traveling to “alleviate the effects of the COVID-19 pandemic that may be a secondary effect of the pandemic.” Secondary effects are considered to include, for example, health areas “not directly related, but adversely impacted by the COVID-19 pandemic”. The same applied to intra-corporate transfers (L-1 visas). For H-2B workers – temporary workers in seasonal or cyclical jobs – the worker had to be endorsed by a US Government agency as critical, or demonstrate that they were “necessary to facilitate the immediate and continued economic recovery”.

Canada imposed a general prohibition on admission of foreign nationals. Exceptions included those who were “providing an essential service while in Canada”. Guidance on “essential service” was provided based on a list²⁵ of hundreds of essential jobs developed

21 Among EU MS, NO and UK: AT, BE, BG, CY, CZ, DE, EE, FI, FR, HR, IE, IT, LU, MT, NL, PT, SK, SI, SE and NO, UK. Among non-EU OECD countries: e.g. CA, AU, JP, ISR.

22 Among EU MS, FR NO and UK: AT, BE, EL, IT, MT. Among non-EU OECD countries: e.g. CA, AU, JP, ISR.

23 ES, FR, HU, LT, LV.

24 <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>

25 The list is here: <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/crtcl-nfrstrctr/esf-sfe-en.aspx>

by Public Safety Canada in consultation with industry representatives. To enter, the foreign national had to perform an activity or function considered in the “national interest” by one of three Ministers: Foreign Affairs, Immigration, Refugees and Citizenship; or Public Safety. The exemption is intended only to be used in exceptional circumstances, rather than as a general admission category. Not all activities on the essential service list granted an exemption to the admission ban, and activities not included on the list could still merit an exception. A general exemption in Canada was available however to certain health, safety and food security workers. This included emergency services; support of critical infrastructure; maintenance or installation of medical equipment; and medical supply delivery personnel. Students in health fields who were allowed to work in that field were also granted an exception. Labour market tests in Canada were targeted to receive priority processing if they were in certain occupational codes, primarily in agriculture and food processing, and in health.

Australia also took the path of providing individual exemptions to the general admission restrictions. Grounds for exemption – determined by the Commissioner of the Australian Border Force – included: foreigners invited by the Australian Government or a state or territory government authority for the purpose of assisting in the COVID-19 response; those providing critical or specialist medical services, including air ambulance, medical evacuations and delivering critical medical supplies; those with “critical skills or working in a critical sector” in Australia; those sponsored by an employer to work in an occupation on the Priority Migration Skilled Occupation List (PMSOL) – which included mostly medical occupations²⁶; and those “whose entry would otherwise be in the national interest, supported by the Australian Government or a state or territory government authority”. Exemptions could be requested online, specifying the grounds, and providing a supporting statement and accompanying evidence.

In Japan, exemptions were very limited. From 21 August 2020, an exemption was applied to foreign nationals who qualified for the status of Medical Services, and who “contribute(d) to the enhancement and strengthening of Japanese medical systems”. In addition to health workers, the only other exemption

applied to the status “Instructor” or “Professor”, but only if the absence of the teacher would require the cancellation of educational activities.

In Israel, the decision was made to admit a limited number of “experts necessary for national infrastructures and/or functional consecutiveness of the economy”. Each admission required a recommendation from the relevant government ministry and approval by the Foreign Workers Administration at the Population and Immigration Authority.

In New Zealand, visa applications were prioritised for key roles in the health sector.

3.3. EXEMPTIONS FOR ESSENTIAL WORKERS FROM HEALTH MEASURES

Since the beginning of the pandemic, all EU and OECD countries implemented restrictions on non-essential travel, often accompanied by requirements for cross-border travellers to stay in quarantine, respect an advised restricted movement period²⁷, or provide a negative test.²⁸ Many countries applied some exemptions from health measures for migrant workers in essential occupations/sectors to facilitate entry into the territory and access to the labour market.²⁹ In those cases, specific categories of third-country national workers in essential sectors were subject to lighter or alternative measures to the normal quarantine such as:

- Temperature test,³⁰
- Proof of a negative polymerase chain reaction (PCR) test before entering the territory of a country³¹;
- Shorter quarantine,³²
- Total exemption from the 14-day quarantine/self-isolation,³³ or
- Quarantine/self-isolation while working.^{34 35}

For example, in Austria, humanitarian, care and health care workers, as well as seasonal workers in agriculture and forestry, were allowed to enter from third-countries with a health certificate confirming a negative PCR test carried out no longer than 72 hours before entry;

26 <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/pmsol>

27 In Ireland international travellers are advised to restrict movement for 14 days after arrival.

28 Luxembourg does not implement a quarantine to international travellers per se. However, for TCN aged at least 11 years old who are part of the categories allowed to enter the country and who wants to travel by air to Luxembourg from a third-country which is not on the list of third-countries considered as safe, - even if they have a temporary residence permit or a residence permit - must obligatorily present the negative result of a biological examination at Covid-19 before boarding. The test must have been carried out less than 72 hours before the flight. Persons from the transport sector, i.e. members of the air crew, have been exempted from the obligation to present the negative result of the above-mentioned test, as well as third-country nationals in transit, i.e. passengers on a stopover with a connection without leaving the transit area, at Luxembourg airport.

29 Among EU MS, NO and UK: AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, LV, LT, MT, NL, PL, SI, SK, NO and UK. Among non-EU OECD countries: e.g. CA, JP, NZ, US.

30 e.g. SI.

31 e.g. AT, BG, HR, and PL.

32 e.g. seasonal workers in agriculture from neighbouring countries in HU.

33 e.g. CY, DE, EE, HR, NO and UK.

34 e.g. seasonal workers in agriculture in FI, FR, PL and the UK or healthcare professionals living in Sweden, but working in Norway

35 The rules on self-isolation for seasonal workers are different from those for other travellers to the UK because of the importance of the work for food supply. Upon arrival, agricultural workers must immediately go to the farm where they will be working and self-isolate for 14 days, unless they travelled from an exempt country. While self-isolating, they are allowed to work on the farm as long as they avoid contact with others and follow social distancing rules.

after entry, a 10-day (home) quarantine was required although quarantine could be lifted if a subsequent PCR test resulted negative. In the Czech Republic, transport workers, persons working on critical or otherwise essential infrastructures and staff of international organisations were not required to present a medical certificate or negative antibody testing result upon arrival and undergo a quarantine if their employment period was not to exceed 14 days.

Norway allowed all categories of essential workers in March and April exemption from quarantine. Later in the summer, all seasonal workers were required to quarantine for 10 days after arriving in Norway. In Spain, health or elderly care professionals who were going to

carry out their activity were exempt from quarantine periods, provided they had not been in contact with people diagnosed with COVID-19.

As regards examples of quarantine exemptions from OECD countries outside of Europe, Canada granted quarantine exemptions to several categories of foreigners admitted. These included those entering Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response; a person or any person in a class of persons whom the Chief Public Health Officer determined would provide an essential service; as well as certain essential workers (see above), subject to restrictions on exposure to vulnerable populations.



4. MITIGATING NEGATIVE EFFECTS ON THIRD-COUNTRY NATIONALS ALREADY RESIDING IN EU AND OECD COUNTRIES

This section sets out some of the measures adopted by Member States in order to both mitigate the negative effects of COVID-19 on the financial situation of third-country nationals residing in an EU Member State or migrants in an OECD country and to ensure that the essential economic sectors had access to enough workers. It also examines the regularisation of undocumented migrants that took place in some countries to address labour shortages and better manage public health. Lastly, the impact that the pandemic had in terms of influencing future plans concerning legal migration flows in essential sectors is also addressed.

4.1. MEASURES TO EASE RESTRICTIONS ON ACCESS TO THE LABOUR MARKET DURING THE COVID-19 OUTBREAK

Several EU Member States and the United Kingdom³⁶ reported to have implemented measures aimed at facilitating access to the labour market for third-country nationals (already residing in the country) in order to ensure that labour market needs in essential sectors were met. The two sectors that were the most targeted by such measures were the agricultural sector³⁷ and the healthcare sector.³⁸

Several EU Member States put in place measures aimed at facilitating access to the labour market or to give the possibility to work for longer hours. Germany and Spain targeted asylum seekers and refugees with these measures. For example, the Federal Employment Agency in Germany decided that asylum seekers and foreigners

whose deportation was suspended could be employed in the agricultural sector between 1 April and 31 October 2020.

In Spain, migrant workers whose work permit expired between 15 March and 30 June 2020 were automatically extended until 30 September to enable them to work in the agricultural sector. Furthermore, Spain gave the right to reside and work to 18-21-year-old third-country nationals in a regular situation employed in the agricultural sector. The authorisation shall be valid for two years, renewable for two years and valid throughout the national territory, regardless of the national employment situation.

Malta introduced a new procedure to make it easier for employers to recruit third-country nationals who lost their job during the COVID-19 crisis for temporary employment.

The Czech Republic implemented a procedure aimed at making it easier to change jobs during the state of emergency for those holding single permits.

Four EU Member States granted the right to work in essential sectors to asylum seekers or extended this right.³⁹ In Belgium, the extension of the right to work of asylum seekers was mainly motivated by the labour shortages in the agriculture, horticulture and forestry sectors. Cyprus also allowed asylum seekers to work in the agricultural sector. Spain automatically granted the right to work to young third-country nationals from age 18 to 21 and who were students or asylum seekers. The Finnish law extending the right to work of asylum seekers already in country came into force in June 2020 allowing these foreigners to work in critical tasks.

³⁶ Among EU MS, NO and UK: AT, BE, CY, CZ, DE, EE, ES, FI, FR, HR, IE, LV, MT, PL, SE and UK. Among non-EU OECD countries: e.g. CA, JP, KR.

³⁷ BE, DE, EE, ES, FR, PL.

³⁸ ES, FR, IE and UK.

³⁹ BE, CY, ES, FI.

Norway allowed seasonal workers already in Norway to have an extended stay as long as they continued working. Some rules were relaxed regarding overtime hours for healthcare staff. Some rules were relaxed regarding overtime hours for healthcare staff, whilst others were eased up in terms of senior citizens being allowed to work additional hours without it affecting their pensions.

Four EU Member States⁴⁰ and the United Kingdom granted or extended the right to work to students from third-countries.⁴¹ France, Germany and the United Kingdom increased the number of hours during which students were allowed to work. Students were allowed to work for 80 % of the maximum working time allowed (instead of the usual 60 %) in France, while in Germany the maximum working time was extended beyond the usual limit of 120 full days and 240 half days. The immigration authorities were also able to issue additional employment permits at their discretion to address additional employment opportunities in university teaching due to the COVID19 pandemic.

Ireland allowed third-country national students to work up to 40 hours per week (the usual limit during out of term periods) if their college was closed. This was a measure to support students rather than a measure to ensure labour market requirements in essential sectors. Finally, the United Kingdom allowed Tier 4 students who had the right to work and were employed by a National Health Service (NHS) Trust within any of the professions established in government guidance (e.g. biochemist, biological scientist, dental practitioner etc. amongst others) to work for longer than 20 hours per week.

Regarding the measures adopted by countries in order to facilitate the change of status (for example, from student, au pair or trainee, to work) of third-country national in order to allow them to work in essential sectors, Ireland has provided that third-country nationals legally resident in Ireland, but without the right to work who responded to and met the criteria for the call for healthcare staff "*Be on Call for Ireland*" and obtained a position, may have an application for change of status considered.

Some OECD countries outside the EU have allowed workers flexibilities not usually granted by their work permit. Japan, for example, allowed participants in the Technical Intern Training Programme to stay beyond the usual end of expiration of their work term (three or five years) and equally important to change sector of occupation.

Canada allowed workers whose permits had expired to "recover" them if they met certain criteria, restoring their legal working status and extending their stay.⁴²

Korea (at the time of this Inform) was considering allowing its non-professional temporary workers, under the Employment Permit System, to stay beyond the end of their term (five or ten years maximum), allowing them to work in seasonal agriculture and other sectors outside those authorised by their original permit.

As a temporary measure, the New Zealand Government also changed temporary work visa conditions to allow some lower skilled temporary healthcare workers that were currently in New Zealand to stay and work for an additional 12 months before they were subject to the "stand down" period. This was to allow those health workers with lower skilled Essential Skills visas, who had worked in New Zealand for three years, an additional 12 months before they were subject to the "stand down" period where they would have to leave New Zealand. This aimed to provide additional certainty for those impacted, some of whom were affected by the first stand down period from 28 August 2020, and it aimed also to help maintain the existing workforce.

4.2. MEASURES TO REGULARISE UNDOCUMENTED MIGRANT WORKERS DURING THE COVID-19 OUTBREAK

Italy undertook a targeted regularisation for third-country nationals who had been employed in the following sectors: agriculture and livestock, fisheries, long-term care (for persons with severe conditions or requiring assistance with daily living); and domestic work (cleaning, childcare etc.). Two separate streams were opened: the first granted 6-month permits for third-country nationals whose permit expired after 31 October 2019, if they could prove they were in Italy on 8 March 2020 and worked previously in the sectors identified. The second stream was for those present prior to 8 March 2020 with new employment contracts or irregular employment in the above sectors. The rationale behind this measure was the need to better monitor and protect health during the pandemic, and to ensure that irregular migrants would not avoid COVID-19 testing or medical treatment out of fear of detention or expulsion.

In Greece, special measures to address urgent seasonal labour shortages in agriculture were adopted on 13 April including a measure according to which automatic extension for a period of six months of special work permits was granted on an exceptional basis to undocumented third-country nationals for their exclusive employment in agriculture to cover urgent needs.

40 DE, ES, FR, IE and UK.

41 For more information, please refer to the second EMN OECD Inform on Impact of COVID-19 on international students in EU and OECD Member States. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_inform2_students_final_en.pdf

42 <https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-covid19/restoration-extension-trv.html>

4.3. MID- TO LONG TERM PLANNED (NATIONAL) MEASURES FOR LABOUR MIGRATION IN ESSENTIAL SECTORS

Regarding future planning, several EU Member States and the United Kingdom⁴³ reported that it was still too early to know if they would be implementing policies, measures or laws aimed at ensuring flows of legal migration in essential sectors in the mid to long term due to the evolving situation of the COVID-19 pandemic.

Germany, Spain and Malta reported that the COVID-19 pandemic had revealed the need for such measures. Both in Germany and Spain, reflection about some necessary changes to the legal immigration system had preceded the pandemic but was subsequently reinforced by it. In Germany, the focus was on attracting skilled workers in the healthcare and nursing professions, as well as in the IT sector. Spain used the experience of

the pandemic to draw lessons in order to inform future reforms of migration laws aimed at overcoming the demographic challenges faced by the country. Malta pointed to the growing numbers of unemployed people resulting from measures to curb the pandemic to possibly inform future changes in policy or legislation.

Outside of the EU, in New Zealand, concern over the employment effects of the crisis led to a strengthening of the labour market test. Immigration New Zealand was able to ask employers requesting 'essential skills' workers from abroad to provide further evidence that no New Zealanders were available for the role, even where the position had previously been labour market tested. This accompanied the introduction of a salary-based rather than occupation-based definition of skilled workers. In the USA, the presidential proclamations in response to COVID-19 also requested recommendations on changes to temporary legal migration programmes to favour hiring of US workers.



5. RESPONSES TO COVID-19 FOR SEASONAL AGRICULTURAL WORKERS

The COVID-19 pandemic has had a significant impact on Member States that rely on seasonal agricultural workers from third-countries. EU and OECD countries reported effects on their admission policy for seasonal workers, particularly as a result of travel restrictions imposed at national, EU and global levels. Some national authorities had to suspend part or all of their normal activities with respect to the processing of applications by seasonal agricultural workers, leading to labour shortages in sectors in which seasonal workers were typically active, such as agriculture,⁴⁴ horticulture,⁴⁵ and forestry.⁴⁶ Furthermore, the quarantine period of 14 days imposed for all persons entering the territory led to challenges in several Member States.⁴⁷

5.1. MEASURES OR CONTINGENCY PLANS TO RESOLVE THE AGRICULTURAL LABOUR SHORTAGE AT NATIONAL LEVEL

Regarding seasonal agricultural workers already residing in an EU or OECD country, a measure commonly applied was the extension of the residence permits / authorisations of third-country nationals (migrants for OECD countries) or the extension of time limits for short-term employment laid down in national

legislation.⁴⁸ As stated above, in Spain work permits of migrants that expired between 15 March and 30 June 2020 were automatically extended until 30 June 2020 for working in the agricultural sector. This measure was subsequently extended until 30 September 2020. This also applied to 7 050 Moroccan workers from the 'hiring in origin' annual programme, who were already in Spain working during the berries harvesting season, and whose permits expired during the state of alarm. In France, seasonal workers from third-countries legally residing as of 16 March 2020 were authorised to continue to reside and work in France without exceeding a cumulative duration of nine months per year (instead of six months).

Germany also extended the maximum working hours and reduced the minimum rest periods for seasonal workers. In addition, some EU Member States sought to address labour shortages through mobilisation of the existing labour force, including both EU citizens and third-country nationals. In France several platforms were created during the lockdown to bring together employers and job seekers. A dedicated website was created by the agricultural sector to attract the domestic labour force in the agricultural sector.⁴⁹ The Ministry of the Labour and the National Employment Agency (*Pôle Emploi*) also created an internet platform,⁵⁰ which aimed to facilitate and accelerate recruitment by

43 BE, EL, FI, FR, HR, LT, LV, NL, PL, PT, SK, SE and UK.

44 AT, BE, DE, EL, ES, FI, FR, HU, IT, SE Among non-EU OECD countries: e.g. AU.

45 BE, DE, ES, FI, SE.

46 BE, FI, SE.

47 AT, DE, FI, SK.

48 Among EU MS, NO and UK: AT, BE, CY, DE, EE, ES, FI, FR, IT, PL, SI, SK, RO. Among non-EU OECD countries: e.g. AU, NZ.

49 <https://desbraspourtonassiette.wizi.farm/>

50 mobilisationemploi.gouv.fr

grouping together the various job offers in the priority sectors requiring manpower reinforcements. As regards specifically third-country nationals, temporary measures were adopted to grant asylum seekers,⁵¹ persons whose return had been suspended,⁵² migrants who had another valid document allowing them to work,⁵³ irregular migrants,⁵⁴ or persons with a recently expired/soon-to-be expired short-term work permit⁵⁵ the right to carry out seasonal work in the agricultural sector. Belgium and Finland also suspended the waiting period for asylum seekers to take up jobs in sectors identified as essential.

With regard to OECD countries outside the EU, in Australia, in April 2020, the Government announced a new visa extending the stay of critical seasonal workers to ensure the agricultural sector had the labour force it needed during the COVID-19 pandemic. Participants in the Seasonal Worker Programme and Pacific Labour Scheme workers saw their visa conditions relaxed and were given an option to extend their stay for up to one year). Workers under the Seasonal Worker Programme and Pacific Labour Scheme were to remain connected to the respective programmes and the protections these afforded to ensure the welfare and wellbeing of workers were maintained.)

Moreover, in Australia, Working Holiday Makers (WHMs) often work in agriculture, and completing a three-month stint allows them to renew their visa for a second year. With no new WHMs arriving and many returning home, the agriculture workforce began to shrink. Australia thus allowed WHMs to stay beyond the two-year term of their visa, on the condition they worked in agriculture for an additional period.

In the United States, the H-2A visa for agricultural work is limited to a three-year stay followed by a three-month period outside the United States before a new visa can be issued. In April 2020, a temporary exception allowed workers whose term was expiring to stay beyond the three-year limit and work for authorised H-2A employers; the extension ended in August 2020.

In New Zealand, the resumption of visa issuance since May 2020 has prioritised applicants already in the country, and those who “support the government response to COVID-19”. The ceiling on admission under the Recognised Seasonal Employers (RSE) programme (14 400 workers) will be maintained for the 2020/2021 season. Usually workers were required to exit New Zealand between seasons and only exceptionally were they allowed to remain. Indeed, visas of RSE workers expiring between 18 August and 31 December 2020 were extended by 6 months. Those who wished to

continue to work in New Zealand for the same purpose after this additional 6 months were able to apply to stay longer.

5.2. MEASURES TO MAINTAIN FLOWS OF SEASONAL AGRICULTURAL WORKERS TO ADDRESS LABOUR MARKET NEEDS

As regards seasonal agricultural workers planning to enter the territory during the pandemic, 13 EU Member States and Norway⁵⁶ lifted travel restrictions for seasonal workers working in agriculture.⁵⁷ Finland and Poland noted that although the quarantine period remained in effect, this was implemented in a way which allowed seasonal workers to begin their work immediately upon arrival, in a safe environment. Austria and Italy adopted special agreements with Ukraine and Morocco and India respectively to directly fly in agricultural workers from these countries, thereby alleviating labour shortages. In Spain, since 24 May 2020 seasonal workers were allowed to enter by any type of border (land or air and sea). Sweden aimed at mobilising the national labour force by implementing a government programme to facilitate the matching of unemployed people to green industries with the help of a dedicated website.

The USA maintained its H-2A programme for seasonal agricultural workers; visa issuance remained at the same level as previous years throughout the pandemic. Australia started to allow seasonal workers to enter in August 2020, when it reopened the Seasonal Worker Program and Pacific Labour Scheme but required their employers to pay for their two-week quarantine. A charter flight was organised from Vanuatu. The schemes provide the only automatic exemption to a general admission restriction; otherwise, Australia only admitted citizens, permanent residents and their family members, although individual exceptions were granted. In New Zealand, however, where the season came to an end during mid-2020, new admissions remained restricted, as efforts were made to redeploy or repatriate seasonal workers whose term was concluded.

51 CY, DE, ES, FI and NO.

52 DE, IT.

53 PL

54 IT (specific conditions apply).

55 EE.

56 A 10-day quarantine after arriving in Norway was required for all seasonal workers in Norway.

57 AT, BE, CZ, DE, EL, ES, FI, FR, HU, NL, PL, SE, SK (only for neighbouring countries), NO.

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