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Before and after the EUs Seasonal Workers Directive: a Swedish perspective

The regulation of the immigration of the
low skilled and unskilled labour force in
Switzerland and in the EU

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Outline

- Some facts and figures
- The legal starting point
- Legal adaptations to prevent exploitation
- Challenges when implementing the seasonal workers directive



Seasonal workers in Sweden

- 3784 berry pickers in 2015
- The largest occupational group
 - (IT-architects etc. 3252)
 - out of total 13 313 granted work permits
 - The rest mainly in the low skilled service sector
- There are also a few hundred labour migrants occupied within the agricultural and forestry sectors each year



Who are they and how did it all start?

- Thailand
- Farmers, from villages surrounding the city Kaeng Khro in the region Chaiyaphum in north eastern Thailand
- Mid 1980ies
- Employed by Thai temporary work agencies
- (Charlotta Hedberg, cultural geographer, field work)



Legal development of labour migration in Sweden

- Since 1967 labour market tests
 - Specific schemes for seasonal workers, a small group
- No work permits needed for pickers of wild berries in the forests



A new labour migration regime

- 2008 the new regime enters into force –
 - A unified system – the same kind of permit for all labour migrants
 - Unified conditions for entrance and stay
 - Totally employer driven (no labour market tests)
- The employer is the one who knows if there is a shortage!
- Make it easier to recruit from third countries



2008 new labour migration regime

- Entrance conditions
 - Offer of employment
 - Including working conditions (wage, working time, insurances) at least corresponding to the level provided for in the relevant collective agreement
- Conditions connected to the permit
 - Only temporary stays 2 (4) years
 - Permit restricted to one employer and a specific profession



Risks?

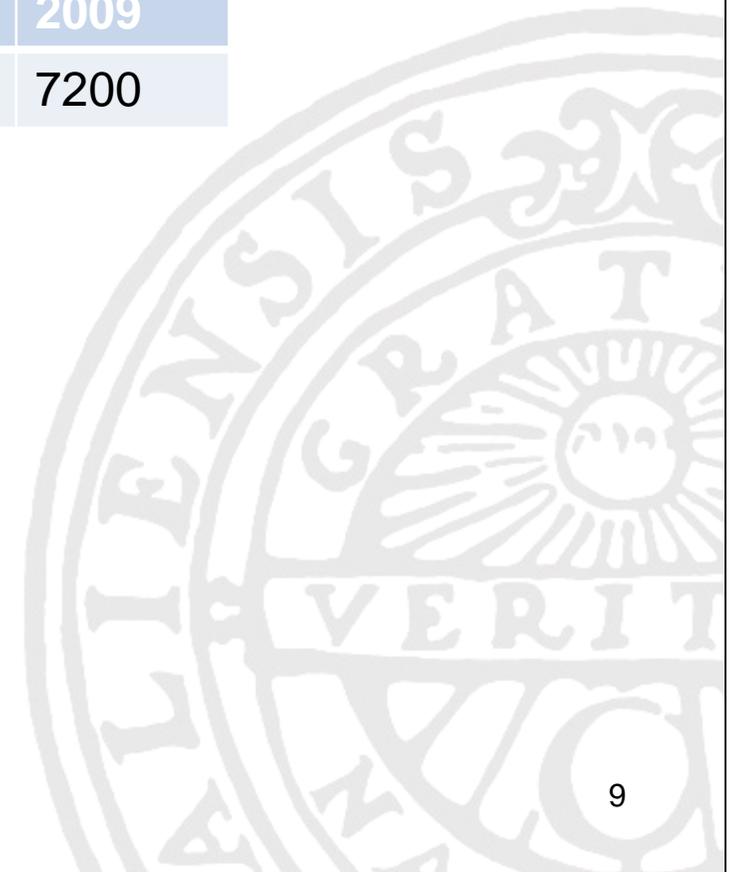
- When no shortage is identified risks for abuse and exploitation
- The permit's connection to one specific employer makes the migrant worker vulnerable
- In the earlier system seasonal workers could change employer



What happened?

- Clear numerical effect!...

	2006	2007	2008	2009
SWP	70	2538	3447	7200





Headlines.....

- Thai workers Enticed to Berry Pick in Sweden left With Huge Debts
- Bangladesh Migrants left stranded in Sweden
- Thai Berry Pickers – No Fruits for their Labour
- Swedish authorities approve Thai slave labour?
- Thai berry pickers head home empty handed
- Thai Berry pickers cheated again and again in Sweden



Increased controls of employers and collective agreement

- The municipality workers union were given the responsibility for the berry pickers → Collective agreement
- Controls of employers
 - Guarantee wages for three months
 - Temporary work agencies must have a branch registered in Sweden



In addition to that

- The employer/service buyer has to provide evidence of:
 - Accommodation, food, transportation, knowledge about Swedish rules in the forests
 - The costs the seasonal worker has to pay for food, accommodation and other costs related to the work



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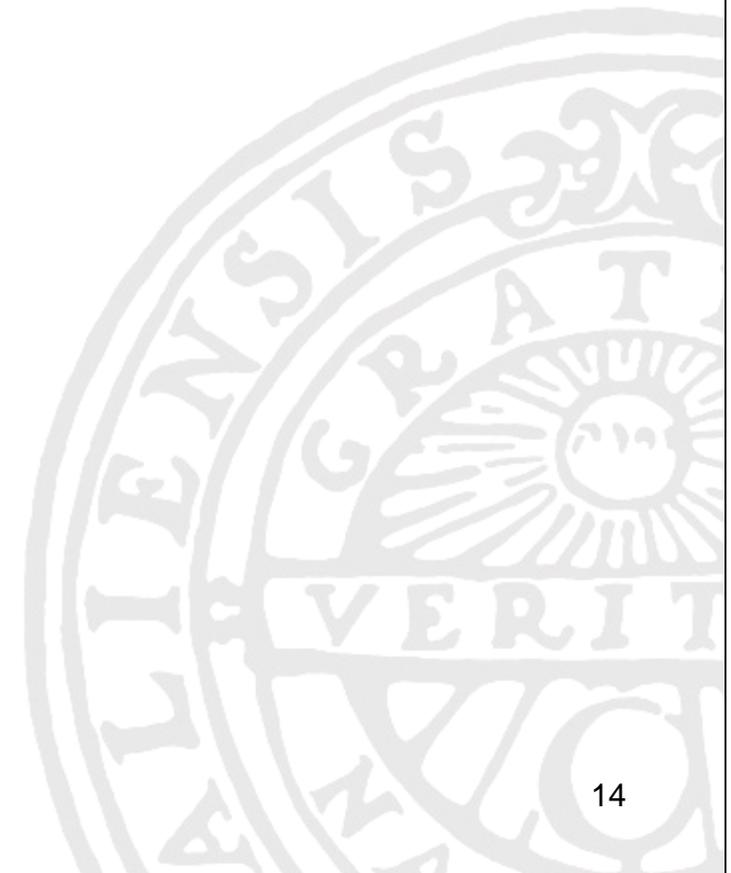
- No scandals last year!
- The number of EU-berry pickers has increased



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The seasonal workers directive

- Positive potential!





The seasonal workers directive

- Many progressive provisions are connected to *may* or *shall, if appropriate* clauses/demands – weak demands, optional
- Re-introduction of a specific seasonal worker scheme
- Temporary agency workers
- Change of employer
- Circular migration
- Sanctions



Temporary work agencies

- The definition in article 3b
 - The conclusion of an employment contract *directly* with an employer established in Sweden
 - Recital 12 in the directive
 - ‘However, where a MS’s national law allows admission of third country nationals as seasonal workers through employment or temporary work agencies established on its territory and which have a direct contract with the seasonal worker, such agencies should not be excluded from the directive’



Change of employer

- What does the directive require?
- Change of employer within the limits of the original employment?
- Article 15.3: relates change of employer to extension
- Recital 31
 - 'provisions should be made to the effect that within the maximum duration of the stay, an extension of the contract or change of employer is possible'



Circular migration

- No such right in Swedish law
- But what does the directive require?
- Facilitate!
- A number of possible facilitating measures are included in article 16.2
- It seems that the requirements for a facilitating measure could be quite low
- And it will be interesting to see what road the Swedish government will opt for



Sanctions

- Article 17.2
- If a seasonal worker permit is withdrawn because the employer for example has not fulfilled the contract , the employer shall be liable to pay compensation to the seasonal worker in accordance with procedures under national law.
 - ‘Any liability shall cover any outstanding obligations which the employer would have to respect if the authorisation for the purpose of seasonal work had not been withdrawn’



Withdrawal in Swedish law

- A work permit (or the residence permit) is withdrawn if the employer is paying the labour migrant less wages than required by the law i.e. than prescribed by the relevant collective agreement
- BUT, the labour migrant can stay for three to four months and look for another job before being expelled
- How will this play out ?



To conclude...

- The SWD has a great potential, but it is still unclear to what extent the government will make use of this potential!



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- Thank you very much!

