

## The Regulation of the Immigration of the Low Skilled and Unskilled Labor Force in Switzerland and in the EU

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### 22 June 2016, University of Fribourg, Switzerland Workshop Report

Participants in the workshop were (in order of their presentation): **Ms. Helene Calers** (European Commission, DG Migration and Home Affairs, Brussels), **Ms. Gloria Moreno-Fontes** (International Labor Organization ILO, Labor Migration Branch), **Professor Petra Herzfeld Olsson** (Uppsala University, Sweden), **Mr. Martin Hirsbrunner** (Head of Free Movement of Persons Department, Swiss State Secretariat for Migration SEM), **Professor Tesseltje de Lange** (Tilburg University, The Netherlands) and **Mr. Tobias Heiniger** (Swiss Refugee Council OSAR).

The focus during the morning program of the workshop was predominantly on the EU's Seasonal Workers Directive (Directive 2014/36/EU), which should be transposed by the Member States until the end of September 2016. The directive has been presented as a possible solution to the constant need for supply of labor force for seasonal work in the European market, offering a legal way for low-skilled workers to enter and stay in the EU as well as minimum standards of protection for these workers during their stay in the EU. Should the Directive be implemented fully and correctly by the Member States, it has the potential to significantly change the working and living conditions of many (potential) labor migrants.

However, doubts about the effectiveness and the practical use of the Directive have already been raised. One of the concerns is that the Directive does nothing to improve the situation of those labor migrants that do not fall within the scope of the Directive, and that therefore are unable to rely on its provisions, thus ending up or remaining in a situation of instability and vulnerability, or even irregularity. These were the focal points in the discussions following the presentations of the first three participants.

Ms. Calers presented a clear overview of the policy objectives of the Directive, its origins in the 2001 Commission proposal for a horizontal directive on the entry, stay and labor rights of third country national economic migrants coming to the EU for employment, and its rebirth in 2010. According to Ms. Calers, the creation of a circular migration pattern for third country national seasonal workers and the protection against exploitation of these seasonal workers are aspects that make this directive stand out. She furthermore pointed out that the Directive does not refer to the level of skill of the third country national wanting to take up seasonal work in a Member State, but that the decisive factor is

the type of work the third country national would like to take up – the presentation itself mentioned the wages of the laborer as another factor of importance.

It was exactly on the issue of labor rights of seasonal workers and their family members where Ms. Moreno-Fontes focused her contribution. Her clear comparison of the rights of migrant workers comprised by the two ILO instruments (the Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)), with the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) of 1990, and the EU Seasonal Workers Directive, was by all present regarded as very informative. Ms. Moreno-Fontes mentioned that ILO instruments concerning the protection of migrant workers apply generally to all categories of workers, including short-term and seasonal workers. Ms. Moreno-Fontes also referred to the principles of equal treatment and opportunities, and the eight ILO fundamental principles and rights at work Conventions, notably mentioning that neither ILO Conventions on Migrant Workers, nor the UN Convention make a distinction between low-skilled and highly-skilled migrants. She regretted the fact that the SWD provided third-country nationals with no possibility of becoming permanent residents in EU Member States, and its provision permitting member States to restrict equal treatment in the areas of social security, education and training, and housing.

The example of berry pickers in the woods of northern Sweden also made clear that the directive, once it has been properly implemented by the EU Member States that are bound by it, will not be able to solve the problems of all seasonal workers, not even those that are active in the agricultural/horticultural sector. Professor Herzfeld Olsson explained that as these berry pickers are often working quasi-independently (the relation with the buyer of the fruit collected and then sold by the pickers themselves is one of supplier/buyer, and not necessarily one that falls under labor law), they will not fall under the scope of the Directive. Nevertheless, the Swedish legislator has foreseen for this type of seasonal worker in its domestic law.

The afternoon program had a broader focus, and the discussion turned from one centered on the seasonal worker (and the Directive) to illegally staying migrants that do or do not work, and possible mechanisms of regularization. It had previously already been discussed that the Directive is not applicable to illegally staying migrants already present within the territory of the Member States at the time the Directive will be implemented, and can therefore not serve as a regularization mechanism.

Tesseltje de Lange presented the results of a research she and her team carried out in the Netherlands – focused on the work of labor Inspectors, and on the relationship and overlaps between Labor and Migration Law in the country. The research is part of Prof. De Lange's broader analysis of the work of the “back offices”, ie all the administrative/bureaucratic actors that, in practice, can have a significant impact on the working and legal status of undocumented migrant. Professor De Lange interacted about the Directive and its repercussions, but, as it became clear during the workshop, the Directive as such should not have much impact on the Netherlands, yet. The Country has in fact agreed to transpose it into the national legal framework – only, though, to implement it, at present, to 0% of third country nationals

According to Martin Hirsbrunner, the Seasonal Workers Directive, or indeed any legislation on the entry and stay of seasonal (low skilled) labor force cannot serve as an example for Switzerland. Switzerland had abolished the seasonal workers' status in 2002, and does not consider its reintroduction, according to Mr. Hirsbrunner's presentation. Because of the Bilateral Treaty with the EU on the free movement of persons, Switzerland can rely on the EU Member States' work force to supply the domestic demand for seasonal workers. Apart from the EU citizens, that have a right to come and work in Switzerland in almost any sector, Swiss migration law provides solely for the immigration of highly skilled workers. Nevertheless, recognized refugees and those persons that have been granted temporary protection status are encouraged to take up work. Next to that, several programs are evaluated for the regularization of undocumented migrants present (and working) in Switzerland.

The importance of the policy of regularization and the granting of access to work for refugees and those with temporary protection status was stressed by Tobias Heiniger in his contribution to the workshop. He considered these developments as major policy changes, but expressed the hope that it will not stop with these measures. According to Mr. Heiniger, it is not only access to work and possible regularization that will encourage the integration of some of the migrants present within the Swiss borders but also flanking measures that will encourage them to make use of their rights. Here one could think of regular status not only being granted to the worker but also to his family, so that on notification the (then still) irregular worker does not run the risk of having his family removed.

The information and arguments produced by the contributors to the workshop, the discussions that ensued each individual presentation and the longer discussions at the end of the morning and afternoon sessions provided the organizers of the workshop and all those present with input that will be used for the drafting of academic papers, and as orientation point for the continuing research into the Directive and the seasonal worker / undocumented migrant as such.

During the whole of the workshop, the openness and genuine interest of all participants and the public ensured that all questions could be asked and discussed by those present. The friendly atmosphere to which all contributed with understanding and respect resulted in the workshop being considered a success by all those present. Once more, the organization would like to thank the contributors and the public for their support for the realization of the event.

The presentations, which are publicly available, can be downloaded on [nccr-onthemove.ch](http://nccr-onthemove.ch).

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