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## **FEANTSA opinion on the proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment<sup>1</sup>**

The idea of having a directive setting minimum standards for the entry and residence of third-country seasonal workers appeared for the first time in the Policy Plan on Legal Migration issued in 2005. However, it was only in July 2010, after the Stockholm Programme reiterated the request, that the European Commission eventually published a proposal for a directive.

It is estimated that around 100,000 third-country seasonal workers enter the European Union each year, some of whom are irregular migrants. Evidence suggests that they often suffer from inadequate living and working conditions and that they are vulnerable to exploitation.

In January 2010, the Italian national authorities found that in Rosarno (Southern Italy) around 2,500 African seasonal workers, most of whose immigration status was regular, were sleeping in tent settlements and abandoned warehouses that were unhealthy and lacking even basic sanitation facilities. These migrants provided essential manpower in agriculture, picking fruit and vegetables for a wage of around 20 Euros per day.

*The Guardian* newspaper reported an investigation that uncovered the plight of migrant workers living in appalling conditions in southern Spain. The Guardian's findings include "migrant workers living in shacks made of old boxes and plastic sheeting, without sanitation or access to drinking water, wages that are routinely less than half the minimum legal wage, workers without papers being told they will be reported to the police if they complain, allegations of segregation enforced by police harassment when workers stray outside the hothouse areas into tourist areas".<sup>2</sup>

### **Rationale**

The proposed directive aims at meeting the structural need for low-skilled seasonal workers as well as at preventing temporary stay from becoming permanent. FEANTSA believes though that greater attention should be afforded to the improvement of seasonal workers' living and working conditions as well as to the setting-up of integration mechanisms for third-country seasonal workers.

### **Scope**

The directive exclusively targets third-country nationals residing outside the EU. It does not cover immigrants, be they regular or not, already residing in the EU territory. FEANTSA believes that extending the scope of the directive to irregular immigrants residing in EU, allowing them

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<sup>1</sup> COM (2010) 379 final

<sup>2</sup> The Guardian "Spain's salad growers are modern-day slaves, say charities", 07/02/2011



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to enter in a circular migration system, would help regularise migration flows and curb migrants' exploitation as well as unfair competition.

### **Duration**

The maximum period allowed is 6 months. Within the 6 months, workers are allowed to extend their contract (if the contract foresees less than 6 months' work) or to change employer. A maximum period allowed has been set, according to the explanatory memorandum provided by the Commission, to ensure that workers have really been admitted for seasonal work and to prevent overstaying. However, it is not clear how the mere fact of foreseeing a maximum period of stay might prevent overstaying. Facilitation of re-entry, provided by the directive, which would be granted through a multi-seasonal permit or a facilitated procedure, might be a good instrument. Nevertheless, to make this provision effective, a system of reimbursement of travel expenses should be provided.<sup>3</sup>

### **Accommodation**

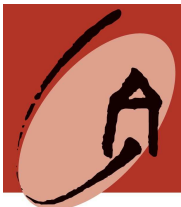
Employers are required to provide evidence that the worker will receive accommodation that ensures an adequate standard of living and, if workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration. Since adequate accommodation is also an admission criteria, in most cases employers will have the responsibility to find accommodation for the workers concerned. In the light of several reports about inadequate housing conditions for seasonal migrant workers, FEANTSA stresses the need to define properly what is meant by "adequate standards of housing". Useful indicators that can be used are to be found, among others, in the UN Committee on Economic, Social and Cultural Rights' General Comment No. 4,<sup>4</sup> which expands on the provisions of article 11 of the International Covenant on Economic, Social and Cultural Rights. Moreover, we consider that adequate housing standards should be monitored for the entire duration of seasonal work, not only as admission criteria, and that the maximum share of remuneration which can be asked by employers should be provided by the directive.

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<sup>3</sup> The New Zealand Recognised Seasonal Employers scheme foresees for instance that employers must cover half of their employees' travel costs. Canada's Seasonal Agricultural Workers Programme (SAWP), which has been running for 50 years and has proven to be successful, foresees that employers must pay part of the transport costs to and from the country of origin. Moreover, within the framework of the SAWP, the participating Caribbean countries have set up a compulsory savings scheme for their workers, whereby 25% of their wages are withheld by the government and when they return, all but 5% to 8% (kept for administrative costs) is given back to the workers. For more information, read S. McLoughlin and R. Münz, "Temporary and circular migration: opportunities and challenges", Working Paper No. 35 – European Policy Centre, March 2011.

<sup>4</sup> The right to adequate housing (Art.11(1)), CESCR General comment 4.

<http://www.unhcr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e?Opendocument>



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### **Access to Social Security**

The directive provides for equal treatment at least with regard to freedom of association, social security, payment of statutory pensions and access to public goods and services (except public housing and counselling services provided by employment services). Regarding social security, however, the directive might create controversy. On the one hand, as it is made clear in article 5, the directive intends to prevent seasonal workers from having recourse to the social assistance system. On the other hand, according to article 16, "seasonal workers shall be entitled to equal treatment with regard to: (...) provisions in national laws regarding the branches of social security as defined in article 3 of Council Regulation (EC) No 883/04". In article 3 of Regulation 883/04 the following branches are included: sickness benefits; maternity and paternity leave; invalidity benefits; old-age benefits; survivors' benefits; accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits. How can a seasonal worker, authorized to stay for a maximum of 6 months and who can not have recourse to the social assistance system, enjoy equal treatment in all the branches of social security mentioned above? Therefore, FEANTSA considers that this provision needs to be made clearer.

### **Right to Family Life**

Although the directive establishes a system whereby third-country nationals may stay in the EU for a considerable period and for several consecutive years, there is no mechanism foreseen which would guarantee a temporary permit of stay for family members of the workers concerned. We consider that the proposal as it stands does not comply with the respect for private and family life as established by article 7 of the EU Charter of Fundamental Rights.

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