

Results protocol

International Conference “Agreement on placement conventions for temporary seasonal employment of workers from Albania, Bosnia and Herzegovina, North Macedonia, Montenegro and Serbia as well as the Republic of Moldavia in the agricultural sector in Germany”

09/10 April 2019

International and Specialized Services (ZAV), Bonn

1 Background information

According to information of the Federal Ministry of Labour and Social Affairs (BMAS), there is a lack of seasonal workers in the agricultural sector in Germany. Accordingly, the Federal Employment Agency (BA) was engaged by the BMAS within the framework of §15a Subsection 1 Employment Regulation (BeschV) to conclude placement agreements with selected third countries on temporary seasonal employment of workers.

The objective is to create good framework conditions, to closely coordinate the requirements and the process with potential partner countries in order to guarantee fair mobility for all sides.

The year 2019 is to be viewed as a pilot; as a maximum contingent 25,000 workers is planned.

The representatives of the employment administrations of Albania, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia as well as a representative of the Employment Ministry of Moldavia were invited to Bonn for bilateral discussions in a conference on 9/10 April 2019. The objective is to conclude a placement convention, for which the BA prepared a draft and sent to the mentioned partners prior to the conference.

2 Procedure and presentations

- Welcome speech and introduction by Markus Biercher, Director of International Activities, Head of the Federal Employment Agency and Dr. Andreas Ruff, Federal Ministry of Labour and Social Affairs, Referat IIa4 “Grundsatzfragen der Flüchtlingspolitik, Ausländerrecht und Beschäftigung ausländischer Arbeitnehmer”
- Introduction of the guests from Albania, Bosnia and Herzegovina, Moldavia, Montenegro, North Macedonia and Serbia by the delegation leaders
- Presentation on legal fundamentals - § 15a BeschV, Zuwanderungsprozess und Beschäftigungsbedingungen (Dr. Ulrich Gawellek, Manager of the Department Monetary Payments and Rehabilitation 23 of the Head of the Federal Employment Agency)
- Presentation on the principles of accepting job offers by Christine Schomaker, expert in structuring professional integration of the Regionaldirektion Nordrhein-Westfalen of the Federal Employment Agency.

- Presentation on the placement process and possible fields of employment by Thorsten Rolfsmeier, Director of International Personnel Services of the ZAV of the Federal Employment Agency.
- Information on social security and tax obligations in Germany by Anne-Bärbel Schneider, Legal Department of the Head of the Federal Employment Agency
- Information from the countries on potential and prior experiences in seasonal employment
- Bilateral discussions in the plenum on the content of a possible placement convention and determining the central requirements of the partners

3 Main issues for further bilateral conventions and the contract structuring

In the following, various points are listed which were identified by a large number of the countries participating in the conference as important for further negotiations and process conventions.

1. Social security protection for seasonal workers

- We request that a regulation on social security for seasonal employment is generated by the partner administration (not just for health insurance and accident insurance, but also for the pension insurance and unemployment insurance). This request has come about due to the fact that the regulation suggested in the agreement on the placement of foreign workers is not sufficient in the view of all countries (only covers health insurance and accident insurance paid by the employer if no national cover present). The regulation is also not compatible with the national legislation (placement in employment of any type by the state employment agency is only permissible if social cover is present). If no regulation can be decided upon here, the agreements on the placement of foreign workers from the point of view from the partner states cannot be concluded.
- Proposed solution:
 - A) Extension of the passage in the placement agreement to include a reference to the respective bilateral social security conventions, assumption of the costs for health and personal accident insurance by the employer,
 - B) As a follow-up to the conference, a clarification of the rules on unemployment and pension insurance by the BA with the competent authorities. Employment both within and outside the social security system are offered. No binding quantitative statements can be made on the ratios. In cases of employment outside the social security system, the countries are to review whether it is possible for employees to voluntarily insure themselves during the period of employment in the country of origin. However, the Federal

Ministry of Food and Agriculture rejects a cost assumption of the contributions by the employers, since it cannot be ensured that the contributions are actually paid into the insurance.

Job offers will be clearly designated for the partners so that it can distinguish the potential applicant groups in

- unemployed applicants for job offers within the social security system,
- students and other persons insured in their home country (plus health insurance paid by the employer in Germany) who do not exercise vocational seasonal employment for short-term jobs outside the social security system.

2. Preparation of a model employment contract in German and in the respective national language

- For a simplified review of the conditions of the employment relationship by the national partners and applicant, a unified model employment contract is required (cannot be provided by the BA due to a potential interference in the freedom of contract).

Proposed solution:

- The Federal Ministry of Food and Agriculture (BMEL) will clarify whether a model employment contract can be drafted and made available. The examination of the possibility has not yet been completed.
- The contract should clarify the rights and obligations for all sides in a transparent manner, in particular including those that result from the placement convention and the requirements named therein.

3. Establishment of an Ombudsman/ Complaint Office for employees in the event of complaints/problems with employers

- The partner administrations emphasize the necessity of a contact point for seasonal workers in the event of problems with the employer.

Proposed solution:

- Clarification by the BA of the utility of existing structures, for example EU equality bodies or the advisory body Fair Mobility of the German Trade Union Federation

4. Clarification of the requirements profile of the applicant

- Partner administrations wish for a clarification of the requirements of applicants in particular in regard to the points of formal qualifications, age limit, physical fitness

Proposed solution:

- Supplement in the placement convention by the BA

5. Signing of the employment contracts must be possible prior to departure

- Required due to national legislation, in part copies of the employment contracts must be saved by the national offices; employment contracts must be in the native language.

Proposed solution:

- Inclusion of a corresponding passage in the placement convention by the BA and use of the bilingual model employment contract by the employers.

6. Exclusion of private agencies

- Request of the BA for a general exclusion of private agencies is not in conformity with national legislation in the countries in all cases.

Proposed solution:

- Review and if applicable specification of the corresponding passage on the basis of statements of Bosnia and Herzegovina and Albania

7. Review of previous stays in the Schengen area cannot be performed by the national employment administrations

- Partner administrations do not view themselves in a position to review previous stays in the Schengen area because this is not systematically recorded by national offices.

Proposed solution:

- After comprehensive internal consultation with the competent offices, a review of previous stays must be made by the partner administrations on the basis of identification documents.

8. Assumption of travel expenses and potential other costs (for example lodgings) by the employers

- According to the statements of various countries, this is an important point for the attractiveness of the offer.

Proposed solution:

- A passage is included in the placement convention that rules on this matter must be included in the employment contract and job offer. However, according to the statements made by the Federal Ministry of Food and Agriculture, this is a voluntary payment which can be made at the employer's discretion.

9. Specifications on minimum and maximum working hours in the placement convention

- From the viewpoint of the partner countries, additional rules are required on minimum working hours of 30 hours / week for advising clients in the agencies

Proposed solution:

- Inclusion of a passage in the placement convention on rules for specific working hours in the employment contract including reference to statutory permissible maximum working hours in Germany pursuant to pertinent statutory fundamentals (Working Hours Act) by the BA.

10. Documentation of the legal fundamentals for the seasonal employment in placement conventions

- Partner administrations wish transparency on relevant legal fundamentals in Germany.

Proposed solution:

- Compilation of the legal fundamentals and inclusion in the Annex of the placement convention by the BA

11. Leaflets and information for employers and employees

- Partner administrations wish for information materials (in the national language) to inform/advise potential applicants.

Proposed solution:

- Drafting of employer information and applicant leaflets as well as applicant recording form by the BA in consultation with the partners, Inclusion of a corresponding passage in the placement convention by the BA

12. Rules on the assumption of the flat tax of 5%

- Partner administrations wish for a provision in which the potentially incurred income tax is assumed by the employers.

Proposed solution:

- Communication to the employers and associations by the Federal Ministry of Food and Agriculture and inclusion into the model employment contract. The Federal Ministry of Food and Agriculture is of the opinion that the employer is fundamentally required to pay the flat-rate tax. However, the flat-rate income tax can be apportioned to the employee in accordance with Section 40, paragraph 3 of the Income Tax Act. This must be contractually agreed upon.

13. Bilateral supplementary agreements on data protection provisions and responsibilities in the process

- Partner administrations with different technical requirements for encryption, transmission of applicant data in conformity with data protection

Proposed solution:

- Inclusion of country specific, bilateral supplementary agreements in the Annex of the placement agreement by the BA after consultation with the partners

14. Amendment of the draft applicant form

- The presented draft of the applicant form was felt to be inadequate by the partner administrations.

Proposed solution:

- Reworking and drafting of country specific, bilingual applicant forms by the BA and exclusion of free text fields