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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)/Council
Subject: Draft Council Conclusions on Improving the working and living conditions of seasonal and other mobile workers

1. On 16 July the Presidency tabled a set of draft Council Conclusions on "Improving the working and living conditions of seasonal and other mobile workers" (9680/20).
2. The draft Conclusions were discussed in two video conferences of the members of the Social Questions Working Party on 23 July and 8 September followed by a round of informal written consultation.
3. The draft Conclusions highlight the important contribution made by seasonal and other mobile workers to the internal market and especially in various sectors of the EU economy. They recognise, inter alia, that seasonal and other mobile workers are often exposed to exploitation or adverse working and living conditions, or are not provided with sufficient information regarding liability and rights; hence, stakeholders are invited to cooperate and take action in order to address these challenges.

4. Thanks to the constructive engagement of delegations, an agreement has been reached on the attached text at the level of the Social Questions Working Party.
5. The Permanent Representatives Committee is invited to:
 - confirm the agreement reached at the level of the Working Party; and
 - forward the draft Conclusions for approval as an "A" item at one of the Council's forthcoming sessions.

Improving the working and living conditions of seasonal and other mobile workers

Draft Council conclusions

RECOGNISING THAT:

1. Seasonal workers and a number of other mobile workers, including posted workers, who often work in one or more Member States for a limited period of time without settling there (hereafter ‘seasonal and other mobile workers’) are often more vulnerable than other workers and exposed to exploitation as well as to precarious or adverse working and living conditions (including with regard to occupational health and safety as well as housing), to infringements of labour law and to non-compliance with standards at work, and are more likely to be exposed to inadequate social security coverage.
2. The free movement of workers and the freedom to provide services as well as equal treatment are cornerstones of the European Union. Seasonal and other mobile workers make an important contribution to the internal market, and have continued to do so during the COVID-19 pandemic, proving once again their essential role in various sectors of the EU economy.
3. Seasonal and other mobile workers are often employed under temporary work contracts, through temporary work and recruitment agencies or subcontracting chains. Especially when not employed directly by the employer, they are often not provided with sufficient clarity and protection regarding information, liability and rights.
4. The COVID-19 pandemic is a serious threat to public health, with severe and widespread consequences for health and care systems, as well as for society and the economies and labour markets of all Member States. Nevertheless, the unprecedented measures taken by the Member States in the context of the COVID-19 response have particularly affected seasonal and other mobile workers.

5. The context of the COVID-19 pandemic has exacerbated and made even more visible some of the issues faced by seasonal and other mobile workers. In turn, when seasonal and other mobile workers face poor working and living conditions, the risk for further spreading of infectious diseases, including increasing the risk of COVID-19 clusters, may be higher.
6. COVID-19 has revealed that it is necessary to consider new actions for better application and enforcement of existing rules to protect seasonal and other mobile workers and to strengthen the resilience of the EU in times of crisis. Therefore, the Member States could use the set of existing tools – at international, EU and national level – to address and prevent the problems seasonal and other mobile workers are confronted with and to ensure their protection.
7. The Member States and other relevant stakeholders need to take appropriate action, to step up proper and effective application and enforcement of the relevant EU and national legislation and to ensure transparency regarding their action.

RECALLING THAT:

8. Union seasonal and other mobile workers exercising their freedom of movement in accordance with Article 45 TFEU enjoy the right of equal treatment, in particular with regard to the applicable employment, remuneration and working conditions. The freedom to provide services is guaranteed under Article 56 TFEU.
9. Third-country workers can benefit from the right to equal treatment under the relevant EU labour migration legislation.
10. The enforcement of EU and national law in this area is a competence of the Member States.

WELCOMING:

11. The Guidelines on Seasonal Workers in the EU in the context of the COVID-19 Outbreak adopted by the European Commission on 16 July 2020.

12. The European Parliament Resolution of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis.
13. Initiatives at national level and bilateral agreements between authorities of the Member States to address the issues faced by seasonal and other mobile workers, in particular in the context of the COVID-19 crisis.
14. Sectoral initiatives as well as bipartite and tripartite agreements at national and European level to protect these workers and provide guidance to them and their employers.

TAKING NOTE OF:

15. The work done by the EURES Network, including the EURES European Coordination Office and the EURES national coordination offices. The EURES portal offers detailed practical, legal and administrative information on living and working conditions in all Member States that may be of relevance to seasonal and other mobile workers.
16. The activities of the European Platform to enhance cooperation in tackling undeclared work, created in 2016. The Platform has on several occasions promoted actions targeted at seasonal and other mobile workers and has allowed mutual learning regarding effective approaches to tackle undeclared work in sectors relying heavily on cross-border seasonal work, such as agriculture and tourism.
17. The work of the Administrative Commission for the Coordination of Social Security Systems, which is responsible for dealing with administrative matters and questions of interpretation arising from the provisions of regulations on social security coordination, for facilitating the uniform application of the EU legislation, especially by promoting exchange of experience and best practice, and for fostering and developing collaboration between EU Member States, including on issues relevant to seasonal and other mobile workers.

18. The role of the European Labour Authority (ELA). Once fully operational, the ELA will assist – in cooperation with other institutions and bodies, where applicable – the Commission and the Member States in their effective application and enforcement of EU law related to labour mobility across the EU and the coordination of social security systems within the EU. The ELA will act within the scope of the relevant EU law.
19. The EU Strategic Framework on Health and Safety at Work 2014-2020, which identifies key challenges and strategic objectives for health and safety at work, presents key actions and identifies EU instruments.
20. The work of the European Agency for Safety and Health at Work (EU-OSHA) to make European workplaces safer, healthier and more productive for the benefit of workers, employers and governments, in particular, its guidelines of 24 April 2020 entitled ‘COVID-19: back to the workplace – adapting workplaces and protecting workers’ and its other COVID-19-specific resources for employers and workers.
21. The work of the Senior Labour Inspectors Committee (SLIC) to promote the equivalent and effective application of EU legislation on health and safety at work.
22. Similar guidelines and resources prepared by the relevant stakeholders at national and sectoral level, addressing seasonal and other mobile workers, as well as their employers.

ACKNOWLEDGING:

23. The fundamental role of labour inspectorates and other competent authorities in ensuring proper application and enforcement of existing legislation and instruments in the area of freedom of movement of workers and freedom to provide services, in the area of working and living conditions, including occupational health and safety, and in the area of social security coordination.

24. The fundamental role of the social partners and the importance of social dialogue in supporting administrations, workers and employers in the proper and effective application of existing legislation, as well as in ensuring workers representation and the provision of information.
25. The important role of relevant non-governmental organisations in supporting the proper and effective application of existing instruments,

THE COUNCIL OF THE EUROPEAN UNION,

INVITES THE MEMBER STATES, IN ACCORDANCE WITH THEIR COMPETENCES AND TAKING INTO ACCOUNT NATIONAL CIRCUMSTANCES AND RESPECTING THE ROLE AND AUTONOMY OF THE SOCIAL PARTNERS, TO:

26. Fully APPLY and ENFORCE the existing EU and national legislation, especially in the areas of freedom of movement of workers and freedom to provide services, employment of third-country nationals as seasonal workers, working and living conditions, including occupational health and safety, and social security coordination, in order to adequately protect seasonal and other mobile workers;
27. PROVIDE seasonal and other mobile workers relevant information, if necessary with support of ELA, regarding their rights and obligations as well as information regarding the authorities assisting seasonal and other mobile workers in the respective Member State in all the areas mentioned above, in their own language, especially if it is an official EU language, or a language they understand or may reasonably be presumed to understand and in a clear and transparent manner;
28. RAISE awareness among seasonal and other mobile workers regarding safety measures in the context of the COVID-19 pandemic, if possible with the support of the social partners, in their own language, especially if it is an official EU language, or a language they understand or may reasonably be presumed to understand and in a clear and transparent manner, including information on measures to be taken in case of symptoms of COVID-19;

29. INCREASE transparency on liability in the case of subcontracting chains, so that mobile workers and national authorities are able to identify the person or entity legally responsible for dealing with their claims; CONSIDER introducing limits to subcontracting chains as well as joint and several liabilities, where necessary;
30. EXPLORE the possibility of setting specific requirements for temporary work and recruitment agencies aimed at seasonal and other mobile workers in the EU, so as to ensure that such agencies respect minimum quality standards according to national and EU legislation and, where appropriate, collective agreements, and do not impose excessive or illegal fees on workers. These agencies should inform workers about the user-undertaking, period of employment, principles of remuneration – including the complete calculation as well as possible automatic deductions like rent or costs for accommodation or necessary protective equipment –working conditions, including rights and obligations of the parties in the event of termination of work, specific counselling services provided by social partners or public employment services, social security regulations and rights, including health coverage, travel and accommodation, and catering arrangements in written form, including electronic means. The information should be provided in the workers' own language or a language they understand and in a clear and transparent manner, before departure, regardless of the duration of their contract;
31. EVALUATE AND ADDRESS the specific situation of seasonal and other mobile workers in case of pandemic-related measures, such as lockdowns or border closures, including the possibility for them to return both to their home as well as to their host Member State without undue limitations to movement in order to take up or continue their employment;

32. EXAMINE whether seasonal and other mobile workers depend on their employers more than other workers do; CONSIDER how such dependencies could be tackled; and CONSIDER that seasonal and other mobile workers, during their stay in the host Member State, can benefit from accommodation, transport and catering corresponding to an adequate standard of living (as defined by national law and practice), meeting the general health and safety standards – also during crises situations – in force in the Member State concerned and at costs that are not excessive compared to the quality of the service and the net remuneration of the workers;
33. STEP UP cooperation and the exchange of best practice between administrations, including, where applicable, through the bodies to promote equal treatment, and to ASSIST Union workers and members of their family in accordance with the applicable EU legislation (e.g. Directive 2014/54/EU) as well as third-country workers benefiting from the right to equal treatment under the respective directives (e.g. Single Permit Directive 2011/98/EU or Seasonal Workers Directive 2014/36/EU);
34. EVALUATE whether the inspections currently in place are sufficient to enforce the existing EU and national legislation and SET targets for stepping up inspections, where necessary;
35. REFLECT, where applicable, on their social security legislation with regard to the adequate coverage of seasonal work;
36. PROVIDE access to upskilling and training opportunities, where appropriate;
37. EVALUATE whether it is opportune to ratify the ILO Convention No. 184 concerning safety and health in agriculture;
38. COOPERATE with the social partners to ensure support for employers and seasonal and other mobile workers, as well as their representation;

39. PROMOTE, where applicable, the conclusion of collective agreements with regard to seasonal and other mobile workers; and
40. SUPPORT, where applicable, counselling services provided by trade unions or other stakeholders for seasonal and other mobile workers in order to actively promote the free movement of workers and the freedom to provide services in a social and fair manner. EXPLORE the possibility of providing such services on site;

CALLS ON THE MEMBER STATES AND THE EUROPEAN COMMISSION, IN ACCORDANCE WITH THEIR RESPECTIVE COMPETENCES, TAKING INTO ACCOUNT NATIONAL CIRCUMSTANCES AND RESPECTING THE ROLE AND AUTONOMY OF THE SOCIAL PARTNERS, TO:

41. Jointly COOPERATE with all the relevant stakeholders, in particular the social partners, through the available frameworks (e.g. committees, agencies, mutual learning activities) in order to properly apply and enforce the existing EU and national legislation;
42. EXPLORE the possibility of improving data collection on seasonal and other mobile workers in relevant sectors, in synergy with the relevant actors at both EU and national level;
43. EXPLORE possible joint communication and awareness-raising activities aiming, in particular, at improving information for workers and employers and at increasing their awareness regarding their rights and obligations, especially concerning working conditions and health and safety at work in cooperation with relevant EU and national actors including the European Agency for Safety and Health at Work. In addition, CONSIDER the possibility of setting up a communication campaign to present the positive effect and the essential role of seasonal and mobile workers in the EU for the functioning of the single market;
44. CONSIDER stepping up the cooperation between the European Commission and national bodies to promote equal treatment and to support Union workers and members of their family under Directive 2014/54/EU, for instance through mutual learning activities and the exchange of good practice;

45. WORK TOGETHER in order to prevent sub-standard wages, other exploitative practices and human trafficking of seasonal and other mobile workers, including strengthening administrative cooperation and raising awareness about risks and possible illegal practices; and
46. With regard to third-country nationals, PROMOTE, where appropriate, the inclusion in partnership and other relevant agreements with third countries of provisions prohibiting unfair recruitment practices, including unfair recruiting fees imposed on workers by private employment and/or migration agencies in their home countries;

CALLS ON THE EUROPEAN COMMISSION TO:

47. COOPERATE with the Member States and other relevant stakeholders on issues related to seasonal and other mobile workers through the existing tools at EU level;
48. COOPERATE with the Advisory Committee on Health and Safety at Work on issues related to health and safety of seasonal and other mobile workers.
49. EVALUATE whether EU funding for specialised counselling services provided by trade unions or other stakeholders for seasonal and other mobile workers can be provided, within existing programmes, in order to actively promote the free movement of workers in a social and fair manner;
50. REFLECT on actions related to the occupational health and safety of workers, including seasonal and other mobile workers, in the context of the upcoming EU Strategic Framework on Health and Safety at Work;
51. ASSESS the areas where the protection of seasonal workers should be enhanced and make policy recommendations; and
52. CONDUCT a study to collect data on intra-EU seasonal work and identify the main challenges faced, including, where possible, during the COVID-19 pandemic, and ensure that data of individuals is disaggregated by sex in order to facilitate an assessment analysis of implemented actions;

INVITES THE EUROPEAN LABOUR AUTHORITY (ELA) TO CONTINUE TO:

53. SUPPORT the Member States, in particular regarding activities in the area of information and coordination of joint and concerted labour inspections. Such activities could include information provision by the competent authorities to workers and employers, as well as awareness-raising campaigns and joint or concerted labour inspections targeting, in particular, sectors more exposed to seasonal work;
54. COOPERATE with the European Platform to enhance cooperation in tackling undeclared work (until its full integration with the ELA in 2021) regarding activities targeting seasonal and other mobile workers, including fostering better awareness of rights and obligations among workers and employers in order to promote the transition from undeclared to declared work;
55. WORK with European Employment Services (EURES) counterparts in the Member States (until the full integration of the EURES network with the ELA in 2021) to develop specific activities and materials related to seasonal and other mobile workers; INVITE the EURES European Coordination Office to provide more dedicated information concerning seasonal workers and the rights applicable to them on the EURES Portal; and
56. Within the remit of Regulation (EU) 2019/1149, cooperate with the Administrative Commission on the coordination of social security systems with the aim of achieving synergies between the field of labour mobility and the coordination of social security systems;

INVITES THE EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK (EU-OSHA) TO CONTINUE TO:

57. WORK with the SLIC and other relevant stakeholders to continue providing guidelines and material, including surveys, occupational risk assessment tools and campaigns, addressing the health and safety at work of seasonal and other mobile workers.