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**APPLYING THE PRINCIPLE OF EQUAL TREATMENT
FOR MIGRANT WORKERS IN EUROPEAN
AGRICULTURE**

**ADMINISTRATIVE FORMALITIES AND OBLIGATIONS OF
EMPLOYERS**

REPORT FROM THE GEOPA-COPA SEMINAR

ROME, 8-11 OCTOBER 2009



With the support of the European Commission – DG for Employment, Social Affairs and
Equal Opportunity

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Mr Arnd Spahn, secretary of EFFAT.

Mr François Ziegler, special assistant for sectoral social dialogue at the DG for Employment, Social Affairs and Equal Opportunity.

Mrs Claudia Merlino, Confederazione Italiana degli Agricoltori (CIA).

Mrs Tania Pagano, Confederazione Generale dell'Agricoltura Italiana (CONFAGRICOLTURA)

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Presentations:

Mr Romano Magrini, Confederazione Nazionale COLDIRETTI.

Mr Politi, president of the CIA and vice-president of COPA.

ADMINISTRATIVE FORMALITIES REQUIRED WHEN EMPLOYING WORKERS

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General discussion with participants and approval of the survey.

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Mr Arnold Brum, the seminar's rapporteur, presented the survey conducted by GEOPA

General discussion with participants and approval of the survey.

SATURDAY, 10 OCTOBER 2009

VISIT OF AN AGRICULTURAL HOLDING

FINAL DECLARATION

The Italian farming organisations and members of COPA, Coldiretti, C.I.A. and Confagricoltura, held a GEOPA-COPA seminar from 8 to 11 October 2009 on the theme of administrative formalities required from farm employers when recruiting workers, in particular the employment of a seasonal migrant workers from a member state of the European Union or a non-EU country.

This seminar, which was made possible thanks to the assistance of the European Commission, brought together the representatives of national employers' organisations from 21 member states and three accession countries.

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SESSION OF THURSDAY, 8 OCTOBER

Mr Bernard Levacher, president of GEOPA, opened the seminar by thanking the three Italian organisations who volunteered to host the COPA employers' group in Rome. He welcomed the many delegates who were taking part in the seminar, which was a guarantee of useful and varied discussions. However, he regretted that, because of a lack of space, the interpreters' booths had to be set up in a nearby room, making their work all the more difficult. After announcing the seminar's programme, he gave the floor in turns to the speakers, thanking them in advance for accepting to speak on the theme of migrant workers and administrative formalities.

Mr Guiseppe Mauricio Silveri, Director general for immigration at the Italian employment ministry, explained the problems in Italy relating to non-EU seasonal immigrants. He underscored the excellent cooperation among the farming organisations in an effort to catalogue the annual seasonal labour requirements of the farm sector.

A decree sets every year the number of non-EU workers who may be admitted. For the past several years, the decree has set the number of permits at 80,000. This figure has not changed, although Italy now grants free movement to workers from the new member states as well as, for some professional sectors including agriculture, Romania and Bulgaria. Today there are around 700,000 Romanians in Italy, many of whom work in farming. Consequently, the number of permits issued to non-EU workers should be reconsidered.

The integration of non-EU seasonal workers raises some problems. These workers have labour contracts with the same rights as national workers but their living conditions in Italy are difficult, in particular accommodation. Such is the case in the Apulia region. There is a plan to provide them housing at a modicum price.

The issue of illegal employment is worrisome. There are workers who enter Italy illegally and there are workers allowed in under the quota who are then siphoned off by shell companies who provide them with illicit employment. These issues must be dealt with by the EU.

Italy has signed agreements with non-EU countries to set quotas for seasonal workers. This has been done in northern Italy with the former Yugoslavia and in southern Italy with several countries, for example Egypt, Bangladesh and Pakistan. These agreements establish cooperation to oversee arrivals and departures. The organisation of *circular immigration* is also being envisaged. The aim is to encourage migrants to make use of the knowledge they gain abroad once they return home.

Mr Silveri concluded his presentation by stressing the fact that not all employers are bad apples. If that were so, he would not have come to this seminar. The administration must also do its work properly. If it issues permits too late, the workers arrive after the harvest and it should then come as no surprise if they work illicitly.

Mr Arnd Spahn, secretary of EFFAT, thanked GEOPA for inviting him as a social partner. He recalled that Europe was born here in Rome.

He regretted that after so many years we still have so many problems with illicit work. Of course there are laws, but there is a specific economic reality that the statistics do not take account of. We don't know how many legal seasonal workers there are in Europe and even less the number of illegals. In Spain, for example, boat people are housed in old barracks but we don't concern ourselves further with them. Of course, they will work illicitly, particularly in farming.

We need international cooperation on the issue of migration. We need European solutions in order to give shape to social Europe. Europe's demographics make this integration indispensable. EFFAT welcomes the GEOPA guidelines on this subject. Foreigners must be integrated because they are part of Europe's economic development. The development of the Mediterranean area is a global European problem, not only a Mediterranean problem.

EFFAT is looking forward to the planned EU Directives, in particular on seasonal workers. For the time being, the draft is not acceptable. Not all seasonal workers are unskilled workers. We must demand that migrant workers who retire to their home countries collect pensions that are in line with the work they did abroad.

Mr Bernard Levacher gave the floor to Mr Ziegler, who spent several years leading our Social Dialogue Committee and who agreed to speak to us today. He pointed out that under the Lisbon Treaty the EU social partners will be called on more frequently to contribute to the EU's social policies. However, the services of the Commission recently informed us that the resources allocated to us will be cut back and we will have to reduce the number of meetings we hold. This, he said, is unacceptable and he asked Mr Ziegler to relay our discontent to the authorities in Brussels.

Mr François Ziegler, administrator in the "social dialogue" unit at the European Commission's Directorate General for Employment, Social Affairs and Equal Opportunities, thanked GEOPA for inviting him once again to the seminar. The issues on the seminar's agenda are also found in the European Commission's programme. The EU's employment and migration policies have become major concerns and are particularly pertinent for agriculture.

A new directorate general for migration will be created when the Lisbon Treaty is ratified. This DG will bring together services that are currently shared between DG Employment and the DG for Justice and Home Affairs.

The history of Europe is one of migration. Without going too far back in history, we only need recall the 19th century migrations of Italians and Spaniards northward and of Poles westward. Today, we are seeing other migratory flows. The southern European countries have now become destinations for migrants and the European Union must manage this human mobility.

Europe's demographic situation is worrisome. Beginning in 2017, Europe will lose one million inhabitants and in 2060 there will be 50 million fewer inhabitants in Europe. This change will have two consequences:

- a fall in the active population and, consequently, in the ability to create wealth;
- the fragilisation of social solidarity: In the year 2000, there was 1 retired person for every 3 active persons; in 2050 the ratio will be one to one.

Growth in demand for jobs is inevitable. This will affect all categories of workers:

- Highly-qualified workers are already lacking in several countries. By way of example, Germany is recruiting doctors and nurses abroad and in a few years engineers will be needed. In addition, many qualified European workers are attracted to non-EU countries such as the United States, Canada, Australia as well as Switzerland.
- Semi-skilled workers will be in greater demand in farming, construction, restaurants and services to individuals.

Today, many immigrants are over-qualified for the jobs on offer and they are victims of discrimination and unemployment. However, when the economic crisis is behind us, many EU countries will see their populations falling and will need to call on immigrants.

The European Union's policy is a global one that was introduced in 2005. It comprises three main chapters, which are summarised below.

1. Partnerships with countries of emigration. This is the Stockholm Programme that is designed to strengthen administrative capacity and appoint on-site European Union representatives in order to manage departures and organise circular migration, i.e. to prepare the return of emigrants to their home country where they are expected to make use of the skills acquired abroad.

2. Management of legal immigration. Four Directives already deal with the subjects of long-term residents, family reunification, students and research workers from third countries. The following four other texts are in the pipeline, one of which has already been adopted:

- A framework directive was proposed by the Commission in October 2007, to spell out the rights of immigrants, define their status in the European Union and set the arrangements for the return of circular migrants.

- The directive of 25 May 2009, concerns immigration of highly-skilled workers, with the creation of a *blue card* and fast-track admission procedures.

- The draft directive on seasonal workers is still being debated by the services. Its goal is to avert poor working conditions and prevent illicit work by requiring the signing of a contract and ensuring equal opportunity for employees. The admission procedure must be rapid, the length of stay limited to six months and circular migration would be facilitated.

- The 1996 directive on posted workers must be revised. It was adopted well before the accession of the new member states and the situation has changed drastically since then. At the time, the aim was to facilitate posting and it stipulated that during a posting of a maximum of eight days the posted employee continued to be paid according to the rules in the country of origin. With the accession of new member states, where wages are still very low, we have the paradoxical situation of a seasonal worker from one of these third countries who is better paid than a posted EU worker. In France this was the cause of the *Polish plumber syndrome*. The issue is still remains to be resolved.

3. Combating illicit work. It is estimated that the number of illicit workers in the EU is between 4.5 million and 8 million people. A directive on sanctions applicable to employers of illegal workers was adopted on 25 May last, but at the same time the European Social Fund provides financial aid to the member states for receiving and housing illegal immigrants. All these immigrants who enter via Spain, Italy and Greece should be dispatched around the EU.

Mrs Claudia Merlino, representative of the CIA, presented a report on **seasonal work in Italy**. She explained that there are around 1.7 million holdings, 200,000 of which recruit employees. The number of holdings is falling and the average size of holdings is increasing, from 7.4 ha in 2005 to 7.6 ha in 2008. Around 49.5% of holdings are very small, less than 2 ha.

Employee statistics. There are 1.3 million employees in agriculture. The number of permanent employees is 100,000, of which 19,000 are from outside the EU. The number of permanent employees is falling and the number of seasonal workers is on the rise: 927,000 seasonal labour contracts were registered by the social security authorities, of which 97,000 are non-EU seasonal workers. It was noted that Italy authorises a quota of 80,000 non-EU seasonal workers, of which 70,000 in agriculture and 10,000 in tourism. Many foreign seasonal workers hold two or three successive labour contracts with two or three employers, which explains the difference between the 97,000 contracts and the 70,000 individuals.

The non-EU seasonal workers come from a range of countries, such as Bangladesh, Morocco, India, Albania, Pakistan, Malawi, Tunisia, Sri Lanka and the former Yugoslavia. Some 42% are

employed in fruit and grape harvests, 32% in vegetable and tomato harvests, 13% in livestock breeding and the rest in green tourism and the sale of produce.

Problems posed by the employment of migrant seasonal workers. The employment of seasonal workers from these countries raises many problems for the employers:

- lack of training and inability to speak Italian;
- difficult compliance with safety rules by these workers who underestimate the dangers;
- slow admission procedure, lasting up to 85 days.
- the late publication of the decree authorising the entry of seasonal workers. The law stipulates the date of 30 November, but in general it is not published until February or March. This delay makes it more difficult to programme the seasonal activities of farmers.

In a common opinion released on 23 July 2009, the employers and employees' organisations called for a simple contract-renewal procedure and the possibility of applying during the season for an extension of the original contract of up to 9 months. The social partners have stated that making the administrative steps easier is a way to combat illicit work.

Mrs Tania Pagano, representative of CONFAGRICOLTURA, presented Italian legislation relating to **the employment of non-EU seasonal workers**. The law regulates all the issues concerning residence permits, work permits, working conditions, healthcare entitlements, expulsion procedures, criminal sanctions, etc.

There are two ways of recruiting a non-EU seasonal worker:

a) Employment of a foreigner who is already in Italy. It is possible to engage a worker who has a valid residence permit and a work permit, but who has lost his job owing to redundancies or an asylum applicant who has a residence permit, or a student. A student can be hired to work 20 hours a week. The employer's formalities are as follows:

- Check that the residence and work permits are valid;
- Sign a residence contract with the state authorities under which the employer agrees to house the worker and pay the cost of return to his home country;
- Register the housed employee with the police within 48 hours;
- Carry out all the standard declarations for the hiring of an employee to the labour authorities, indicating the applicable collective agreement and the agreed salary.

b) Admission of a non-EU seasonal worker residing in his home country:

- Apply to police headquarters for an admission permit under the quota allocated to the region. The application may be nominal or anonymous. The seasonal permit is issued for a minimum period of 20 days and a maximum period of 9 months;
- Sign the residence contract along with the farmer to house the worker and pay his return travel costs;
 - Register the housed employee with the police;
 - Carry out all the standard declarations for the hiring of an employee.

Criminal sanctions. A number of sanctions are provided for if immigration rules are breached, if the labour contract's duration is changed in relation to the duration declared prior to employment and failure to declare the worker's lodging. Moreover, a recent law sanctions with a prison term of 6 months to three years the housing of an illegal immigrant.

The equal treatment principle applies to labour law and social security provisions.

a) Labour law and collective agreements apply in the usual way to foreign employees, including seasonal workers: wages, work time, holidays, etc. There are no *specific* rules for foreign employees. Work time can be arranged in certain cases at company level, for example breaks for religious prayer, or the possibility of permanent workers to cumulate their paid holiday entitlements over two years in order to return to their home country.

b) Social contributions are payable at the same rate as for Italian workers and there is no difference between a permanent and a seasonal worker in this regard. The overall rate is 35.30% for the employer and 8.84% for the worker. The employee is insured for work accidents, has sickness insurance and acquires retirement entitlements that he may liquidate if he takes his retirement in his home country under bilateral social security agreements between Italy and a number of other countries. Contributions towards family and unemployment benefits are due and the immigrant worker is entitled to these benefits with the exclusion, however, of seasonal workers whose family has remained in the country of origin and who must return to their country at the end of their labour contract. As a result, they cannot be considered unemployed in Italy and may not receive family benefits.

In response to questions from Messrs Levacher, Botterman, Brum, Sarraute and Matas, Claudia Merlino and Tania Pagano provided the following additional information:

Criminal sanctions. In the event of infringement, criminal fines are in general issued by the courts, but prison terms are rare, except in the case of holdings owned by the Mafia in certain regions. The government has announced that it will be very stringent in enforcing the new law on housing illegal workers.

The draft directive calling for a 6-month limit to the seasonal contract is very worrisome for Italian employers. Mr Levacher pointed out that GEOPA will be discussing this with the Commission. If it is not possible to obtain work permits of longer than 6 months, then at the very least foreign seasonal workers should be provided pre-employment training during a period that is not considered work time.

Employment in the regions. It was pointed out that 50% of seasonal workers are employed in three southern regions: Apulia, Sicily and Calabria.

Social contribution exemptions. Contrary to other countries, in Italy there are no social contribution reductions for employing seasonal workers, but of course employers are calling for reductions.

Work time is 6.5 hours per day, i.e. 39 hours per week. Beyond 39 hours, work is considered overtime and paid extra but the work week must not exceed 48 hours. The national agriculture collective agreement is somewhat flexible on this point. It states that hours beyond 39 can be paid at the usual rate if they are later compensated by rest time. However, for seasonal workers, it is rarely possible to provide compensatory rest time before the end of the labour contract and, as a result, overtime must be paid.

Cost of employment. There is no fee payable to the state for the admission of a non-EU seasonal worker but there is a €14 application fee. However the employer must agree to pay the cost of sending the worker back to his home country.

Medical check-up. An employer who hires a seasonal worker can request that the worker submit to a prior medical check-up, which is compulsory only if the worker is required to do dangerous work.

Family benefits and unemployment insurance must be paid by the employer. However, if the worker cannot benefit from them, they are paid into a solidarity fund that funds integration actions for foreigners.

Agro-tourism. Agro-tourism activities are considered farming activities.

Fixed-term contracts. The law on fixed-term contracts does not apply to agriculture. This matter is regulated by the national collective agreement (see presentation by Mr Magrini).

Session of Friday, 9 October

Mr Romano Magrini, representative of COLDIRETTI, presented a report on **administrative formalities when employing workers**. These formalities are compulsory prior, during and at the end of the labour contract.

The prior declaration. Prior to the start of the contract, the employer must make an online declaration to the state employment office. He must identify of the worker, the type of agreed contract (fixed-term or permanent), the nature of the work offered, the intended remuneration, etc.

Information for the employee. A copy of this declaration must be provided to the employee prior to the start of work.

The amending declaration. If the data on the prior declaration are modified, for example work time, the nature of the employment, the promotion of an employee to a better paid position or the transformation of the contract into a fixed-term contract, an amending declaration must be transmitted to the employment department within 5 days, with a copy to the employee.

The logbook. After each month of work, and before the 16th of the following month, the employer must enter a number of items in the employee's logbook, which is a digital document. For each employee, the number of hours worked, holidays taken, absences due to sickness or other causes, the components of the salary (increases for overtime, compensation, benefits in kind, etc.) contributions deducted from the salary, etc. must all be indicated. A part of this form is the pay slip, a copy of which must be given to the worker.

The quarterly worker's declaration. Every quarter the employer must submit information relating to the workers to the social security authorities, who calculate the amount of contributions due and send the invoice to the employer.

The annual tax declaration. Every year before 26 February, the employer must submit to the tax authorities an online declaration relating to the workers. A copy must be submitted to the worker so that he may then file his income tax declaration.

End of contract. At the end of the permanent contract various types of compensation are due, such as the holiday compensation income, the proportional quota of the year-end bonus, etc. At the end of the fixed-term contract, end-of-contract compensation is paid. On the other hand, the so-called *third element* is not due under this type of contract because the employer pays every month in advance, along with the wages, a proportional quota of the paid holiday and a proportional quota of the year-end bonus.

The fixed-term contract. The national collective agreement contains three types of fixed-term contracts:

- The short fixed-term contract, for casual or seasonal work or to replace an absent employee.
- The intermittent labour contract for several seasonal jobs or several production cycles, with a guarantee of at least 100 days of work during the year.
- The full time fixed-term contract requires at least 180 uninterrupted days of work.

The simplified labour contract. In 2008, a simplified labour contract was created for very small farms whose annual turnover is less than 7,000 euros. A farmer who hires a retired person, a homemaker or a student younger than 25 years of age does not need to file a prior declaration. He pays the worker in vouchers that he buys at the post office. Each voucher costs 10 euros, which amounts to 7.50 euros of net income, 1.30 euros in social security contributions, 0.70 euros for work accident insurance and 0.50 euros for the scheme's administrative costs. At the end of the day, the employer gives the worker the number of vouchers due him. The worker then takes the vouchers to the post office and in return is paid 7.50 euros for each voucher.

Mr Politi, president of the CIA and vice-president of COPA, praised the work done by GEOPA in the context of COPA. Given the current economic crisis, he asserted that farmers must be given long-term guarantees. He described three principles for the recruitment of employees:

- **Workers' rights must be respected**, but that does not justify the proliferation of administrative formalities. Farmers have to spend one-third of their time on paperwork, which is excessive. Simplification is needed and useless formalities must be eliminated.

- **Illicit work must be combated**. We agree with the goal of zero tolerance. However, farming needs immigrant workers and we must issue work permits for these workers without complicating the admission procedure.

- **Production costs in the European Union must be harmonised**. Differences in wage levels and social contributions and taxes lead to competitive distortions among European farmers.

Mr Politi expressed the wish that all these issues be dealt with by the COPA presidium.

Mr Arnold Brum, the seminar's rapporteur, presented information on administrative formalities required when recruiting an employee and on the rules pertaining to housing for seasonal workers that was gathered before the seminar from the national member organisations of GEOPA. All the seminar's participants were then asked to speak in turn to add to and approve this information. These documents were used to prepare the summary report presented below.

ADMINISTRATIVE FORMALITIES REQUIRED WHEN EMPLOYING WORKERS

The administrative formalities required for the recruitment of employees are:

- **compulsory on the employer,**
- **justified,**
- **governed by national law in the member states.**

1. The formalities required of the employer for the recruitment of a worker

The main concern of a farmer who hires employees is to organise their work and, in many instances, take part in the work himself. Filling in administrative forms and keeping records up to date is not regarded as a priority. It often happens in agriculture that the farmer hires several seasonal workers at the same time on the same day.

2. The requirement to fulfil administrative recruitment formalities is nevertheless justified.

The recently recruited employee does his work first and is then paid. It is therefore logical that formalities should be completed at the time work begins. These formalities have a twofold goal:

- provide the employee with information and guarantees;
- secondly, to allow the authorities to conduct controls, such as the labour inspectorate, social security bodies, the tax authorities, etc. In that sense they are a necessary part of the effort to curb illicit work.

3. Compulsory formalities are governed by different national legislations in the 27 member states of the European Union.

The international and EU standards that the member states are required to apply are not numerous.

ILO Convention 95 (1949) on the protection of wages calls for a pay slip to be issued to the employees. Article 14 states that “*effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner (...) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change.*”

However, it should be noted that this convention has been ratified by only 17 of the 27 EU member states. The countries that did not ratify it are Germany, Luxembourg, Ireland, Denmark, Sweden, Finland, Lithuania, Latvia and Estonia. The United Kingdom, which ratified it in 1951, opted out in 1983. The reasons for not ratifying the convention apparently concern clauses other than the pay slip clause.

Directive 91/533 du 14 October 1991 “on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship”, states that the employer must inform the employees of the essential parts of their contract or of the labour relation and, in particular, “*in the case of a temporary contract or employment relationship, the expected duration thereof*”. This information must follow on from a written labour contract or a letter of employment or another written document being given to the worker.

However, this directive also states the following:

- “*Member States may provide that this Directive shall not apply to employees having a contract or employment relationship with a total duration not exceeding one month, and/or with a working week not exceeding eight hours; or of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.*”

- That the labour contract or letter of employment must be issued “*not later than two months after the commencement of employment*”.

This directive therefore allows member states to opt out of the obligation to give the worker a written labour contract or a letter of employment when the length of employment is less than one month, which concerns many seasonal farm workers. For employment of a longer duration, the employer may delay the issue of a labour contract for up to two months.

National legislation on compulsory formalities are only scantily backed by international or EU standards. Under these conditions, it is not surprising that wide differences exist among the member states. Obviously, competitive distortions arise among employers.

The GEOPA survey

In preparing the seminar, GEOPA conducted a survey with its national members with the aim of gathering information relevant to four types of formalities required of employers:

- the employment declaration
- the labour contract
- the staff register
- the pay slip.

Responses from 21 member states have been brought together. They highlight differences that deserve to be analysed. However, this is a very summary survey that only provides an overview. We did not ask about laws and regulations that spell out the employer's obligations, which would have required their translation and interpretation on the basis of national case law and practices.

The formalities analysed stem from two complementary concerns:

- The formalities relating to the effort to curb illicit work: the declaration of employment and the staff register.
- The formalities relating to information provided to the workers: the labour contract and the pay slip.

I. FORMALITIES RELATING TO THE EFFORT TO CURB ILLICIT WORK

A. THE DECLARATION OF EMPLOYMENT

In all the member states employers must, in accordance with varying arrangements, pay social security contributions and cooperate with the tax authorities in the collection of income tax. Information on employees must therefore be transmitted by the employer to one or more bodies or administrations.

For the comparative study on restrictions imposed on the employer, it is not so important to know to which body or administration a declaration should be sent. On the other hand, it is useful to know the following:

- whether the declaration must be done before the commencement of work or whether it can be done later and, if so, by what deadline,
- and what form the declaration must take and whether it can be done online.

The prior and after employment declaration

The declaration must be done prior to employment in 10 member states. In the following countries, the employees must be declared to an administration or the social security authorities prior to beginning work.

- Italy
- France
- Belgium
- Netherlands
- Austria

- Cyprus
- Hungary
- Lithuania
- Romania
- Slovenia

In an eleventh country, Spain, the declaration must also be made prior to the commencement of work, but Spain's farm organisation managed to secure a degree of tolerance from the administration under which the declaration may still be done before noon on the first day of work.

The declaration is made after recruitment in 10 member states, within a certain time period after the start of work:

- Germany: "at the start of work"
- Portugal: before noon on the first day of work
- Latvia: within 3 days
- Poland: within 7 days
- Czech Republic: within 8 days
- Denmark, Sweden, Finland, United Kingdom and Ireland: when the employee receives his first wages or at the monthly tax declaration.

The issue of whether the employment declaration is done before or after is fundamental in the effort to curb illicit work. If a time period is allowed, there may be a temptation to engage in illicit work, often with the agreement of the employee. If an inspection takes place, it can be claimed that the employee had just been hired that morning. Delegates from Germany pointed out that in practice employers usually submit a prior declaration because if there is a work accident involving an undeclared employee, the employer must cover all the costs.

The declaration

In general, the declaration is done using a written form sent to an administration or the social security authorities. This form indicates the employee's identity and, where necessary, other information concerning the length and nature of the employment.

In countries where the prior declaration is required, it may be done on the Internet and in Italy, the Internet declaration is the only way that is allowed. By contrast, in Lithuania, the prior declaration must be done on paper, which raises a problem because of postal delays, but Internet declarations are slated to be introduced in 2010.

Online declarations can also be done in Germany, Portugal, the Czech Republic and Latvia.

Several countries also mention the possibility of making the declaration by fax or phone. In countries where the employment declaration is combined with the wage declaration to social security or tax authorities, the declaration can only be done manually on paper.

B. THE STAFF REGISTER

The staff register is a document containing the names of all the employees in the company. It is handled by the employer and is made available to the control authorities.

The responses to the questionnaire show that in the following seven countries the staff register is not required.

- The United Kingdom, Denmark and Latvia do not require a declaration prior to employment. Consequently, the means of control are scant. However, in the United Kingdom an employer must record the hours worked by the employees;

- Belgium and Austria require a prior declaration. The copy of the declaration kept on file by the employer could be considered a substitute for a register (In Austria, a record of hours worked is required.);

- In Spain and Cyprus, the employee has a “worker’s logbook” that the employer must sign upon employment. In Spain the logbook is updated daily and a copy is sent to the administration every month.

II. FORMALITIES APPLICABLE TO WORKERS’ INFORMATION

A. THE LABOUR CONTRACT

The recruitment of an employee finds its legal expression in the signing of a contract between the employee, who agrees to work for the employer who, in turn, agrees to pay him. This contract may be oral or in writing. However, in some countries the term labour contract is not used and preference is given to *labour relation*.

Directive 91/533 is applied in different ways in the member states. Following are four examples:

The prior written contract: In Italy, France, Belgium, the Netherlands, Sweden, Lithuania and Latvia, a written labour contract must be submitted to the employee prior to employment. In Italy, France and Belgium, a copy of the prior declaration submitted on the Internet may replace the written contract. This copy contains all the usual information found in a labour contract. We have noted that in Latvia the contract must be in writing and submitted prior to employment, while the employer has three days to make his declaration.

The post-recruitment written contract or certificate. In Spain, the contract must be submitted to the employee within 10 days. The time period is one month in Germany and Denmark and two months in the United Kingdom. A contract or a certificate must be submitted within an unspecified period in Ireland, Finland, the Czech Republic and Poland.

The employee logbook: In Spain, Cyprus and Hungary, the employees have a worker’s logbook signed by the employer, which is done prior to employment and replaces the contract.

No contract for casual workers. In Portugal, a contract is not necessary if the employee is recruited for a week or less. In Austria, this waiver applies to employees who are recruited for a period of less than two months.

B. THE PAY SLIP

A pay slip must be issued in all the member states, except in Latvia and Cyprus.

Compliance by the employer with the various formalities requiring him to inform the employees and employment control authorities is indispensable for countering illicit work. There are certainly more effective means but their implementation causes formidable political problems that are not on the agenda of the GEOPA seminar. These more effective means are:

- A decrease in social contributions, in particular contributions arising from the employment of casual and seasonal workers. Some member states have, in an uncoordinated fashion, made efforts in this direction.

- The tax regime for farm holdings. In several member states, income tax on farm holdings is still based on a flat rate, which does not encourage people to register employees and their salaries. On the other hand, certified accountancy and the calculation of taxes based on real income eliminates the temptation to resort to illicit work.

It should be recalled that legislation on social protection and taxation are the exclusive purview of the member states.

ADMINISTRATIVE FORMALITIES WHEN EMPLOYING WORKERS

The following table summarises the most important information sent in by GEOPA members in response to the questionnaire. It was updated and approved by the participants during the Rome seminar.

The column entitled "Employment declaration" should be understood as follows:

PRIOR = The employee must be declared before the first day of work (or on the Internet one day before starting work).

AFTER = The employee may be declared once work has begun, within a certain timeframe.

ADM. = The employee must be declared to an administrative body (public employment department, tax authorities or other).

S.S. = The employee must be declared to the social security authorities and, where necessary, an insurance company.

Written = The declaration must be submitted in writing on a paper form.

INTERNET = The declaration is submitted online.

COUNTRY	EMPLOYMENT DECLARATION	WRITTEN EMPLOYMENT CONTRACT	STAFF REGISTER	PAY SLIP
ITALY	PRIOR (ADM) INTERNET only	Yes + Copy of the declaration	YES	YES
FRANCE	PRIOR (S.S.) INTERNET, Fax, written	YES or copy of the declaration	YES	YES
BELGIUM	PRIOR (1 st hour of work) (S.S.) INTERNET	YES (except seasonals) Daily declaration of seasonals	NO	YES
NETHERLANDS	PRIOR (S.S.) INTERNET, Fax, written	YES, before employment	YES	YES
LUXEMBOURG				
AUSTRIA	PRIOR (S.S.) INTERNET, Fax, Written	Certification except for casual workers < 2 months	NO Register for hours worked	YES
GERMANY	AFTER but in practice PRIOR (S.S.) INTERNET or written	YES or certification within 1 month	YES	YES
SPAIN	PRIOR tolerance: morning of 1 st day (S.S.) INTERNET, Fax	YES if contract is > than 28 days	NO (recording in worker's logbook)	YES
PORTUGAL	AFTER morning of 1 st day (ADM.) INTERNET, Fax	YES if contract is > than 1 week	YES (1 st day)	YES
GREECE				
UNITED KINGDOM (1)	AFTER (annual nominal tax declaration)	YES (within 2 months)	NO Register of hours worked	YES
IRELAND	AFTER	Written document	YES	YES
DENMARK	AFTER (monthly tax declaration)	YES (within 1 month)	NO	YES
SWEDEN	AFTER (at first pay)	YES (at start of work)	YES	YES
FINLAND	AFTER (at first pay)	Written document (at first pay)	YES	YES
CYPRUS	PRIOR (ADM. and S.S.)	Logbook prior to employment	NO	NO
MALTA				
HUNGARY	PRIOR (ADM. and S.S.) INTERNET, Fax, Written	Seasonal worker's logbook with daily stamp showing	YES	YES

		contributions		
CZECH REPUBLIC	AFTER within 48 hours (S.S.) INTERNET, Fax, Written	YES	YES	YES
SLOVAKIA				
POLAND	AFTER (7 days) (SS) Written	YES	YES Daily register	YES
LITUANIE	PRIOR (S.S.) Written (INTERNET in 2010)	YES prior to employment	YES	YES
LATVIA	AFTER within 3 days (ADM.) Written or INTERNET	YES prior to employment	NO	NO
ESTONIA				
ROMANIA	PRIOR (ADM. SS) Written or INTERNET	YES prior to employment	YES	YES
BULGARIA				
SLOVENIA	PRIOR ADM. SS) Written or INTERNET	YES (if contract is > than 1 month)	YES	YES
(1) UNITED KINGDOM: Prior to employment, the employee must submit to the employer a document prepared by the previous employer indicating the taxes paid during the current year.				

HOUSING OF SEASONAL WORKERS IN AGRICULTURE

The three tables below show the results of the survey on housing for seasonal farm workers. These results were updated and approved during the seminar.

I. Compulsory accommodation of seasonal workers

The question was raised as to whether farm employees are required to house seasonal workers whose workplace is far from their homes.

Employers are required to provide accommodation for all seasonal workers who are far from their place of residence.	SPAIN
Employers are only required to house non-EU workers, including citizens of the new member states who do not yet enjoy free movement.	ITALY FRANCE BELGIUM NETHERLAND GERMANY POLAND
Employers are not required to provide accommodation for seasonal workers, but in most cases employers offer housing to facilitate employment and ensure the workers' loyalty.	AUSTRIA PORTUGAL UNITED KINGDOM (1) DENMARK SWEDEN FINLAND CZECH REPUBLIC HUNGARY LITHUANIA

(1) UNITED KINGDOM: The gangmasters must house seasonal workers that they make available to farmers.

II. Housing conditions

The table below summarises the following information:

LEGISLATION:

- **specific** = housing must conform to legislation setting specific standards on the housing of agricultural workers, who are likely to be subject to labour inspections.
- **general** = the accommodation must only conform to the general legislation on building permits.

COLLECTIVE– MOBILE – TENT:

The **yes** and **no** answers indicate whether the legislation allows or prohibits collective housing, caravans, mobile homes and tents. When tents are authorised, there are rules on the time of year and sanitary conditions.

COUNTRY	REGULATION	COLLECTIVE	MOBILE	TENT
ITALY	general	yes	no	no
FRANCE	specific	yes	yes	yes
BELGIUM	specific	yes	no	no
NETHERLANDS	general	yes	yes	yes
GERMANY	specific	yes	no	no
AUSTRIA	specific	yes	yes	no
SPAIN	specific	yes	no	no
PORTUGAL	general	yes	yes	yes
UNITED KINGDOM	general	yes	yes	no
IRLEAND				
DENWEDEN	general	yes	yes	yes
SWEDEN	general			
FINLAND	specific	yes	yes	yes
CZECH REPUBLIC	general	yes	no	no
HUNGARY				
POLAND	?	yes	yes	yes
LITHUANIA	general	yes	yes	no
LATVIA				

III. Payment of housed seasonal worker

The table below provides the following information:

- **“Deduction of services in kind”**: Are employers authorised to deduct an amount from the total wage (calculated in keeping with legislation or a collective agreement) a sum for the value of housing provided?

- **“Addition of benefits in kind”**: Are employers who pay the normal wage and in addition provide housing required to add the value of the housing to the wage when calculating social contributions and taxes??

“ Evaluation”: Is the value of the housing set by legislation or by a collective agreement?

- **“ Subsidy”**: Are employers who build or convert housing for seasonal workers eligible under certain conditions, which may vary depending on the country, for subsidies or tax benefits?

COUNTRY	DEDUCTION	ADDITION	EVALUATION	SUBSIDY
ITALY	yes	yes	yes	yes (2)
FRANCE	yes	yes	yes	yes
BELGIUM	yes	yes and no (1)	yes	no
NETHERLANDS	yes	no	yes	no
GERMANY	yes	yes	yes	no
AUSTRIA	yes	yes	yes	no
SPAIN	yes	no	yes	yes
PORTUGAL	yes	no	yes	no
UNITED KINGDOM	yes	no	yes	no
IRELAND				
DENMARK	no	yes	yes	no
SWEDEN	yes	yes	no	yes
FINLAND	yes	yes	yes	yes
CZECH REPUBLIC	no	no	no	no
HUNGARY				
POLAND	no	no	no	no
LITHUANIA	yes	no	yes	no
LATVIA				

(1) BELGIUM: Benefits in kind must be added to the wage when calculating the worker's income tax but they are not figured into the calculation of social contributions.

(2) ITALY: Any subsidy is regarded as farm support that is accounted for in applying the "De minimis" directive.

GEOPA-COPA SEMINAR 8-11 OCTOBER 2009, ROME

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FINAL DECLARATION

On the initiative of Italian farm organisations Coldiretti, C.I.A. and Confragricoltura, delegates from organisations representing employers in agriculture from 24 EU member states met in Rome from 8 to 11 October 2009.

The discussions mainly focussed on three aspects relating to the working conditions of seasonal farm workers:

- Admitting seasonal workers from non-EU territories,
- The free circulation of EU seasonal workers,
- Compulsory administrative formalities for recruiting seasonal workers.

In that connection, the GEOPA-COPA member organisations adopted the following conclusions.

1. Admitting non-EU seasonal workers.

A directive to regulate conditions of entry and residence of non-EU seasonal workers is currently being prepared by the relevant departments of the European Commission.

GEOPA-COPA made it clear that as a necessary means to monitor migration, this directive should not be used as a pretext for restricting the scope of seasonal workers or for limiting the length of seasonal contracts in a way that would be incompatible with agricultural work seasons.

2. The free movement of EU seasonal workers.

Several member states restrict the free movement of workers from countries that recently joined the European Union.

GEOPA-COPA affirms that these obstacles must be lifted without delay. A transitional period for the implementation of the free movement of workers is not justified in light of the fact that goods, capital and services enjoy free movement from day one of accession.

3. Compulsory administrative formalities for recruiting seasonal workers.

In a bid to address the issue of illicit work, member states require an employer to fulfil often complex administrative formalities that differ from one country to another in the absence of any EU harmonisation.

GEOPA-COPA calls upon the member states to simplify their procedures by avoiding administrative restrictions that are not necessary to attain the goal pursued.

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