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of:                    JHA Counsellors

on:                    22 November 2012

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No. Cion prop.:   12208/10 MIGR 66 SOC 461 CODEC 689 + ADD 1, ADD 2

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Subject:            Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment

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Delegations will find attached a report of the meeting of JHA Counsellors on 22 November at which Presidency compromise suggestions concerning the above mentioned proposal were discussed. The results of the discussions have been incorporated in the text of the report of the meeting of the JHA Counsellors on 5 November (doc. 15815/12) and are set out in the Annex to this Note, with delegations' comments in the footnotes.

Proposal for a  
**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on the conditions of entry and stay of third-country nationals for the purposes of seasonal**  
**employment**<sup>1</sup>

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular

Article 79(2)(a) and (b) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> **AT, BG, CZ, DE, EE, EL, ES, FR, HU, LT, MT, PL, PT, SE:** general scrutiny reservations. **CZ:** the proposal offers no added value. **AT, CZ, NL, PL:** parliamentary reservations. **FR, HU, SE, SI:** parliamentary scrutiny reservations. **AT, EL, DE, SE:** linguistic reservations. **PT:** a general reservation on the distinction between short and long stays. **CZ:** a general reservation concerning the inclusion of short stays in the scope of the Directive. **EE:** it should not be defined in the text which visas MS should issue for which stays.

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) The Hague Programme, adopted by the European Council on 4 and 5 November 2004, recognised that legal migration will play an important role in advancing economic development, and asked the Commission to present a policy plan on legal migration, including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.
- (3) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007, which include the development of well-managed legal immigration policies that fully respect national competences, in order to assist Member States in meeting existing and future labour needs. It also called for means to be explored to facilitate temporary migration.
- (4) The European Pact on Immigration and Asylum, adopted by the European Council on 15 and 16 October 2008, expresses the commitment of the European Union and its Member States to conduct a fair, effective and consistent policy for dealing with the challenges and opportunities of migration. The Pact forms the basis of a common immigration policy guided by a spirit of solidarity between Member States and cooperation with third countries and founded on proper management of migratory flows, in the interests not only of the host countries but also of the countries of origin and of the migrants themselves.

- (5) The Stockholm Programme, adopted by the European Council at its meetings of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the EU in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. It invites the European Commission and the European Council to continue implementing the Policy Plan on Legal Migration.
- (6) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration by setting out fair and transparent rules for admission and stay, while at the same time providing for incentives and safeguards to prevent temporary stay from becoming permanent. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the European Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals will contribute to avoiding such temporary stay turning into illegal stay.
- (7) This Directive should be applied without prejudice to the principle of Union preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. Therefore, nationals of the Member States concerned should be given preference over third-country nationals, during the transitional period specified in the relevant provisions of the Acts of Accession, with respect to access to the labour market.
- (8) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory for the purposes of seasonal work as specified in the Treaty.<sup>2</sup>

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<sup>2</sup> **DE:** reservation on the Recital. **AT, DE, EL:** the Recital should be worded along the lines of Recital 8 in the Blue Card Directive referring to the option of granting 0-quota.

- (9) This Directive should not affect conditions of the provision of services in the framework of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. Nor should this Directive apply to workers posted by undertakings established in a third-country to provide a service in the territory of a Member State.
- (10) Member States should be able to determine specific sectors of the economy and/or activities that meet the criteria for seasonal work as defined in this Directive such as agriculture, in particular during the planting or harvesting period, or tourism, in particular during the holiday period.<sup>3</sup>
- (11) It should only be possible to apply for admission as a seasonal worker while the applicant is residing outside the territory of the Member States. However, this Directive should not prevent Member States from allowing employment, for the purpose of seasonal work and in accordance with national law, of third-country nationals already legally residing in the territory of the Member State concerned.<sup>4</sup>
- (12) The Directive should not affect, where granted, the rights of third-country nationals already legally staying in a Member State to work.

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<sup>3</sup> **ES:** the specification of sectors is too detailed; there is no need to refer to the actual seasons. **HU, FR:** it is up to MS to determine the sectors, the examples serve no purpose and could be misleading. **DE** supported the examples given in the recital as they give direction to MS but would like to leave out the references to seasons. **FR** asked whether it is necessary to repeat "in particular" twice.

<sup>4</sup> **EL, PT** could not see the reason for adding the last sentence if it is clear that this category of persons does not fall under the scope of the Directive. Furthermore, **EL** asked whether the unreturnable persons could not be employed for the purpose of seasonal work.

- (12a) Criteria and requirements for admission as a seasonal worker for stays not exceeding three months are defined in this Directive as far as admission to employment as a seasonal worker is concerned. In this case, the conditions for entry to and stay in the territory of Member States, are governed by the relevant provisions of the Schengen acquis. In the case of Member States applying the Schengen acquis in full both the Visa Code and the Schengen Borders Code apply, in the case of Member States not applying the Schengen acquis in full only the Schengen Borders Code applies. The provisions of the Schengen acquis referred to in the present Directive belong to that part of the Schengen *acquis* in which Ireland and the United Kingdom do not take part and therefore these provisions do not apply to them.<sup>5</sup>
- (13) The Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the level of remuneration applicable to seasonal workers in the sector concerned.
- (14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.
- (14a) Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to return to a third country on the expiry of an authorisation for the purpose of seasonal work.<sup>6</sup>
- (14b) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed for granting, withdrawal or extension/renewal of the authorisation for the purpose of seasonal work in order to prevent possible abuse and misuse of the procedure set out in this Directive.

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<sup>5</sup> **FR, IE:** scrutiny reservations on the Recital. **PT** could not support the Recital as it implies two admission procedures for short stays also pointing out that the Visa Code should not be used for labour purposes.

<sup>6</sup> **DE:** replace with "... the expiry of *an authorisation for admission as a seasonal worker*".

(15) Provision for a single procedure leading to one combined permit encompassing both stay and work permit, should contribute to simplifying the rules currently applicable in Member States. This should not affect the right of Member States to determine the national authorities and the way they should be involved in the single procedure, in accordance with national specificities of administrative organization and practice.

(15a) *deleted*<sup>7</sup>

(15a) The Directive provides for a degree of flexibility for Member States regarding the authorisations to be issued for the admission (entry, stay and work) of seasonal workers. Member States are, therefore, free to decide whether to issue work permits in addition to short-stay visas and long-stay visas. Nevertheless, in order to ensure that the conditions of employment as provided by the Directive have been checked and are met it should be made clear on the authorisations that they were issued for the purpose of seasonal work. In case only short-stay visas are issued, Member States should make use of the "remarks" heading of the visa sticker for this purpose.<sup>8</sup>

(16) Member States should be able to determine the maximum duration of stay for the purposes of seasonal employment within any period of twelve months referred to in this Directive.

(16a) The possibility to change employers, in accordance with the procedure defined by national law and/or practice, should be given in the specific cases referred to in the Directive where the employer does not fulfil its obligations and could be given in order to reduce the risk of abuse that seasonal workers employed by one single employer might face.<sup>9</sup>

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<sup>7</sup> **EE**: should be re-inserted despite the fact that it is included in the body of the text.

<sup>8</sup> **PT** objected to merging the Schengen regime with the one designed for the purpose of employment. Schengen visas are designed for crossing external borders and for travelling within the Union and not for employment purposes. **FR**: the first and the last sentence appear more like a commentary and not an explanation for the corresponding Article.

<sup>9</sup> **AT**: scrutiny reservation as the right to change employers should not be automatic suggesting the following wording: "The possibility to change employers *could* be given in the specific cases referred to in the Directive where the employer does not fulfil its obligations." **EE**: the first part of the sentence should not express an obligation either. **Cion** pointed out that the first part of the sentence relates to situations set out in Article 7(3) and (3a).

- (16b) In cases where a seasonal worker has been admitted for a stay not exceeding three months and where the Member State decides to extend it beyond three months, the short-stay visa should be replaced either by a long-stay visa or a seasonal worker permit provided that the seasonal worker complies with the provisions of Articles 5, 5b and 6.<sup>10</sup>
- (17) In order to promote circular migration of third-country national seasonal workers and to ensure their employment prospects in the EU for periods beyond a single season and for EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment for several consecutive years could be provided, either through three seasonal worker permits covering up to three subsequent seasons issued in one administrative act or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required.<sup>11</sup>
- (18) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.
- (18a) In the case of short-stay visas the procedural safeguards are governed by the relevant provisions of the Schengen *acquis*.

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<sup>10</sup> **BG, FR:** the recital should not imply that there is an obligation to extend the stay of a seasonal worker.

<sup>11</sup> **AT** (supported by **DE**): scrutiny reservation on the recital as having doubts about the reference to circular migration in this context suggesting the following wording instead: "*Taking into account certain aspects of circular migration as well as employment prospects of third-country seasonal workers beyond one single season and interests of EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment...*"



(19) In order to ensure that seasonal workers have adequate accommodation during their stay, including at a reasonable cost, provision should be made to require applicants to provide the evidence of the accommodation they or third parties provide.

(19a) *deleted*

(20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to provide effective protection of their rights. For the sake of legal certainty, therefore, the work contract or a binding job offer should specify clearly the working conditions which should be in conformity with applicable laws, collective agreements and/or practices of the given Member State.

(21) *deleted*

(22) Third-country national seasonal workers should be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems<sup>12</sup>. The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. This Directive should not confer more rights than those already provided in existing EU legislation in the field of social security for third-country nationals who have cross-border interests between Member States. **Since third-country nationals are admitted for the purpose of seasonal employment under this Directive and should have to leave the territory of the Member State concerned following the termination of the work contract, they are not entitled to unemployment benefits.** This Directive does not provide for family reunification and accordingly does not confer rights on family members of a seasonal worker.

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<sup>12</sup> OJ L 166, 30.4.2004, p. 1.

Furthermore, this Directive does not grant rights in relation to situations which lie outside the scope of EU legislation such as, for example, to family members residing in a third country.<sup>13</sup> This should not, however, affect the right of survivors who derive rights from the seasonal worker to receive survivor's pensions when residing in a third country. This is without prejudice to the non-discriminatory application by Member States of national legislation providing for *de minimis* rules on contributions to pension systems.<sup>14</sup>

**(22a) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.<sup>15</sup>**

(23) To facilitate enforcement, relevant designated third parties such as trade unions or other associations should be able to lodge complaints in order to ensure effective application of the Directive. This is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use these in their own name, out of fear of possible consequences.

(24) Since the objectives, namely the introduction of a special admission procedure and the adoption of conditions on entry and stay for the purpose of seasonal employment by third-country nationals, cannot be sufficiently achieved by Member States and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the subsidiarity principle as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.<sup>16</sup>

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<sup>13</sup> **FR, PT** could not support restrictions to equal treatment. **Cion:** the sentence on unemployment benefits should be redrafted to reflect better the text in the corresponding Articles.

<sup>14</sup> **EL** wanted to know which rights exactly are referred to here.

<sup>15</sup> **BG:** the last sentence of the paragraph should be deleted as it states the obvious. **FR:** scrutiny reservation stressing the importance of keeping the last sentence. **PT** supported the text in the recital.

<sup>16</sup> **Cion** was opposed to the use of the term "stay" in this Directive.

(25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

[(25a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.]<sup>17</sup>

(26) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by it or subject to its application.

(27) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>17</sup> LV: scrutiny reservation pending an explanation from the Cion.

# CHAPTER I

## General provisions

### *Article 1*

#### *Subject-matter* <sup>18</sup>

1. This Directive determines the conditions of entry and stay <sup>19</sup> of third-country nationals for the purposes of employment as seasonal workers and defines the rights of seasonal workers.
2. The provisions of this Directive shall apply without prejudice to the Schengen acquis in particular Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas<sup>20</sup>, Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders<sup>21</sup>, and Council Regulation (EC) No 539/2001 of 15 March 2001 listing third countries whose nationals must be in possession of visas when crossing the external borders and those nationals exempt from that requirement<sup>22</sup>. <sup>23</sup>

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<sup>18</sup> **AT, CZ, EE, PT, SE:** scrutiny reservations on the Article. **FR, PT, PL:** general reservations on all the provisions covering stays shorter than 3 months in this Directive. **EE:** it should not be defined in the text which visas MS should issue for which stays. **FR** expressed fundamental concerns about this approach due to its interference with the Schengen system pointing out that the admission for the purpose stays shorter than three months falls under national competence and should not be covered by this Directive. **CZ:** reservation on covering stays not exceeding 3 months as it interferes with the Visa Code pointing out that the legal base in Article 79 of TFEU does not cover short stays.

<sup>19</sup> **Cion** was opposed to the use of "stay" but stated that in case it is used, it should not in any way have an impact on the interpretation of the rights granted to seasonal workers in Article 16. (*Comments apply to all the other relevant provisions in this Directive*).

<sup>20</sup> OJ L 243, 15.9.2009, p. 1.

<sup>21</sup> OJ L 105, 13.4.2006, p. 1.

<sup>22</sup> OJ L 81, 21.3.2001, p. 1.

<sup>23</sup> **PT:** simultaneous application of the Directive and the Schengen acquis will be problematic in practice.

## *Article 2*

### *Scope*<sup>24</sup>

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and apply to be admitted or who have been admitted, under the terms of this Directive, to the territory of a Member State for the purpose of employment as seasonal workers.<sup>25</sup>
  
2. This Directive shall not apply to third-country nationals:<sup>26</sup>
  - (a) who are posted in the framework of the provision of services, irrespective of whether the undertaking is established in a Member State or in a non-Member State, as long as they are posted.
  
  - (b) who are working for and being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking.<sup>27</sup>
  
  - (c) who are family members of Union citizens who have exercised their right to free movement within the Union, in conformity with Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

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<sup>24</sup> **AT, SI:** scrutiny reservations on the Article.

<sup>25</sup> **PT:** third-country nationals legally staying in the territory of a MS should also fall under the scope of the Directive.

<sup>26</sup> **SI:** scrutiny reservation. **CZ** suggested to add the following new point (e) in this paragraph: "*(e) who are family members of seasonal workers.*" (doc. 5688/12).

<sup>27</sup> **ES:** reservation, **PL, PT:** scrutiny reservations on point b). **ES, PT:** temporary work agencies should not be excluded from the scope of the Directive as also those workers who use the services of agencies should be protected under this Directive.

- (d) who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and the Member States or between the Union and third countries;

*Article 3*  
*Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘third-country national’ means any person who is not a citizen of the European Union within the meaning of Article 20 (1) of the Treaty on the Functioning of the European Union;
- (b) ‘seasonal worker’ means a third-country national who retains his/her principal place of residence in a third country and stays legally and temporarily for the purposes of employment in the territory of a Member State to carry out an activity dependent on the passing of the seasons, as determined by national law and/or practice, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in that Member State;<sup>28</sup>
- (c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year during which required labour levels are above those necessary for usually ongoing operations or during which specific operations need to be carried out;<sup>29</sup>
- (d) ‘seasonal worker permit’ means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals bearing a reference to seasonal work and entitling its holder to stay and work in the territory of a Member State under the terms of this Directive;<sup>30</sup>

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<sup>28</sup> **ES, PT:** reservation on the direct work contract.

<sup>29</sup> **HU, PL:** scrutiny reservations. **ES** pointed out that it would be more appropriate to link seasonal activities to an increased need for labour rather than the passing of the seasons.

<sup>30</sup> **EE, PT, SI:** scrutiny reservations.

- (e) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention or issued in accordance with the national law of Member States not implementing the Schengen acquis in full;
- (f) 'single application procedure' means a procedure leading, on the basis of one application for the authorisation of a third-country national's stay and work in the territory of a Member State, to a decision on the application for the seasonal worker permit;<sup>31</sup>
- (g) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.
- (h) "authorisation for the purpose of seasonal work" means either a short-stay visa [...] **and** a work permit, if a work permit is required under national law, a long-stay visa [...] **and** a work permit, if a work permit is required under national law or a seasonal worker permit. In the case of those third-country nationals listed in Annex II of Regulation 539/2001, Member States either apply Article 4(3) of Regulation 539/2001 or issue a work permit or both.<sup>32</sup>
- (i) 'work permit' means any authorisation issued by a Member State in accordance with national law primarily for the purpose of work in the territory of a Member State.<sup>33</sup>

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<sup>31</sup> **EE, PT:** scrutiny reservations.

<sup>32</sup> **ES, PT:** scrutiny reservations. **CZ** (supported by **FR, PT**): reservation suggesting to replace "together with a work permit" by "*and* a work permit" as the current wording implies that the two documents are issued simultaneously whereas in reality they constitute two different procedures. **EL** wanted to know whether, in the case of third-country nationals exempt from a visa obligation, an approval of employment which is an internal document not delivered to the seasonal worker would qualify as a work permit for the purposes of this Directive. **Pres:** a document of some sort would need to be issued proving that the person has been admitted for the purpose of seasonal work.

<sup>33</sup> **EL:** scrutiny reservation. **PT:** the definition should not refer to the concept of an "authorisation" which is too broad and contains no reference to seasonal work. **FR** expressed concerns about the addition of "primarily" asking for clarification. **Pres:** in some MS a work permit is also a residence title.

## Article 4

### More favourable provisions<sup>34</sup>

1. This Directive shall apply without prejudice to more favourable provisions of:
  - (a) Union law, including bilateral and multilateral agreements concluded between the Union or between the Union and its Member States on the one hand and one or more third countries on the other;
  - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 13, 14, 16 and 17 of this Directive.<sup>35</sup>

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<sup>34</sup> **PL** suggested to add the following new paragraph 1(c) in order to be able to keep its current simplified schemes in respect of certain third countries: "*national schemes to grant access to labour market based on Member State law applied to nationals of a certain third country or countries due to particularly close links in the area of migration despite lack of a bilateral agreement.*" **Cion** was opposed to any national schemes pointing out that Article 4 (2) should meet the concerns expressed by **PL** as it allows for introduction of a more favourable procedure and rights. Furthermore, Article 4 already allows for bilateral agreements that can contain more favourable provisions. **Pres**: **PL** suggestion would open the scope of the Directive and thus empty the Directive of its content. **FR**: reservation on **PL** suggestion.

<sup>35</sup> **SI**: scrutiny reservation. **DE**: linguistic reservation. **ES** would like to be able to adopt more favourable provisions also in respect of Article 12.



## CHAPTER II

### Conditions of admission

#### Article 5

*Criteria and requirements for admission to employment as a seasonal worker for stays not exceeding three months* <sup>36</sup>

1. Without prejudice to Article 9, a third-country national who applies to be admitted under the terms of this Directive or the employer shall:

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<sup>36</sup> **AT, DE, EE, FR:** scrutiny reservations on the Article. **CZ, FR, PT:** reservations on the Article concerning the scope covering stays not exceeding 3 months. **CZ:** the approach leads to over-regulation. Furthermore, the Article contains overlaps with the Schengen acquis and not all the conditions in the Article deal with access to employment. **CZ** asked whether in situations where work permits are not issued it would be the consulate that is responsible for collecting all the necessary documents verify whether conditions of Article 5 are met. **FR** (supported by **PT**) suggested to merge Articles 5 and 5b as admission conditions in the two cases should be similar. **Pres:** such an approach would lead to overlaps with the Schengen acquis. **Cion:** should the two articles be merged, it should be made clear that paragraphs 3 and 6 of Article 5b do not apply to short stays. **EL, LT, PL:** a clear distinction between the criteria for short and long stays should be maintained. **EE:** there is no need to distinguish between short and long stays. **AT** supported the reference to "employment" in the title. **AT, DE:** MS should be able to apply other criteria of admission in accordance with their national legislations. **DE** suggested the following introductory sentence: "*Member States shall ensure that at least the following criteria for admission to a Member State under the terms of this Directive are fulfilled.*" and proposed to add the following new paragraph: "*The competent authority shall issue a visa or residence permit to seasonal workers at its own discretion.*" **ES** suggested two additional criteria for admission enabling Member States to require the worker/employer to provide a guarantee of return to a country of origin, and to require the employer to organise and bear the costs of a travel of the worker from and to the country of origin. **CZ** wanted to include an additional criterion requiring the worker to provide his/her address in the territory of the Member State concerned. **EL** would either like to add that "*Member States may require means of evidence, set by national legislation, which guarantee the capacity and/or needs of the respective employer to employ a certain number of seasonal workers*" or provide that Member States may add other admission criteria. **SI** did not support the idea of adding new conditions but could accept a minimum list of conditions. **AT** was opposed to the deletion of Recital 13a as it appeared in doc 13194/11 which should instead be integrated in the body of the text.

- (a) present a valid work contract or, if provided for by national law or administrative regulations or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State which specifies the remuneration and the working hours per week or month and, where applicable, other relevant working conditions.
- (b) provide evidence that the third-country national has or is <sup>37</sup> entitled to have by virtue of the application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in the Member State concerned. <sup>38</sup>
- (c) provide evidence that the third-country national has accommodation as set out in Article 14. <sup>39</sup>

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<sup>37</sup> **Cion:** insert "*or having applied for ...*"

<sup>38</sup> **EE, PL:** scrutiny reservations, **FI:** reservation on the paragraph. **AT:** the text should be aligned to the one in the ICT Directive: "*without prejudice to existing bilateral agreements, present evidence that...*" **CZ** stated that the provision collides with the corresponding one in the Visa Code pointing out that the insurance provided under the Visa Code should be sufficient. **PT:** there is a risk of double insurance - one under the Visa Code and another one under this Directive. **DE** pointed out that Article 15(6) of the Visa Code should be sufficient to ensure that there is no double insurance. **FI** (could be supported by **BG, EE, LV, SE**) suggested the following wording referring to the short duration of the stay of seasonal workers: "(b) provide evidence that the third-country national has [...] a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits *in kind* are provided in connection with, or as a result of, the work carried out in the Member State concerned." **IT** could support the suggestion without the deletion. **EL, SI, SK** would not oppose the FI proposal. **AT, BE** needs to further scrutinise the FI suggestion. **CZ, FR, PT** were opposed to the FI suggestion. **Cion** expressed its opposition to FI proposal which makes sickness insurance compulsory for seasonal workers pointing out that seasonal workers should not be treated less favourably than those falling under the Single Permit Directive. **Cion:** seasonal workers will benefit from the coverage on the basis of the equal treatment clause of Article 16, Article 5(1)(b) will cover very specific situations (e.g. weekend before commencing work); insurances under the Visa Code and Art 5(1)(b) do not cover the same risks.

<sup>39</sup> **SI:** scrutiny reservation.

- 1a. Member States shall require that the conditions listed in paragraph 1(a) are in conformity with applicable laws, collective agreements and/or practices;<sup>40</sup>
2. Member States shall require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to the social assistance system of the Member State concerned.<sup>41</sup>
3. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens<sup>42</sup> of the regulated profession specified in the work contract or binding job offer as provided for in national law.<sup>43</sup>

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<sup>40</sup> **HU**: scrutiny reservation. **FR** enquired whether reference is made to the laws of the MS in question. **Pres** confirmed that this is indeed the case pointing out that this is clearly stated in Recital 20. **DE**, supported by **EE**, proposed the following new paragraph: "*Member States may require that all conditions according to applicable laws, regulations, administrative provisions, collective agreements or practices applicable to comparable seasonal workers in the relevant occupational branches are met with regard to pay, insurance cover and other terms of employment*". **Cion**: the paragraph is overly complicated and would lead to problems in practice; a requirement for a binding work contract in this Article together with a requirement for equal treatment in respect of working conditions in Article 16(1) should suffice.

<sup>41</sup> **PL**: this should not be an obligatory provision for MS since it is checked anyway while applying the Schengen acquis. **HU**: this provision should not be obligatory for MS. **AT, BG, FI, LT** insisted on keeping the paragraph as it relates to conditions of employment in this context. **AT** (supported by **PL, HU**) suggested the following wording: "Member States *may* require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself *and his/her family members* without having recourse to *social benefits including* the social assistance system of the Member State concerned." **BE, BG, DE, EL, FI, RO, SE** were opposed to this provision being optional. **Cion**: the equivalent provision in the Schengen acquis is also a shall-clause so it should remain a shall-clause in this Directive as well. **FR**: this paragraph could be placed at the end of paragraph 1(a) of this Article.

<sup>42</sup> **DE**: delete "by Union citizens".

<sup>43</sup> **EL**: reservation. **FR** expressed doubts about the relevance of this paragraph since seasonal work covers only a limited number of activities.

4. When examining an application for authorisation for the purpose of seasonal work, Member States not applying the Schengen acquis in full, shall verify whether the third-country national does not present a risk of illegal immigration and that he/she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.

**Article 5b**

*Criteria and requirements for admission as a seasonal worker for stays exceeding three months*<sup>44</sup>

1. Without prejudice to Article 9, a third-country national who applies to be admitted under the terms of this Directive or the employer shall:
- (a) present a valid work contract or, if provided for by national law or administrative regulations or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State which specifies the remuneration and the working hours per week or month and, where applicable, other relevant working conditions.
  - (b) provide evidence that the third-country national has or is entitled to have by virtue of the application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in the Member State concerned.<sup>45</sup>
  - (c) provide evidence that the third-country national has accommodation as set out in Article 14.

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<sup>44</sup> **CZ, FR:** reservations on the Article. **AT, ES:** scrutiny reservations on the Article.

<sup>45</sup> **AT** suggested to insert, in order to align the wording with the one in the ICT Directive: "*Without prejudice to existing bilateral agreements, present evidence that ...*".

- 1a. Member States shall require that the conditions listed in paragraph 1(a) are in conformity with applicable laws, collective agreements and/or practices.
2. Member States shall require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to the social assistance system of the Member State concerned. <sup>46</sup>
3. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive. <sup>47</sup>
4. When examining an application for authorisation for the purpose of seasonal work Member States shall verify whether the third-country national does not present a risk of illegal immigration and that he/she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation. <sup>48</sup>
5. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law.

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<sup>46</sup> **AT:** the wording should be aligned with the one agreed upon in the ICT Directive in the following manner: "Member States *may* require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself *and his/her family members* without having recourse to *social benefits including* the social assistance system of the Member State concerned".

<sup>47</sup> **ES:** this criterion is better here since it should be checked before admission pointing out that all admission criteria are also criteria for rejection.

<sup>48</sup> **SI:** scrutiny reservation. **ES:** scrutiny reservation stating that this should be an optional clause and enquiring how to verify whether a TCN presents a risk of illegal employment. **Cion** could not support this provision being obligatory pointing out that this kind of requirement is not used for other groups of migrants.

6. Third-country nationals shall be in possession of a valid travel document determined by national law. Member States shall require the period of validity of the travel document to cover at least the validity of the seasonal worker permit or the long-stay visa.<sup>49</sup> In this case Member States may also require the period of validity to exceed the intended duration of stay by a maximum of 6 months.<sup>50</sup>

#### *Article 5a*

#### *Volumes of admission*<sup>51</sup>

1. This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory for the purpose of seasonal work. On this basis and for the purposes of this Directive, an application for authorisation for the purpose of seasonal work may be considered inadmissible.

#### *Article 6*

#### *Grounds for refusal*<sup>52</sup>

1. Member States shall reject an application for authorisation<sup>53</sup> for the purpose of seasonal work<sup>54</sup> whenever the conditions set out in Article 5 or 5b are not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.

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<sup>49</sup> **DE, BG** insisted on a "shall-clause".

<sup>50</sup> **DE** (supported by **PL**) pointed to inconsistency with Article 12 of the Visa Code which provides that the validity of a travel document shall extend at least three months after the intended date of departure.

<sup>51</sup> **DE** (supported by **AT, EL**): reservation on the grounds set out in comments to Recital 8. **AT** (supported by **FR**) suggested the following wording in order to align the text with the ICT Directive: "This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory. An application for admission to a Member State for the purposes of this Directive may be considered inadmissible."

<sup>52</sup> **CZ**: reservation.

<sup>53</sup> **DE**: it is not necessary to refer to "authorisation" in this Article.

<sup>54</sup> **SE**: scrutiny reservation. **CZ** could not support the term used pointing out that workers always apply for a concrete permit.

2. Member States may verify whether the vacancy in question could be filled by nationals of the Member State concerned or by other EU citizens, or by third-country nationals lawfully residing in the Member State [...], in which case they may reject the application. This paragraph shall apply without prejudice to the principle of Union preference as expressed in the relevant provisions of the Act of Accession of 2005.<sup>55</sup>
- 2a. Member States may reject an application for authorisation for the purpose of seasonal work on the ground set out in Article 5a.<sup>56</sup>
3. Member States may reject an application for authorisation for the purpose of seasonal work if the employer:<sup>57</sup>
- (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment **or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place;**<sup>58</sup>

or

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<sup>55</sup> **AT:** scrutiny reservation on the paragraph and the related Recital. **EL** asked whether it is allowed to give priority to countries with whom bilateral agreements have been concluded. **Cion:** more favourable provisions in bilateral agreements are allowed. **HU** asked why "and already forming part of its labour market in accordance with national or Union law" was deleted. **Pres:** it was considered superfluous.

<sup>56</sup> **AT** suggested to align the provision with the respective one in the Blue Card Directive: "Member States *may consider inadmissible* an application for authorisation.."

<sup>57</sup> **IT:** scrutiny reservation. **EL** would like to add a new criterion related to the pre-selection of the employer as a condition for authorising it to hire foreign workers. This would be a way to test the productive capacity of the employer in relation to the number of seasonal workers it has asked to hire or to examine the real needs of the employer in order to prevent abuse and illegal immigration. **Cion:** this appears to be a procedure preceding the immigration procedure and would thus not fall under the scope of the Directive.

<sup>58</sup> **EL** asked whether the concept of insolvency could be interpreted to refer to the real needs of employers to hire seasonal workers.

- (b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment, **including remuneration**, according to applicable laws, collective agreements and/or practices are not met;<sup>59</sup>
- (c) has eliminated the positions he is trying to fill, within the 12 months immediately preceding the date of the application, in order to employ third-country nationals through the new application. <sup>60</sup>
4. Member States may reject an application for authorisation for the purpose of seasonal work if the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.

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<sup>59</sup> **EE, EL, PT**: scrutiny reservations. **EL**: insert "... taxation , *recruitment requirements* and/or ..." as an alternative way of meeting the concerns of EL expressed in above. **Cion**: the reference to remuneration should not be interpreted as allowing Member States to set discriminatory salary thresholds for third-country nationals.

<sup>60</sup> **AT**: scrutiny reservation for reasons of legal certainty. **EL** expressed concerns about this provision regarding legal certainty. **HU**: it might be problematic to apply this provision in practice.

<sup>61</sup> **SE** (supported by **CZ, EE, FI**) suggested to add the following new paragraph 5: "*Grounds for rejecting an application for a short-stay visa are regulated in the relevant provisions of the regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.*" **ES, FR, PT**: scrutiny reservations on the SE suggestion. **AT** would not oppose SE suggestion. **Pres** (supported by **Cion**) considered such a paragraph unnecessary as Article 1(2) of the Directive already states that the provisions in this Directive apply without prejudice to the Schengen acquis. In practice, thus, in the case of short-stay visas the provisions of Articles 6 and 7 will be applied through the relevant provisions of the Visa Code (Articles 32 and 34 respectively as well as Annex VI). **AT, DE** suggested to add the following new paragraph: "*Member States may reject an application if the applicant has committed a breach of legal provisions, court rulings or official orders, excepting isolated or minor breaches, or has committed an offence outside the territory of a Member State which is regarded in the Member State's territory as an intentionally committed offence.*" (The explanation is provided in doc. 6176/12) **Cion**: the provision is not precise enough, it raises concerns of legal certainty and stigmatises this particular group of migrants. **PL** agreed with **Cion** stating that the provision goes too far and referring to the SIS that already contains a provision on public order.



## *Article 7*

### *Withdrawal or non-extension/non-renewal of the authorisation for the purpose of seasonal work*<sup>62</sup>

1. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive whenever the provisions of Articles 5 or 5b were not or are no longer complied with.<sup>63</sup>
  
2. Member States shall withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the documents presented for the purpose of Article 5, 5b or 6 had been fraudulently acquired, or falsified, or tampered with or where the holder is residing for purposes other than those for which he/she was authorised to reside.<sup>64</sup>
  
3. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the employer:<sup>65</sup>
  - (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment **or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place;**<sup>66</sup>

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<sup>62</sup> **CZ, FR:** reservations on the Article. **AT:** scrutiny reservation on the Article. **EL** enquired why "withdrawal" and not "revocation" is used as is the case in the Visa Code. **Pres:** reference is not only made to visas but also permits.

<sup>63</sup> **DE, EL, NL:** reference should also be made to Article 5a. **AT:** Articles 5a and 6 should be added as grounds for withdrawal or non-extension/non-renewal.

<sup>64</sup> **EL:** the last part of the paragraph could be turned into a separate provision.

<sup>65</sup> **PT** pointed out that this should be a basis for sanctions for the employer and not for the employee. **EL** also found that it is excessive to sanction the worker in this case and suggested that in such a situation seasonal workers would be allowed to change employers as provided for in Article 11.3 (**PT** could support that).

<sup>66</sup> **DE:** scrutiny reservation as this is covered by the Sanctions Directive.

- (b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment, **including remuneration**, according to applicable laws, collective agreements and/or practices are not met, or
- (c) has not fulfilled the obligations based on the work contract.
- (d) has eliminated the positions he is trying to fill, within the 12 months immediately preceding the date of the application, in order to employ third-country nationals through the new application.<sup>67</sup>

3a. Article 7(3) does not apply to a seasonal worker who has a valid contract or a binding job offer for seasonal work in the Member State concerned and can, therefore, be employed by a different employer in accordance with Articles 5, 5b and 6, on the basis of a procedure defined by national law and/or practice.<sup>68</sup>

4. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the third-country national has not complied with the obligations arising from the authorisation for the purpose of seasonal work<sup>69</sup> during a previous stay as a seasonal worker.

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<sup>67</sup> **SK**: scrutiny reservation asking which positions are being referred to. **EL** expressed concerns about the inclusion of this paragraph as it amounts to unfair punishment of workers.

<sup>68</sup> **EE, SK**: scrutiny reservations. **FR**: the paragraph seems to imply that an initial authorisation procedure will apply but it is not clear. **HU** (scrutiny reservation): this should not be an obligation to allow for a change of employers as a new assessment of the situation needs to be done.

<sup>69</sup> **SE** (scrutiny reservation): "... from the decision *on authorisation to work, the long-stay visa or the seasonal worker permit*".

<sup>70</sup> **LV** could not support the deletion of the paragraph.

5. Member States may refuse to extend or renew the authorisation for the purpose of seasonal work when the vacancy in question could be filled by nationals of the Member State concerned or by other EU citizens, or by third-country nationals lawfully residing in the Member State [...].

6. Member States shall refuse to extend or renew the authorisation for the purpose of seasonal work where the maximum duration of stay as defined in Article 11(1) has been reached.<sup>71</sup>

7. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the third-country national applies for international protection under Council Directive 2011/95/EU of 13 December 2011 or if the third-country national applies for protection in accordance with national law, international obligations or practice of the Member State concerned.<sup>72</sup>

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8. Without prejudice to Article 11(2a), Member States may withdraw an authorisation for the purpose of seasonal work following the termination of a work contract.<sup>74</sup>

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<sup>71</sup> **FR:** scrutiny reservation on the maximum duration of validity of the permit. **PT:** there should be a possibility for the status of a seasonal worker to be converted into another status if the person concerned finds another job. **EL** was opposed to this as it could open up a window for other types of migration.

<sup>72</sup> **EE:** reservation. **CZ, EE:** this should be a shall-clause. **DE** suggested to add that "Member States may determine that the authorisation expires or may withdraw ...": **Cion:** an automatic expiry of the authorisation would be problematic for reasons of legal security enquiring how the employer or the person concerned would know that the permit has expired. **SE** could support the paragraph as long as it remains a may-provision.

<sup>73</sup> **AT** suggested to add the following new paragraph 6: "*Member States may refuse to extend or renew the authorisation for the purpose of seasonal work, the long-stay visa or the seasonal worker permit because of the grounds under Article 5a and 6(2) to (4)*".

<sup>74</sup> **CZ:** this paragraph seems to be covered by reference to Article 5 in paragraph 1 of this Article.

<sup>75</sup> **SE** suggested to add the following new paragraph 9: "Grounds for withdrawal or non-extension/non-renewal of a short-stay visa are regulated in the relevant provisions of the regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas."

**Article 7a**  
*Obligation of cooperation*<sup>76</sup>

Member States shall require the employer to provide all relevant information needed for granting, withdrawing, [...] extending **or renewing** the authorisation for the purpose of seasonal work.<sup>77</sup>

**Article 7b**  
*Sanctions*<sup>78</sup>

1. Member States shall provide for sanctions against employers who have not fulfilled the obligations based on this Directive. Those sanctions shall be effective, proportionate and dissuasive.
2. Sanctions in accordance with paragraph 1 may include the exclusion of employers who have not fulfilled the obligations based on this directive from applications for seasonal workers for up to 3 years.<sup>79</sup>
3. An application for authorisation for the purpose of seasonal work may be considered inadmissible if the employer has been excluded from applications for seasonal workers on the grounds set out in paragraph 1.

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<sup>76</sup> **EE, FR:** scrutiny reservations.

<sup>77</sup> **DE** (reservation): it should be a "may-clause". **EL** supported this being a mandatory clause but suggested to insert: "... the employer *or the employee* to provide..."

<sup>78</sup> **EL, FR:** scrutiny reservations on the Article. **DE:** reservation.

<sup>79</sup> **DE, FR:** scrutiny reservations on the timeline of 3 years. **FR:** there is no need for such as a precise provision as national legislation should apply suggesting to insert: "*in application of national law*" instead of "for up to 3 years".

## CHAPTER III

### Procedure and authorisations for the purpose of seasonal work <sup>80</sup>

#### *Article 8*

##### *Access to information*

Member States shall take the necessary measures to make available information on conditions of entry and stay, including rights and all documentary evidence needed for an application for authorisation for the purpose of seasonal work.

#### *Article 9*

##### *Applications for authorisations for the purpose of seasonal work <sup>81</sup>*

1. Member States shall determine whether an application for a seasonal worker permit is to be made by the third-country national and/or by the employer.
2. Member States shall designate the authorities competent to receive and decide on the application for and to issue an authorisation for the purpose of seasonal work. <sup>82 83</sup>

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<sup>80</sup> **SE:** the heading could be simplified to say "Procedure and authorisation". **FR:** scrutiny reservation on the new title and a reservation on Chapter III regarding the scope of application of the Directive. **ES:** there might be a need to include an Article on fees such as Article 10 in the Single Permit Directive.

<sup>81</sup> **AT, EE, PT:** scrutiny reservations. **AT** suggested to provide for the possibility of social partners to participate in the decision-making procedure.

<sup>82</sup> **EL:** scrutiny reservation on the paragraph.

<sup>83</sup> New Recital: "**The designation of the competent authority under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, with regard to the examination of, and the decision on, the application.**" **EL:** the reference to social partners should be deleted. **DE:** the wording is acceptable as "where applicable" refers to social partners. **ES:** the reference to authorities should be in the plural in the recital too as is the case in the Article.

3. The application for a seasonal worker permit shall be submitted in a single application procedure.<sup>84</sup>
4. If required for initial entry, the Member State concerned shall facilitate the obtaining of a long-stay visa by the third-country national whose application for a seasonal worker permit has been accepted.<sup>85</sup>

### *Article 10*

#### *Authorisations for the purpose of seasonal work*<sup>86</sup>

1. For stays exceeding three months, Member States shall grant applicants who comply with the provisions of Article 5b and do not fall under the grounds set out in Article 6 a long-stay visa or a seasonal worker permit.<sup>87</sup>

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<sup>84</sup> **EE, EL:** scrutiny reservations.

<sup>85</sup> **BG:** the paragraph adds no value and should therefore be deleted. **DE, EL, ES:** scrutiny reservations on the paragraph. **DE** suggested to delete the paragraph as it is not clear what purpose it serves. Furthermore, it could create confusion and lead to discrimination as a long-stay visa can be used as a basis for seasonal work. **EL:** it is not clear whether a work permit should be granted before an entry visa is issued. **EE** suggested to refer to visas without specifying the type of a visa.

<sup>86</sup> **AT, CZ, FR, PT:** reservations, **DE, EE, ES, PL:** scrutiny reservations on the Article. **DE:** the Article is overly complex suggesting to keep only paragraphs 3 and 5 as the rest would be covered by the Recital in footnote 3. If, however, the other paragraphs are kept, reference should also be made to the grounds of refusal in Article 6 could be added. **FR** suggested to delete any references to stays exceeding three months or less than three months in this Article. **PT** was opposed to combining the Schengen acquis with this Directive.

<sup>87</sup> **AT:** scrutiny reservation. **DE:** reservation as the paragraph is misleading and should be deleted. **PL:** the use of the term "applicants" is not correct since this can also cover employers. **Cion:** the reference to applicants enables to cover employers in cases where work permits are issued to employers.

2. Member States may grant applicants who comply with the provisions of Articles 5 or 5b and do not fall under the grounds set out in Article 6, a work permit authorising a third-country national to work as a seasonal worker in connection with the issuance of **a short-stay visa or a long-stay visa** for the purpose of seasonal [...].<sup>88</sup>
- 2a. Member States shall grant a work permit, in the case of stays not exceeding three months, to those applicants who comply with the provisions of Article 5 and do not fall under the grounds set out in Article 6, where the third-country national is exempted from the visa obligation in accordance with Annex II of Regulation 539/2001 and to whom Member States do not apply Article 4 (3) of Regulation 539/2001.<sup>89</sup>
3. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in Council Regulation (EC) No 1030/2002. Member States shall enter a reference on the permit stating that it is issued for the purpose of seasonal work.
4. In accordance with Article 18 of the Schengen Convention and with point 12 of the Annex to Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas, Member States shall enter a reference stating that it is issued for the purpose of seasonal work under the heading 'remarks' on the visa sticker issued for long stays.<sup>90</sup>

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<sup>88</sup> **EL**: scrutiny reservation. **CZ, PT**: reservations on the paragraph. **CZ**: the wording implies a simultaneous issuance of work permits and visas which should not be the case. **EE, PT** would like to be able to issue national visas also for stays shorter than 3 months. **DE**: reference should also be made to short-stay visas. **FR** also enquired why only long-stay visas are being referred to here.

<sup>89</sup> **AT, EL, ES, FR**: scrutiny reservations. **CZ, PT**: reservations on the paragraph. **CZ, DE, EE, PL, PT**: this should be a may-clause. **DE**: this should be a may-provision as it should not be limited to work permits forever. **CZ**: issuing of work permits falls under national competence and should thus not be regulated at EU level.

<sup>90</sup> **ES, PT**: scrutiny reservations. **FR** enquired why the paragraph applies to long-stay visas only. **EL** suggested to add: "Article 18 of the Schengen Convention *as amended by Regulation (EU) 265/2010*" pointing out that the comment must be inserted in the language of the MS concerned.

5. Member States may indicate additional information related to the employment relationship of the seasonal worker (such as the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and in point (a)16 of the Annex thereto.

### *Article 11*

#### *Duration of stay*<sup>91</sup>

1. Seasonal workers shall be allowed to stay for a maximum of five to nine months in any period of twelve months, after which they shall return to a third country unless the Member State concerned [...] grants a residence permit under national law or Union law for purposes other than seasonal work.<sup>92</sup>
- 1a. Member States may determine a maximum aggregate period of time during which an employer is allowed to hire seasonal workers in any period of twelve months. This period should not be shorter than the maximum period **determined by a Member State in accordance with [...]** paragraph 1.

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<sup>91</sup> **AT**: reservation on the Article. **BG, DE, EL, ES, FR, PT**: scrutiny reservations on the Article.

<sup>92</sup> **AT**: replace with "granted". **SE** could not support the addition of "for purposes other than seasonal work". **EL**: reservation, the last part of the paragraph should be deleted as there should not be a possibility to change the status since it would convey the wrong message implying that seasonal workers are able to stay on. It is also contrary to the principle of circular migration expressed in Recital 17. **FR** (scrutiny reservation): delete the reference to "Union law". **BG**: the last part of the paragraph referring to a residence permit for purposes other than seasonal work could be transferred to a recital instead as it could send a wrong signal when placed in an Article.

**AT** explained that it has two seasons and many seasonal workers are employed during both seasons. After 12 months of employment the foreign worker has to leave the country for two months. **DE**: scrutiny reservation on the time period. **EL** regretted such an open formulation that does not lead to harmonisation. **EL**: reservation on the 12-month period. **FR** would prefer the maximum of 6 months in a year with a residence card that is valid for 3 years after which it can be renewed.



2. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the provisions of Articles 5 and 5b are complied with and the grounds set out in Article 6 are not met, seasonal workers may be allowed to extend their contract and apply for an extension of their stay, on the basis of a procedure defined by national law and/or practice.<sup>93</sup>
- 2a. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the provisions of Articles 5 and 5b are complied with and the grounds set out in Article 6 are not met, seasonal workers may be allowed to be employed with a different employer on the basis of a procedure defined by national law and/or practice and, if necessary, apply for an extension of their stay.<sup>94</sup>
3. For the purposes of paragraphs 2 and 2a, Member States shall accept the submission of an application by a seasonal worker admitted under the terms of this Directive and staying on the territory of the Member State concerned.<sup>95</sup>

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<sup>93</sup> **EE, HU:** scrutiny reservations concerning the renewal of the long-stay visa as it contradicts the temporary nature of this kind of employment. **AT:** it should be up to MS to decide whether long-stay visas can be extended or not. **EL:** add in paragraphs 2 and 2a a reference to "a maximum period of five to nine months after which they shall return to a third country". **HU:** reservation on "and/or" asking whether the reference to national practice means that MS are not obliged to allow for the extension of the contract.

<sup>94</sup> **EL:** reservation. **EE, HU:** it is not clear whether a permission from the authorities is required for the change of employers. **SE** stated that it is hard to see how the criteria in Article 5 can be checked as the change of employers is not notified to the authorities. **DE** proposed an alternative wording: "*without prejudice to the right of Member States to allow for the change of employers ...*" **MT** enquired whether seasonal workers can have more than one job at the same time. **HU:** reservation on "and/or".

<sup>95</sup> **BG, EL** (scrutiny reservation): this should be an optional clause. **Cion:** it should stay a "shall-clause". **HU:** scrutiny reservation on the renewal of the long-stay visa due to the short nature of seasonal work.

4. For the purposes of paragraphs 2 and 2a, and if the seasonal worker has been admitted for stays not exceeding 3 months and the extension would result in the overall duration of the stay exceeding 3 months, the competent authorities may extend the initial staying period in which case they shall issue a long-stay visa or a seasonal worker permit covering the duration of the extended stay, on the basis of a procedure defined by national law and/or practice.<sup>96</sup>

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<sup>96</sup> **EL, ES, FR, HU, PL:** scrutiny reservations on the paragraph. **BG, CZ, PT:** reservations on the extension of short stays. **EL, ES, PL:** long-stay visas can only be issued by a consulate in a third country. **EL** suggested that more flexibility be given to MS by providing for a third option (a national authorisation or a permit). **EL** noted that short-stay visas can also be extended in accordance with Article 33 of the Visa Code. **Cion** was opposed to allowing for more options here since sufficient flexibility is already guaranteed and explained that a short-stay visa can only be extended in exceptional circumstances which would not be the case here. **AT:** insert that the overall duration of the stay must not exceed the maximum period as defined in paragraph 1. **CZ, ES, PL:** the provision encroaches on the Schengen acquis; furthermore, the extension of short stays cannot be an obligation for MS. **ES:** turn this into a may-clause or include a reference to a work permit. **HU:** the implementation of this provision would cause practical problems. **BG, ES** referred to legal problems that the extension would cause. **PL:** it should be a may-clause pointing out extension/changing of a Schengen visa is problematic as there are no grounds for it asking what kind of a document would be granted in case a stay is extended by 2 weeks. **FR:** it is important that this is not an automatic extension and that an authorisation to employment is granted when a long-stay visa or a seasonal worker permit is issued. **HU:** the extension would essentially amount to lodging an application for a new authorisation. **DE** suggested by way of a compromise that the provision could be made optional for MS. **Cion:** this is not a matter of extension but a transition from short stay to long stay which does not encroach upon the Schengen acquis speaking in favour of a harmonised approach, i.e. a 'shall' clause.

<sup>97</sup> **AT** suggested to add the following new paragraph to cater for its specific situation having two seasons with many seasonal workers being employed during both seasons after which they have to leave the country for two months: "*By way of derogation from paragraph 1 and 1a and provided that a Member State has applied longer maximum periods for seasonal workers at least ten years preceding the date of entry into force of this Directive, that Member State may, at the end of the maximum period in paragraph 1, allow seasonal workers to stay up to a maximum period of twelve months within any period of fourteen months, after which they shall return to a third country unless the Member State concerned granted a residence permit under national law or Union law for purposes other than seasonal work. Paragraph 1a to 4 and Article 11 paragraph 6 and 8 shall apply accordingly.*" **CZ, SK** could not support **AT** as the period suggested for seasonal work is too long. **Cion:** any derogation from the rules set out in the Directive would go against the principle of harmonization.

## *Article 12*

### *Facilitation of re-entry*

1. Member States may
  - (a) upon application, issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative act,  
  
and/or
  - (b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.<sup>98</sup>

## *Article 13*

### *Procedural safeguards*<sup>99</sup>

1. [...] The competent authorities of the Member State shall adopt a decision on the application for authorisation for the purpose of seasonal work and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State, as soon as possible but not later than 90 days from the date on which the complete application was lodged.<sup>100</sup>

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<sup>98</sup> **EL** noted that issuing multiple-entry visas could involve a number of problems and stated that a facilitated procedure could only be applied to cases that concern the same employer and the same employee and suggested to add "... *under the terms set out by national legislation*". **PL**: it would be difficult to carry out a labour market test in case of a multi-season authorisation as it is impossible to predict the situation is in three years' time. **SI**: it would be technically problematic to issue multiple-entry visas as it is not possible to insert 3 separate remarks on the document. **Cion** clarified that it could be one administrative act covering 3 seasons and only the end of the third season would be indicated on the card.

<sup>99</sup> **FR**: reservation. **PL** asked whether the Article applies to stays not exceeding three months. **Pres** confirmed that this is the case, with the exception of short-stay visas. **ES** (supported by **EE**): decisions on long-stay visas should be excluded from this Article as the current version would lead to complications in implementation.

<sup>100</sup> **HU** asked whether the 90-day period covers the labour market test and the issuance of the permit. **ES** asked whether 90 days covers both the procedure for issuing visas and permits. **Cion** confirmed that it covers the entire procedure.

2. [...] Where the information supplied in support of the application for authorisation for the purpose of seasonal work is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.<sup>101</sup>
3. [...] **Without any prejudice to the visa procedure which may be required for initial entry prior to the issuance of a seasonal worker permit**, any decision not to extend/renew or to withdraw the authorisation for the purpose of seasonal work shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.<sup>102</sup>
4. **Procedures and decisions concerning short-stay visas are regulated in the relevant provisions of the Schengen acquis.**

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<sup>101</sup> **PL** suggested to follow the example of the Blue Card Directive and provide for the possibility to suspend the period laid down in paragraph 1 or to reject the application. **DE**: the paragraph should be deleted as unnecessary.

<sup>102</sup> **EE, EL**: scrutiny reservations. **CZ**: reservation. **Cion** could not support the addition in the paragraph but pointed out that it should be clear that reference is being made to entry visas issued for the collection of seasonal worker permits as referred to in Article 9(4). **DE** also suggested the following wording: "... shall be notified ... to the applicant *in accordance with the notification procedures under the relevant national legislation*. The notification shall specify ... the possible redress procedures available and the time limit for taking action." **EE** (supported by **AT**): scrutiny reservation concerning "legal challenge" as an administrative appeals procedure is used in the case of visas; suggested "*an appeals procedure according to national law*". **CZ**: this issue falls under national competence. **AT**: linguistic reservation. **HU**: a delayed entry into force of the legal remedy could be foreseen.

### *Article 13a*

#### *Fees*<sup>103</sup>

Member States may require applicants to pay fees for handling applications in accordance with this Directive. The level of such fees shall be proportionate and may be based on the services actually provided for the processing of applications and the issuance of authorisations for the purpose of seasonal work. [...] Fees for short-stay visas [...] are regulated in the relevant provisions of the Schengen acquis.

### *Article 14*

#### *Accommodation*

Member States shall require the applicant to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national legislation and/or practice. If the accommodation is provided by the employer and the seasonal worker is required to pay rent for such accommodation, its costs shall not be excessive in relation to their remuneration.<sup>104</sup>

### *Article 14a*

#### *Placement by public employment services*

Member States may determine that the placement of seasonal workers from third countries shall only be carried out by public employment services.<sup>105</sup>

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<sup>103</sup> **EL:** scrutiny reservation. **IT** (supported by **EE**, **SE**) suggested the following wording: "... and the issuance of authorisations for the purpose of seasonal work. Fees for short-stay visas are regulated in the relevant provisions of the Schengen acquis." **DE:** reservation as the last part of the second sentence should be deleted.

<sup>104</sup> **DE** would have preferred the original Cion proposal. **FR:** scrutiny reservation as the employer should provide evidence of accommodation.

<sup>105</sup> **ES**, **PL**, **SI:** scrutiny reservations.

## CHAPTER IV Rights

### *Article 15*<sup>106</sup>

*Rights on the basis of the seasonal worker permit or the long-stay visa*

During the period of validity of a seasonal worker permit or a long-stay visa, issued for the purpose of seasonal employment, the holder shall enjoy at least the following rights:<sup>107</sup>

- (a) the right to enter and stay in the territory of the Member State issuing the seasonal worker permit or the long-stay visa, provided that the holder meets all the admission requirements in accordance with national law;<sup>108</sup>
- (b) free access to the entire territory of the Member State issuing the seasonal worker permit or the long-stay visa within the limits provided for by national law;
- (c) the right to exercise the concrete employment activity authorised under the seasonal worker permit as well as under [...] the long-stay visa and the work permit, if required, in accordance with national law.

### *Article 16*

*Right to equal treatment*<sup>109</sup>

1. Seasonal workers admitted under this directive shall enjoy equal treatment with nationals of the Member State concerned with regard to:

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<sup>106</sup> **AT, ES:** scrutiny reservations on the Article.

<sup>107</sup> **DE:** scrutiny reservation.

<sup>108</sup> **SE** questioned whether the part of the sentence starting with "provided that ..." is necessary.

<sup>109</sup> **EL, EE, HU:** scrutiny reservations, **BG, EL, LT:** reservations on the Article. **BG:** the provisions of this Article should align with the ones in the ICT Directive.

- (a) Working conditions, including pay and dismissal as well as health and safety requirements at the workplace;
- (b) freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
- (c) provisions in national laws regarding the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04, **with the exception of unemployment benefits;** <sup>110</sup>

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<sup>110</sup> **BG, FI:** reservations. **AT, EE, EL, ES, MT, PL, SI:** scrutiny reservations. **AT:** the paragraph should be aligned with Article 14(2)(c) of the ICT Directive. **BG, DE, EL, ES, PL** supported the changes in the paragraph. **FI** (supported by **BG, EE, IT, LV, SE**) suggested the following modifications to the paragraph: "... with the exception of unemployment benefits *and sickness benefits in kind which are not provided in connection with, or as a result of the work carried out in the Member State concerned.*" **DE, EL, SI, SK** would not oppose the FI proposal. **AT, BE, DE** needs to further scrutinise the FI suggestion. **CZ, FR, PT** were opposed to the FI suggestion. **FR:** the general principle of full equal treatment of seasonal workers regarding social security asking whether it is necessary to exclude unemployment benefits as seasonal workers do not qualify for them anyway. Alternatively, a reference to national law could be inserted. **PT** could not support restrictions of the principle of equal treatment. **Cion** was opposed to the FI proposal and also to the exclusion of unemployment benefits which are the property of the persons who have paid contributions pointing. **Cion** added that there is normally a qualifying period for unemployment benefits, furthermore, Article 7(8) gives MS the possibility to withdraw the authorisation for the purpose of work following the termination of a work contract which means that the person would be obliged leave the territory of the MS concerned. **BE** suggested to merge paragraphs 1(c) and 2 in order to have all the exceptions grouped under 1(c). **EE** suggested to add the following in the paragraph: "*An employment office may offer to the seasonal worker, who has the right to receive unemployment benefits, suitable vacancies of seasonal work.*" **BG** was against granting any residence-based benefits to seasonal workers also suggesting that the legal base should be extended to Article 153 of the Treaty. **Cion** did not support the suggestion to change the reference to Article 3(1) and explained that the purpose of the reference to Regulation 883/04 is only to define the categories of benefits and noted that limiting equal treatment to contribution-based benefits only is far below the practice in the EU, furthermore, contrary to national systems, no clear distinction between contributory and non-contributory benefits is made at the EU level. **Cion** also commented that it is clear from the Directive that seasonal workers reside temporarily in the territory of the EU. It added that while there is a clear distinction between residents and non-residents in the field of social security, there is no such clear distinction in migration law.

- (d) payment of statutory pensions based on the worker's previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when moving to a third country;<sup>111</sup>
- (e) access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining housing as provided for by national law, without prejudice to the freedom of contract in accordance with Union and national law, and services afforded by employment offices.<sup>112</sup>
2. Member States may decide that equal treatment under point (c) of paragraph 1 shall not apply as regards family benefits without prejudice to Council Regulation (EC) No 1231/2010.<sup>113</sup>

<sup>111</sup> **BG**: reservation. **AT, EE, EL**: scrutiny reservations. **AT**: reference should be made to existing bilateral agreements similarly to the corresponding provision in the ICT Directive. **ES**: reference should be made to Article 3(1) c), d), e) and f). **Cion**: equal treatment with nationals should be given in all cases.

<sup>112</sup> **EL**: scrutiny reservation. **BG**: reservation. **MT**: replace with "... *except services afforded by employment offices*" pointing out that Cion proposal excluded both housing and counselling services. **DE** (supported by **AT**) proposed the following recital in order to clarify the term "services": "*The Directive does not cover equal treatment of seasonal workers as regards education and training.*" **EL** suggested that a clarification of the term "services" should be considered.

<sup>113</sup> **PT**: scrutiny reservation. **BG, FR**: reservations. **AT** suggested to align the wording with Article 14 (2)(c) of the ICT Directive by excluding family benefits in Article 16(1)(c). **FR, PT** could not support any exceptions from the principle of equal treatment. **FR** suggested to use the same approach as was adopted in the Single Permit Directive. **FI, LT** (supported by **AT**): MS should have a right to decide on exceptions in other fields besides family benefits such as residence-based benefits. **FI**: add the following paragraph: "*In addition, Member States may decide that point (c) of paragraph 1 with regard to sickness benefits in kind is conditional to having sickness insurance as set out in Article 5(1) (b) of this Directive and Article 5b(1)(b).*" **Cion** opposed any derogations from the principle of equal treatment with national workers and explained that although no family reunification is foreseen under the Directive, family members could be on the territory of a MS on the basis of national provisions. Cion could not support the exclusion of residence-based benefits either as such a category of benefits has not been defined at the EU level.



3. The right to equal treatment provided for in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to extend or renew the authorisation for the purpose of seasonal work in accordance with Article 7.<sup>114</sup>

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### Article 17

#### Facilitation of complaints<sup>116</sup>

Member States shall ensure that third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of a seasonal worker, with his/her approval, in any administrative or civil proceedings, excluding the procedures and decisions concerning short-stay visas, provided for with the objective of implementing this Directive.

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<sup>114</sup> **AT, PT:** scrutiny reservations.

<sup>115</sup> **DE** (supported by **EL**) suggested to add the following subparagraph by way of a clarification on Article 16(1)(e): "*The right to equal treatment provided for in this Article does not include study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training*". **DE** argued that due to the unspecific wording in Article 16(1)(e) it is not possible to know what it covers. **Cion:** in other legal migration directives study grants and loans have always been formulated as part of access to education and it would be confusing to refer to them in the context of goods and services here.

<sup>116</sup> **EE:** reservation. **DE:** reservation opposing the engagement of third parties. **EL:** scrutiny reservation suggesting to add the following: "... third parties *designated in accordance with national law*..." **EL** also pointed out that the Article should concern specific rights of seasonal workers that are violated and not any administrative or civil proceedings. **SE** noted that the heading of the Article is not in line with the content and should thus be amended.

## CHAPTER V

### Final provisions

#### *Article 18*

#### *Statistics*<sup>117</sup>

1. Member States shall, **in accordance with Regulation (EC) No. 862/2007**, communicate to the Commission statistics on the number of [...] **authorisations for the purpose of seasonal work** issued for the first time **and, as far as possible, on the number of third-country nationals whose authorisation for the purpose of seasonal work has been [...]** extended/renewed [...] **or withdrawn, including their nationality and, as far as possible, [...]** the length of validity of the **authorisation and the economic sector**.<sup>118</sup>

[...]<sup>119</sup>

2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be [*the year following the point of time referred to in Article 20(1)*].

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<sup>117</sup> **AT, DE, FR, PT:** scrutiny reservations on the Article.

<sup>118</sup> **EL, ES, PL:** scrutiny reservations. **FR:** reservation. **FI:** Regulation 862/2007 does not cover stays under three months. **EL:** the obligation to collect statistics in Regulation 862/2007 applies to residence permits but not national visas and permits. **PL** (supported by **SI**): the collection of data according to the economic sector would be difficult and would create excessive administrative burden.. **Cion:** the statistics should also be disaggregated by economic sectors.

<sup>119</sup> OJ L 199, 31.7.2007, p. 23.

## *Article 19*

### *Reporting*

Every three years, and for the first time no later than [*three years after the date of transposition of this Directive*], the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.<sup>120</sup>

## *Article 20*

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (*three years from the date of publication in the Official Journal of the European Union*) at the latest. They shall forthwith communicate to the Commission the text of those provisions.<sup>121</sup>

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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<sup>120</sup> **DE:** reservation.

<sup>121</sup> **Cion:** the transposition deadline should be two years.

***Article 21***

*Entry into force*

This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

***Article 22***

*Addressees*

This Directive is addressed to the Member States, in accordance with the Treaty on the Functioning of the European Union.

Done at Brussels, [...]

*For the European Parliament*

*For the Council*

*The President*

*The President*

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