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**A7-0428/2013**

3.12.2013

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**REPORT**

on the 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 (COM(2010)0379 – C7-0180/2010 – 2010/0210(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Claude Moraes

Rapporteur for the opinion (\*): Alejandro Cercas, Committee on Employment and Social Affairs

(\*): Associated committee – Rule 50 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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(\*) Associated committee – Rule 50 of the Rules of Procedure



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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  
(COM(2010)0379 – C7-0180/2010 – 2010/0210(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0379),
- having regard to Article 294(2) and points (a) and (b) of Article 79(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0180/2010),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Chamber of Deputies, the Czech Senate, the Netherlands Senate, the Netherlands House of Representatives, the Austrian National Council and the Austrian Federal Council, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 4 May 2011<sup>1</sup>,
- having regard to the opinion of the Committee of the Regions of 31 March 2011<sup>2</sup>,
- having regard to the undertaking given by the Council representative by letter of 6 November 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rules 55 and 37 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs and the Committee on Women's Rights and Gender Equality (A7-0428/2013),

1. Adopts its position at first reading hereinafter set out;

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<sup>1</sup> OJ C 218, 23.7.2011, p. 97.

<sup>2</sup> OJ C 166, 7.6.2011, p. 59.

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Amendment 1**

**Amendment 1**

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**on the conditions of entry and *stay***

**of third-country nationals for the purposes of seasonal employment**

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<sup>1</sup>,

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

<sup>1</sup> OJ C , , p. .

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

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

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.
  - (1a) ***The Treaty provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence of third country nationals and on the definition of their rights.***
- (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.

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<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

- (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 also highlights the importance of ensuring fair treatment of third-country nationals residing legally on the territory of the Member States and of optimising the link between migration and development.*** It invites the European Commission and the European Council to continue implementing the Policy Plan on Legal Migration<sup>1</sup>.
- (6) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration ***and to ensuring decent working and living conditions for seasonal workers***, by setting out fair and transparent rules for admission and stay **■** ***and by defining the rights of seasonal workers*** while at the same time providing for incentives and safeguards to prevent ***overstaying and/or*** temporary stay from becoming permanent. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the **■** Council ***of 18 June 2009*** providing for minimum standards on sanctions and measures

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<sup>1</sup> COM(2005) 669



against employers of illegally staying third-country nationals<sup>1</sup> will contribute to avoiding such temporary stay turning into *unauthorised* stay.

- (6a) *Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC of 29 June 2000<sup>2</sup> implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>1</sup>.*
- (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 *the relevant* Acts of Accession.
- (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** .
- (9) This Directive should not affect conditions of the provision of services in the framework of Article 56 of the TFEU. 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.
- (9a) *This Directive aims at covering direct working relationships between seasonal workers and employers. However, where a Member State's national law allows*

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<sup>1</sup> OJ L 168, 30.6.2009, p. 24.

<sup>2</sup> *OJ L 180, 19.7.2000, p. 22.*

*admission of third-country nationals as seasonal workers through employment or temporary work agencies established on its territory and which have a direct contract with the seasonal worker, such agencies should not be excluded from the scope of this Directive.*

- (10) *When transposing this Directive, Member States should, where appropriate in consultation with social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. Activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture and horticulture, in particular during the planting or harvesting period, or tourism, in particular during the holiday period.*
- (10a) *When laid down in national law and in accordance with the principle of non-discrimination as set out in Article 10 of the Treaty, Member States are allowed to apply more favourable treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive.*
- (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.
- (11a) *Admission for the purposes set out in this Directive may be refused on duly justified grounds. In particular, admission could be refused if a Member State considers, based on an assessment of the facts, that the third-country national concerned is a potential threat to public policy, public security or public health.*
- (11b) *This Directive should be without prejudice to the application of Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>2</sup>.*
- (12) The Directive should not *adversely* affect, where granted, the rights of third-country nationals already legally staying in a Member State to work.

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<sup>1</sup> OJ L 303, 2.12.2000, p. 16.

<sup>2</sup> OJ L 348, 24.12.2008, p. 98.

*(12a) In the case of Member States applying the Schengen acquis in full, Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas<sup>1</sup> (Visa Code), 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>2</sup> (Schengen Borders Code), 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>3</sup> apply in their entirety.*

*This entails that, for stays not exceeding three months, the conditions for admission of seasonal workers to the territory of the Member States applying the Schengen acquis in full are regulated by those instruments, while the present Directive should only regulate the criteria and requirements for access to employment. In the case of Member States not applying the Schengen acquis in full, with the exception of the United Kingdom and Ireland, 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.*

*(12b) Criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding three months are defined in this Directive as far as employment as a seasonal worker is concerned. When short-stay visas are issued for the purpose of seasonal work, the relevant provisions of the Schengen acquis concerning the conditions of entry and stay in the territory of Member States as well as grounds for refusal, extension, annulment or revocation of those visas apply accordingly. In particular, any decision on refusal, annulment or revocation of a visa and the reasons on which it is based should be notified, in accordance with Article 32(2) and 34(6) of the Visa*

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

<sup>2</sup> OJ L 105, 13.4.2006, p. 1.

<sup>3</sup> OJ L 81, 21.3.2001, p. 1.

*Code, to the applicant by means of the standard form set out in Annex VI of the Visa Code.*

- (12c) *For seasonal workers that are admitted for stays longer than three months, the present Directive should define both the conditions for admission to and stay in the territory and the criteria and requirements for access to employment in the Member States.*
- (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 *essential aspects of the contract or employment relationship*.
- (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 leave the territory of the Member State concerned on the expiry of an authorisation for the purpose of seasonal work.*
- (14b) *Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed in order to prevent possible abuse and misuse of the procedure set out in this Directive.*
- (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 organisation and practice.
- (15a) *The designation of the competent authorities under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, in accordance with national law and/or practice, with regard to the examination of, and the decision on, the application.*

- (15b) *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. The issuance of a long-stay visa in accordance with Article 9(2)(a) is without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned. 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.*
- (15c) *For all stays not exceeding three months per 6-month period, Member States should choose to issue either a short-stay visa or a short-stay visa accompanied by a work permit in cases where the third-country national requires a visa in accordance with Regulation (EC) N° 539/2001. Where the third-country national is not subject to the visa obligation or where the Member State did not apply Article 4(3) of that Regulation, the Member States should issue a work permit to him or her. For all stays exceeding three months, Member States should choose to issue one of the following authorisations: a long-stay visa; a seasonal worker permit; or a seasonal worker permit accompanied by a long-stay visa, if the long-stay visa is required under national law for entering the territory. Nothing precludes Member States from delivering a work permit directly to the employer.*
- (15d) *When a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued a seasonal worker permit, the Member State concerned should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate to that purpose.*
- (16) The *maximum* duration of stay should be *fixed by Member States and* limited to a **■** period **■** *of between five to nine months* which, together with the definition of seasonal work, should ensure that the work is of genuinely seasonal nature. Provision should be made that within that maximum duration of stay, an extension of the contract or change of employer is possible, *provided that the criteria of admission*

*continue to be met.* This should serve to reduce risks of abuses that seasonal workers may face if tied to a single employer and at the same time provide for a flexible response to employers' *actual workforce needs.* *The possibility for the seasonal worker to be employed with a different employer under the conditions laid down in this Directive should not entail the possibility for the seasonal worker to seek employment on the territory of the Member States while being unemployed.*

- (16a) *When deciding on the extension of stay or the renewal of the authorisation for the purpose of seasonal work, Member States should be able to take into consideration the labour market situation.*
- (16b) *In cases where a seasonal worker has been admitted for a stay not exceeding three months and where the Member State has decided to extend it beyond three months, the short-stay visa should be replaced either by a long-stay visa or a seasonal worker permit.*
- (17) *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 facilitated admission procedures for bona fide third-country nationals having been admitted as seasonal workers in a Member State at least once within the previous 5 years, and having always respected all criteria and conditions provided under this Directive for entry and stay in the Member State concerned, should be provided. Such arrangements should not affect, or circumvent, the requirement that the employment be of a seasonal nature.*
- (17a) *Member States should do their best to ensure that information on conditions of entry and residence, including the rights and obligations and the procedural safeguards as laid down in this Directive and all documentary evidence needed for an application to reside and work in the territory of a Member State as a seasonal worker, is made available to applicants.*
- (17b) *Member States should provide for effective and proportionate sanctions against employers in the event of breaches of their obligations under this Directive. Those*

*could consist of sanctions as provided for in Article 7 of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Such sanctions should include, if appropriate, liability of the employer to pay compensation to seasonal workers. The necessary mechanisms should be in place to enable seasonal workers to obtain the compensation to which they are entitled even if they are no longer on the territory of the Member State in question.*

(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.*

*(18b) The competent authorities of the Member States should decide on applications for an authorisation for seasonal work as soon as possible. In relation to applications for an extension or renewal, where filed within the validity of the authorisation, Member States should take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employer, due to on-going administrative procedures. Applicants should submit their application for extension or renewal as soon as possible. In any event, the seasonal worker should be allowed to stay on the territory of the Member State concerned, and where appropriate to continue working, until a final decision on the application has been taken by the competent authorities.*

*(18c) Given the nature of seasonal work, Member States are encouraged not to charge a fee for the handling of applications. In the event that a Member State nevertheless decides to charge a fee, such a fee should not be disproportionate or excessive.*

- (19) *Seasonal workers should all benefit from accommodation that ensures an adequate standard of living, with the competent authority informed of any change of accommodation. Where that accommodation is arranged by or through the employer, the rent should not be excessive in relation to his/her net remuneration nor to the quality of that accommodation; the seasonal worker's rent should not be automatically deducted from his/her wage; the employer should provide the seasonal worker with a rental contract or equivalent document stating the rental conditions for the accommodation, and the employer should ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.*
- (19a) *Third-country nationals who are in possession of a valid travel document and an authorisation for the purpose of seasonal work issued under this Directive by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months in accordance with 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 (Schengen Borders Code) and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders<sup>1</sup> (Schengen Implementing Convention).*
- (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 the rights of third-country *national seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, abiding by the concept of the same pay for the same work in the same workplace, by applying collective agreements and other arrangements on working conditions which have been concluded at all possible levels or for which*



*there is statutory provision, in accordance with national law and practice, under the same terms as to nationals of the host Member State.*

- (20a) *This Directive should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and, where relevant, the European Convention on the Legal Status of Migrant Workers of 24 November 1977.*
- (21) *In addition to the legislative, administrative and regulatory provisions applicable to workers who are nationals of the host Member State, arbitration decisions and collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice, should also apply to third-country national seasonal workers under the same terms as to nationals of the host Member State.*
- (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>2</sup>. The Directive does not harmonise the social security legislation of Member States and does not cover social assistance. 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 **Union** legislation in the field of social security for third-country nationals who have cross-border interests between Member States.
- Due to the temporary nature of the stay of third-country nationals admitted for the purpose of seasonal employment under this Directive and without prejudice to Council Regulation (EC) No 1231/2010, Member States should have the possibility to exclude family benefits and unemployment benefits from equal treatment of seasonal workers and to limit the application of equal treatment in relation to education and vocational training, as well as tax benefits.*

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<sup>1</sup> *OJ L 239, 22.9.2000, p. 90.*

<sup>2</sup> *OJ L 166, 30.4.2004, p. 1.*

*This Directive does not provide for family reunification.* 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. 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. *Mechanisms should be in place, in order to ensure effective social security coverage during the stay and the exporting of acquired rights of the seasonal workers, where applicable.*

- (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.*
- (22b) *Any restrictions to the equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred in application of Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.*
- (22c) *To ensure the proper enforcement of this Directive, and in particular the provisions regarding rights, working conditions and accommodation, Member States should ensure that appropriate mechanisms for the monitoring of employers are in place and that, where appropriate, effective and adequate inspections are carried out on their territory. The selection of employers to be inspected should be based primarily on a risk assessment to be carried out by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.*

- (23) To facilitate enforcement *of this Directive, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through* relevant ■ third parties such as trade unions or other associations ■ . 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. *Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.*
- (24) Since the objectives, namely the introduction of a special admission procedure■ , the adoption of conditions on entry and residence for the purpose of seasonal employment by third-country nationals *and the definition of their rights as seasonal workers*, cannot be sufficiently achieved by *the* Member States and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the *principle of* subsidiarity ■ as set out in Article 5 of the Treaty on European Union, *taking account of immigration and employment policies at European and national level*. 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.
- (25) This Directive respects the fundamental rights and observes the principles recognised ■ by the Charter of Fundamental Rights of the European Union *in particular, Articles 7, 15(3), 17, 27, 28, 31 and 33(2) thereof, in accordance with Article 6 of the Treaty on 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.*

- (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:

## CHAPTER I

### **GENERAL PROVISIONS**

#### Article 1

#### Subject-matter

1. This Directive determines the conditions of entry and *stay* of third-country nationals for the purposes of employment as seasonal workers and defines the rights of seasonal workers.
2. ***For stays not exceeding three months, 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, 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, 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.***

## Article 2

### Scope

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. *This Directive shall not apply to third-country nationals who at the time of application reside in the territory of Member States with the exception of cases referred to in Article 11a.*
  - 1a. *When transposing this Directive, Member States shall, where appropriate in consultation with social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. The list of sectors which include activities that are dependent on the passing of the seasons may be modified by Member States, where appropriate after consultation of the social partners. The Member States shall inform the Commission of such modifications.*
2. This Directive shall not apply to third-country nationals :
  - (a) who are carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of service in accordance with Directive 96/71/EC.
  - (b) *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.*
  - (c) *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, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in *that* Member State.
- (c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year by *a recurring* event or pattern *of events linked to seasonal conditions* during which *required* labour levels are *significantly* above those necessary for usually ongoing operations;
- (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 *for a stay exceeding three months* under the terms of this Directive;
- (da) *'short-stay visa' means an authorisation issued by a Member State as provided for in Article 2(a) of the Visa Code or issued in accordance with the national law of Member States not implementing the Schengen acquis in full;*
- (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*;
- (g) "*authorisation for the purpose of seasonal work*" means any of the authorisations referred to in Article 9 entitling the holder to stay and work on the territory of the Member State having issued the authorisation under the terms of this Directive;
- (h) '*work permit*' means any authorisation issued by a Member State in accordance with national law for the purpose of work in the territory of that Member State.

#### Article 4

##### More favourable provisions

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 *third country nationals* to whom it applies in respect of Articles *13, 13a, 14, 16 and 17* of this Directive.

#### CHAPTER II

##### *CONDITIONS OF ADMISSION*

#### Article 5

Criteria *and requirements* for admission *to employment as a seasonal worker for stays not exceeding three months*

1. Applications for admission to a Member State under the terms of this Directive *for a stay not exceeding three months* shall be accompanied by **■** :
  - (a) 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 *place and type of the work, duration of employment, the remuneration* and the working hours per week or month, *the amount of any paid leave*, and, *where applicable*, other relevant working conditions, *and, if possible, the date of commencement of employment*.
  - (b) **■** *evidence of having or, if provided for by national law, having applied for 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.*
  - (d) *evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, in accordance with the provisions laid down in Article 14.*
- 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. *Based on the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will not have recourse to their social assistance systems.*
3. *Member States may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of the regulated profession, as defined in Directive 2005/36/EC, specified in the work contract or binding job offer.*
4. *When examining an application for an authorisation referred to in Article 9(1), 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 5a*

*Criteria and requirements for admission as a seasonal worker for stays exceeding three months*

1. *Applications for admission to a Member State under the terms of this Directive for a stay exceeding three months shall be accompanied by:*
  - (a) *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 place and type of the work, duration of employment, the remuneration and the working hours per week or month, the amount of any paid leave, and, where applicable, other relevant working conditions and, if possible, the date of commencement of employment.*
  - (b) *evidence of having or, if provided for by national law, having applied for 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.*
  - (c) *evidence ■ that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, in accordance with the provisions laid down in Article 14.*

■

- 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. ***Based on the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to **their** social assistance systems.***
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.
4. ***When examining an application for an authorisation referred to in Article 9(2), 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.***
5. ***Member States may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of the regulated profession, as defined in Directive 2005/36/EC, specified in the work contract or binding job offer.***
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 authorisation for the purpose of seasonal work. Member States may also require the period of validity to exceed the intended duration of stay by a maximum of 3 months and the travel document to be issued in the last ten years and to contain at least two blank pages.***

#### ***Article 5b***

##### ***Volumes of admission***

***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 an authorisation for the purpose of seasonal work may be either considered inadmissible or be rejected.***

Article 6  
Grounds for refusal

1. Member States shall reject an application for *authorisation for the purpose of seasonal work where*:
  - (a) the conditions set out in Article 5 *or 5a* are not met; or
  - (b) the documents presented have been fraudulently acquired, or falsified, or tampered with
- 1a. *Member States shall reject, if appropriate, an application for authorisation for the purpose of seasonal work where*:
  - (a) *the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment or where the employer's business is being or has been wound up under national insolvency laws or if no economic activity is taking place; or*
  - (b) *the employer has been sanctioned under Article 12a.*
2. Member States may verify whether the vacancy *in question* could be filled by *nationals of the Member State concerned or by other Union 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 relevant Acts of Accession.*
3. Member States may reject an application *for authorisation for the purpose of seasonal work where*:
  - (a) *the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable laws and/or collective agreements; or*

- (b) *within the 12 months immediately preceding the date of the application, the employer has eliminated a full-time position in order to create the vacancy he/she is trying to fill by use of this Directive;*
  - (c) *the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.*
- 4. *Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.*
- 5. *Grounds for refusing the issuance of a short-stay visa are regulated in the relevant provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.*

#### Article 7

##### Withdrawal *of the authorisation for the purpose of seasonal work*

- 1. Member States shall withdraw *the authorisation for the purpose of seasonal work* issued on the basis of this Directive *where*:
  - (a) *the evidence presented for the purpose of Article 5 or 5a had been fraudulently acquired, or ■ falsified, or tampered with■ or*
  - (b) *where the holder is residing for purposes other than those for which he/she was authorised to reside.*
- 1a. Member States *shall withdraw, if appropriate, the authorisation for the purpose of seasonal work* issued on the basis of this Directive *where*:
  - (a) *■ the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment or where the employer's business is being or has been wound up under national insolvency laws or if no economic activity is taking place; or*

- (b) **■** *if the employer has been sanctioned under Article 12a.*
2. *Member States may withdraw the authorisation for the purpose of seasonal work issued on the basis of this Directive where:*
- (a) *the provisions of Articles 5 or 5a were not or are no longer complied with; or*
  - (b) *the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable laws and/or collective agreements; or*
  - (c) *the employer has not fulfilled the obligations based on the work contract, or*
  - (d) *within the 12 months immediately preceding the date of the application, the employer has eliminated a full-time position in order to create the vacancy he/she is trying to fill by use of this Directive.*
3. *Member States may withdraw 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.*
4. *Grounds for annulment or revocation of a short-stay visa are regulated in the relevant provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.*
5. *Without prejudice to paragraph 1, any decision to withdraw the authorisation shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.*

#### *Article 7a*

#### *Obligation of cooperation*

*Member States may require the employer to provide all relevant information needed for issuing, extending or renewing the authorisation for the purpose of seasonal work.*

## CHAPTER III

### ***PROCEDURE AND AUTHORISATIONS FOR THE PURPOSE OF SEASONAL WORK***

#### Article 8

##### Access to information

1. Member States shall ***make easily accessible to applicants the*** information on **■** all documentary evidence needed for an application **■** ***and information on entry and residence, including the rights and obligations and the procedural safeguards of the*** seasonal worker.
2. ***When third-country nationals are issued an authorisation for the purpose of seasonal work, they shall be provided with information in writing about their rights and obligations under this Directive, including complaint procedures.***

#### Article 9

##### ***Authorisations for the purpose of seasonal work***

1. ***For stays not exceeding three months, Member States shall issue third-country nationals who comply with the provisions of Article 5 and do not fall under the grounds set out in Article 6 one of the following authorisations for the purpose of seasonal work, without prejudice to the rules on the issuance of short-stay visas as laid down in Regulation (EC) N° 810/2009 and in Regulation (EC) No 1683/95 of 29 May 1995:***

**■**

***(a) a short-stay visa, indicating that it is issued for the purpose of seasonal work,***

***or***

***(b) a short-stay visa and a work permit issued in accordance with national law indicating that it is issued for the purpose of seasonal work,***

***or***

(c) *a work permit indicating that it is issued for the purpose of seasonal work, where the third-country national is exempted from the visa*

*obligation in accordance with Annex II of Regulation (EC) N° 539/2001 and the Member State does not apply Article 4 (3) of the same Regulation to him or her.*

*When transposing this Directive, Member States shall provide for either the authorisations referred to in point (a) and (c) or the authorisations referred to in points (b) and (c).*

**2.** For stays exceeding three months, *Member States shall issue third-country nationals who comply with the provisions of Article 5a and do not fall under the grounds set out in Article 6 one of the following authorisations for the purpose of seasonal work:*

(a) *a long-stay visa, indicating that it is issued for the purpose of seasonal work;*

*or*

(b) *a seasonal worker permit;*

*or*

(c) *a seasonal worker permit and a long-stay visa, if the long-stay visa is required under national law for entering the territory.*

*When transposing this Directive, Member States shall provide for only one of the authorisations referred to in points (a), (b) and (c).*

**2a.** *Without prejudice to the Schengen acquis, Member States shall determine whether an application is to be submitted by the third country national and/or by the employer.*

**█** *The obligation on the Member States to determine whether the application is to be made by a third country national or by the employer shall be without prejudice to any arrangements requiring both to be involved in the procedure.*

3. *The seasonal worker permit referred to in paragraph 2, points (b) and (c) 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 case of long-stays visas, 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.*
5. *Member States may indicate additional information related to the employment relationship of the seasonal worker 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.*
6. *When a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued a seasonal worker permit under paragraph 2 (c), the Member State concerned shall grant the third-country national every facility to obtain the requisite visa.*
7. *The issuance of a long-stay visa in accordance with Article 9(2)(a) shall be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned.*

#### *Article 10*

##### *Applications for a seasonal worker permit*

1. *Member States shall designate the authorities competent to receive and decide on the application for and to issue a seasonal worker permit.*
2. *The application for a seasonal worker permit shall be submitted in a single application procedure.*



Article 11

*Duration of stay*

1. *Member States shall determine a maximum period of stay for seasonal workers between five to nine months in any period of twelve months. After that period, the third country national shall leave the territory of the Member State unless the Member State concerned has issued a residence permit under national law or Union law for purposes other than seasonal work.*
2. *Member States may fix a maximum period of time within any 12 months period, during which an employer is allowed to hire seasonal workers. This period of time shall be at least the maximum period of stay referred to in paragraph 1.*

*Article 11a*

*Extension of stay or renewal of the authorisation for the purposes of seasonal work*

1. *Within the maximum period referred to in Article 11(1) and provided that the provisions of Articles 5 or 5a are complied with and the grounds set out in Article 6 paragraphs (1), (1a) and, if applicable, (3) are not met, Member States shall allow seasonal workers one extension of their stay, where seasonal workers extend their contract with the same employer.*
2. *Member States may decide, in accordance with their national law, to allow seasonal workers to extend their contract with the same employer and their stay more than once, provided that the maximum period referred to in paragraph 1 is not exceeded.*
3. *Within the maximum period referred to in Article 11(1) and provided that the provisions of Articles 5 or 5b are complied with and the grounds set out in Article 6 paragraphs (1), (1a) and, if applicable, (3) are not met, Member States shall allow seasonal workers one extension of their stay to be employed with a different employer.*

4. *Member States may decide, in accordance with their national law, to allow seasonal workers to be employed by a different employer and to extend their stay more than once, provided that the maximum period referred to in paragraph 1 is not exceeded.*
5. *For the purposes of paragraphs 1 to 4, Member States shall accept the submission of an application when the seasonal worker admitted under the terms of this Directive is on the territory of the Member State concerned.*
6. *Member States may refuse to extend the stay 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 Union citizens, or by third-country nationals lawfully residing in the Member State. This paragraph shall apply without prejudice to the principle of Union preference as expressed in the relevant provisions of the relevant Acts of Accession.*
7. *Member States shall refuse to extend the stay 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.*
8. *Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work issued 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.*
9. *Article 7(1a) and (2)(b), (c) and (d) shall not apply to a seasonal worker who applies to be employed by a different employer in accordance with paragraph 3 when these provisions apply to the previous employer.*
10. *Grounds for extension of a short-stay visa are regulated in the relevant provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.*

11. *Without prejudice to Article 5a(3) and (6) and Article 6(1), any decision on an application for an extension or renewal shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.*

#### Article 12

##### Facilitation of re-entry

1. Member States shall **█**
- █** *facilitate re-entry of* third-country nationals who were admitted to that Member State as seasonal workers *at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers as laid down in this Directive during each of their stays.*
2. *The facilitation referred to in paragraph 1 may include one or more measures such as:*
- (a) *an exemption from submitting one or more documents referred to in Articles 5 or 5a;*
  - (b) *the issuance of several seasonal worker permits within one administrative act;*
  - (c) *an accelerated procedure leading to a decision on the application for the seasonal worker permit or the long stay visa;*
  - (d) *priority in examining applications for admission as a seasonal worker including taking into account previous admission when deciding on applications with regard to the exhaustion of volumes of admission.*

#### Article 12a

##### Sanctions against employers

1. *Member States shall provide for sanctions against employers who have not fulfilled their obligations arising from this Directive, including the exclusion of employers*

*who are in serious breach of their obligations under this Directive from employing seasonal workers. Those sanctions shall be effective, proportionate and dissuasive.*

2. *Member States shall ensure that, if the authorisation for the purpose of seasonal work is withdrawn pursuant to paragraph 1a and points (b), (c) and (d) of paragraph 2 of Article 7, the employer shall be liable to pay compensation to the seasonal worker in accordance with procedures under national law. Any liability shall cover any outstanding obligations which the employer would have to respect if the authorisation for the purpose of seasonal work had not been withdrawn.*
3. *Where the employer is a subcontractor who has infringed the provisions of this Directive, the main contractor and any intermediate subcontractor, where they have not undertaken due diligence obligations as defined by national law:*
  - (a) *may be subject to the sanctions defined in paragraph 1;*
  - (b) *may, in addition to or in place of the employer, be liable to pay any compensation due to the seasonal worker in accordance with paragraph 2; and*
  - (c) *may, in addition to or in place of the employer, be liable to pay any back payments due to the seasonal worker under national law.*

*Member States may provide for more stringent liability rules under national law.*

## Article 13

### Procedural safeguards

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.
  - 1a. *In the case of an application for an extension of stay or renewal of the authorisation pursuant to Article 11a, Member States shall take all reasonable*

*steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employer, due to on-going administrative procedures.*

*If the validity of the authorisation for the purpose of seasonal work expires during the procedure for extension or renewal, in accordance with their national law, Member States shall allow the seasonal worker to stay on their territory until a decision on the application has been taken by the competent authorities, provided that the application was submitted within the validity of that authorisation and that the time period referred to in Article 11(1) has not expired. In such a case, Member States may, inter alia, decide to:*

- (a) issue national temporary residence permits or equivalent authorisations until a decision is made, and/or*
- (b) allow the seasonal worker to work during that period.*

*During the period of examination of the application for extension or renewal, the relevant provisions of this Directive shall apply.*

2. Where the information *or documentation* supplied in support of the application is *incomplete*, 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. *The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.*
3. *Reasons for a decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting an application for authorisation for the purpose of seasonal work or refusing extension of stay or renewal of the authorisation for the purposes of seasonal work shall be given* in writing to the applicant. *Reasons for a decision withdrawing the authorisation for the purpose of seasonal work shall be given in writing to both the seasonal worker and, if provided for in national law, the employer.*

- 3a. *Any decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting the application, refusing extension of stay or renewal of an authorisation for the purposes of seasonal work or withdrawing an authorisation for the purpose of seasonal work shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court and/or administrative authority where an appeal may be lodged and the time-limit for lodging the appeal.*
4. *Procedural safeguards concerning short-stay visas are regulated in the relevant provisions of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.*

*Article 13a*

*Fees and costs*

1. *Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive. Fees for short-stay visas are regulated in the relevant provisions of the Schengen acquis. Where those fees are paid by the third-country national, Member States may provide that they are entitled to be reimbursed by the employer in accordance with national law.*
2. *Member States may require employers of seasonal workers to pay for:*
- (a) the cost of travel from the seasonal workers' place of origin to the place of work in the Member State concerned and the return journey;*
  - (b) the cost of sickness insurance referred to in point (b) of Article 5(1) and point (b) of Article 5a(1).*

*When paid by the employers, such expenses shall not be recoverable from the seasonal worker.*

Article 14  
Accommodation

1. Member States shall require **■** evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living *according to national legislation and/or practice, for the duration of stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.*
2. *Where accommodation is arranged by or through the employer:*
  - (a) *the seasonal worker may be required to pay a rent whose cost shall not be excessive in relation to his/her net remuneration nor to the quality of the accommodation in question. Such rent shall not be automatically deducted from the wage of the seasonal worker;*
  - (b) *the employer shall provide the seasonal worker with a rental contract or equivalent document in which the rental conditions of the accommodation are clearly stated;*
  - (c) *the employer shall ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.*

*Article 14a*  
*Placement by public employment services*

*Member States may determine that the placement of seasonal workers shall only be carried out by public employment services.*

CHAPTER IV

***RIGHTS***

Article 15

Rights on the basis of the *authorisation for the purpose of seasonal work*

During the period of validity of *the authorisation referred to in Article 9*, the holder shall enjoy at least the following rights:

- (a) the right to enter and stay in the territory of the Member State issuing the **authorisation**,
- (b) free access to the entire territory of the Member State issuing the **authorisation** within the limits provided for by national law;
- (c) the right to exercise the concrete employment activity authorised under the **authorisation** in accordance with national law.

## Article 16

### ***Right to equal treatment***

1. ***Seasonal*** workers shall be entitled to ***equal treatment with nationals of the host Member State at least with regard to:***
  - (a) ***terms of employment, including the minimum working age, and*** working conditions, including pay and dismissal, ***working hours, leave and holidays***, as well as health and safety requirements at the workplace **■** ;
  - (b) ***the right to strike and take industrial action, in accordance with*** the host Member State ***'s national law and practices***, 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 ***rights and*** benefits conferred by such organisations, ***inter alia the right to negotiate and conclude collective agreements***, without prejudice to the national provisions on public policy and public security;
  - (c) ***back payments to be made by the employers, concerning any outstanding remuneration to the third-country national;***
  - (d) branches of social security, as defined in Article 3 of **■** Regulation (EC) No 883/2004;



- (e) access to goods and services and the supply of goods and services made available to the public, except housing, without prejudice to the freedom of contract in accordance with Union and national law;*
- (f) advice services on seasonal work afforded by employment offices;*
- (g) education and vocational training;*
- (h) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;*
- (i) tax benefits, in so far as the seasonal worker is deemed to be resident for tax purposes in the Member State concerned.*

**█** *Third-country national seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out 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 they move to a third country* **█**.

**2. Member States may restrict equal treatment:**

- (i) under point (d) of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Council Regulation (EC) No 1231/2010;*
- (ii) under point (g) of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans;*
- (iii) under point (i) of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.*

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 ***Articles 7 and 11a***.

#### Article 16a

##### ***Monitoring, assessment and inspections***

1. ***Member States shall provide measures aimed at preventing possible abuses and at sanctioning infringements. They shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practices.***
2. ***Member States shall ensure that services in charge of inspection of labour or competent authorities and, where provided for under national law for national workers, organisations representing workers' interest have access to the workplace and, with the agreement of the worker, to the accommodation.***

#### Article 17

##### Facilitation of complaints

1. ***Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or a competent authority of the Member State when provided for by national legislation.***
2. 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.

3. ***Member States shall ensure that seasonal workers have the same access as other workers in a similar position to measures protecting against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with this Directive.***

## CHAPTER V

### ***FINAL PROVISIONS***

#### Article 18

##### Statistics

1. Member States shall, 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. These statistics shall be*** disaggregated by citizenship, and ***as far as possible by the*** length of validity of the ***authorisation*** and ***the*** economic sector.
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)].
3. ***The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council<sup>1</sup>.***

#### 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

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<sup>1</sup> ***OJ L 199, 31.7.2007, p. 23.***

Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.

Article 20  
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (**30** months 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

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.

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 ...

For the European Parliament

The President

For the Council

The President



## EXPLANATORY STATEMENT

### 1. Introduction

The 2005 Commission Communication on "A Policy Plan on Legal Migration" provided for a proposal for a Directive on the conditions of entry and residence of seasonal workers, considering that "seasonal workers are regularly needed in certain sectors, where many immigrants work illegally under precarious conditions". The Commission published its proposal in July 2010 in a package together with the proposal on intra-corporate transfers.

The Rapporteur strongly believes that this Directive is needed to prevent the exploitation of seasonal workers, especially in the light of recent events (notably in Rosarno, Italy, but not confined to any particular Member State).

Furthermore, the need for seasonal workers from outside the EU is a common phenomenon in most Member States, and a framework at EU level for the management of this migration could provide real added value. In this respect it is also noted that providing legal routes for migration can play an important role in reducing irregular migration and the exploitation that often accompanies it. It is also vital that this Directive pays close attention to the need for equal treatment in the EU labour market, to ensure that pay and working conditions are not undermined. The Rapporteur therefore welcomes this proposal in general, while noting that some areas need to be significantly strengthened.

### 2. General overview of proposal

This proposal establishes a fast-track procedure for the admission of third-country nationals employed as seasonal workers, based on a common definition and common criteria for seasonal workers. The proposal lays down the conditions under which seasonal workers would be granted a residence and work permit allowing stays of up to six months in a calendar year, and defines the rights of seasonal workers.

A number of provisions are intended to ensure stronger protection of seasonal workers, which the Rapporteur welcomes. These include the following:

- Admission is dependent on the existence of a work contract or a binding job offer that specifies the salary to be paid and other working conditions.
- Employers are required to provide evidence that the seasonal worker will have appropriate accommodation during their stay.
- Designated third parties, such as trade unions and NGOs, shall be able to complain on behalf of seasonal workers in order to ensure effective enforcement of the rules.

The proposal also provides for equal treatment with national workers with respect to certain rights (Article 16). The Rapporteur, while mindful that the majority of this Article falls under the exclusive competence of the Committee on Employment and Social Affairs, considers that these provisions are crucial and should be further reinforced to ensure equal treatment.

### **3. Key amendments**

While the Rapporteur considers that the Commission proposal contains some important provisions, he feels it could be further strengthened with a number of changes and additions as contained in the draft report. These include:

#### Scope

The scope of the Commission proposal includes only third-country nationals residing outside the EU. However, in order to ensure a comprehensive approach to seasonal work, this Directive should also apply to third-country nationals already residing in the EU who are not entitled to work under existing legislation. Furthermore it should not ignore the current situation in the seasonal work sector where many third-country nationals with an irregular status are employed in exploitative conditions. Therefore, third-country nationals in an irregular position should, for a transitional period, be able to apply for employment as a seasonal worker under this Directive.

In terms of the sectoral scope of the Directive, some activities in the agriculture, horticulture and tourism sectors are naturally seasonal, being tied to peaks in workforce requirements, depending on the passing of seasons. These sectors should therefore be clearly stated as falling under the scope of this Directive. However, given the wide variety of situations in the Member States, some additional activities, beyond these sectors, may be brought within the scope of this Directive, but this should only happen with the agreement of the social partners.

#### Access to information

Providing information to seasonal workers is an important tool in helping to reduce their vulnerability to exploitation. Therefore, information to prospective seasonal workers and employers should be made available and should allow them to make an informed choice about applying to become a seasonal worker or hiring seasonal workers. Furthermore, when seasonal workers receive their permit, they should be given information in writing about their rights under this Directive. Finally, contact points should be established in order to inform and advise seasonal workers.

#### Seasonal worker permit

The Commission proposal provides for a visa to be issued in place of a seasonal worker permit for stays less than three months. However, it is not clear why this needs to be the case and more importantly whether the rights associated with the seasonal worker permit apply to those working on the basis of a visa. Therefore, in order to prevent two categories of seasonal workers being created with different rights depending on their length of stay, all seasonal workers should be given a seasonal worker permit.

#### Duration of stay

The Rapporteur supports the provision in the Commission proposal providing for a maximum duration of stay of six months. It is questionable whether longer periods of stay can be accurately described as seasonal, and may lead to abuse of the system to the detriment of seasonal workers. Furthermore, the maximum period should take place within 12 months

rather than a calendar year in order to allow for the winter season which does not fall within a calendar year. Additionally, provision should be made for seasonal workers who may be entitled to stay in the Member State under a different permit or visa, and are therefore not required to return to their country of origin.

#### Sanctions against employers

The Rapporteur considers that a separate provision on sanctions against employers is required. Furthermore, given the vulnerable position of seasonal workers they should receive compensation if their permit is withdrawn as a result of their employer not fulfilling its legal obligations.

The Commission proposal also provides for the grounds for refusal of an application, or the withdrawal or non-renewal of a seasonal worker permit to include cases where the employer has been sanctioned for illegal employment. In the interests of protecting seasonal workers, this should be extended to include sanctions for violations of the provisions of this Directive, and violations of working conditions or labour rights. However, given the vulnerable position of seasonal workers, a permit should only be withdrawn under these circumstances if it serves their interests.

#### Accommodation

The Rapporteur considers the provision requiring employers to provide evidence that seasonal workers will benefit from adequate accommodation to be a positive element on the Commission proposal. However, it should be strengthened by referring to the requirements of national legislation and practice as well as to some minimum standards as recommended by the UN Committee on Economic, Social and Cultural Rights. Furthermore, the rent should not be excessive in relation to the quality of the accommodation in addition to their pay and should not be raised during a seasonal workers' stay.

#### Costs

Some costs that are directly linked to the seasonal employment should be paid by the employers, including the costs of travel, visa costs and health insurance for periods outside the work contract. The payment by the employer of the costs of travel will facilitate the return of the seasonal workers to their place of origin upon the expiration of their permit.

#### Monitoring and Inspections

The proposal does not contain any provisions on monitoring or inspections, which the Rapporteur considers as essential to ensure that the rights of seasonal workers and the provisions of this Directive will be fully respected. The draft report therefore contains amendments to ensure that Member States put in place such mechanisms for monitoring and inspections.

#### Facilitation of complaints

Given the vulnerability of seasonal workers to exploitation it is essential that there are effective mechanisms in place for them to complain themselves, or via third parties. The



proposal provides that third parties may lodge complaints on behalf of seasonal workers. However, this needs to be strengthened to ensure that Member States put in place effective mechanisms through which seasonal workers or third parties can complain. Furthermore, protection against victimisation is vital to make this mechanism a realistic option for seasonal workers who need to complain and would consequently be placed in a vulnerable position vis-a-vis their employer.

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Juan Fernando López Aguilar,  
Chair  
Committee on Civil Liberties, Justice and Home Affairs  
BRUSSELS

Copy to Ms Pervenche Berès,  
Chair  
Committee on Employment and Social Affairs  
BRUSSELS

Subject: *Verification of the legal basis of the proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM (2010) 379).*

Dear Mr Chair,

By letter of 4 July 2011 the Chair of the Committee on Employment and Social Affairs, which is an associated committee within the meaning of Rule 50, with the main committee being the Committee on Civil Liberties, Justice and Home Affairs, asked the Committee on Legal Affairs, pursuant to Rule 37 of the Rules of Procedure, to take up a question relating to the legal basis of the above-mentioned proposal for a directive.

The committee has duly considered this request as follows.

The legal basis proposed by the Commission for the proposed directive is Article 79(2)(a) and (b) TFEU, which falls under Title V on the Area of Freedom, Security and Justice of Part Three of the TFEU, entitled Union Policies and Internal Actions. It must be borne in mind that this provision is subject to Protocol No 21 on the position of the United Kingdom and Ireland and Protocol No 22 on the position of Denmark. Under those protocols, Denmark never takes part in the adoption of measures and the United Kingdom and Ireland have a choice whether or not to participate.

The Employment Committee considers that the proposed legal basis is not appropriate for the directive and proposes adding Article 153(1)(a), (b) and (g) TFEU, which falls under Title X on Social Policy of Part Three of the TFEU, entitled Union Policies and Internal Actions. The reason for the additional legal basis is stated as being that the proposal for a directive does not regulate only issues of migration, but also questions of employment rights of the categories of workers concerned.

## I. BACKGROUND

The proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM (2010) 379) was presented by the Commission on 13 July 2010 as a follow up to the Commission Communication "A Policy Plan on Legal Migration" (COM (2005) 669) and as a response to The Hague Programme of November 2004 (COM (2005) 184), which called upon 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.

The Commission Communication "A Policy Plan on Legal Migration" defines a road-map for the remaining period of The Hague Programme (2006-2009) and lists the actions and legislative initiatives that the Commission intends to take in order to pursue the coherent development of EU legal migration policy. Regarding the category of seasonal workers, the above-mentioned Commission Communication sets out a scheme which will "propose a residence/work permit allowing the third-country national to work for a certain number of months per year for 4-5 years. Entry and exit stamps should prevent abuses. The aim is to provide the necessary manpower in the Member States while at the same time granting a secure legal status and a regular work prospective to the immigrants concerned, thereby protecting a particularly weak category of workers and also contributing to the development of the countries of origin."<sup>1</sup>

## II. LEGAL BASIS PROPOSED BY THE COMMISSION

In the explanatory memorandum to the proposal, the Commission states that the appropriate legal basis is Article 79 (2) (a) and (b) TFEU, which reads as follows:

*"Article 79*

*1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.*

*2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:*

*(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;*

*(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States".*

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<sup>1</sup> COM (2005) 669, p. 9.

### III. LEGAL BASIS PROPOSED TO BE ADDED

The Employment Committee proposes adding to the legal basis Article 153(1)(a), (b) and (g), which read as follows:

*"Article 153*

*1. With a view to achieving the objectives of Article 151<sup>1</sup>, the Union shall support and complement the activities of the Member States in the following fields:*

*(a) improvement in particular of the working environment to protect workers' health and safety;*

*(b) working conditions;*

*(...)*

*(g) conditions of employment for third-country nationals legally residing in Union territory".*

These provisions have to be read in conjunction with Article 153(2), which reads as follows:

*"2. To this end, the European Parliament and the Council:*

*(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;*

*(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.*

*The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee*

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<sup>1</sup> *The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.*

*To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union's economy.*

*They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.*

*of the Regions.*

*In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees.*

*The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g).<sup>1</sup>*

#### **IV. THE EUROPEAN COURT OF JUSTICE'S APPROACH**

It is settled case-law of the European Court of Justice that the choice of the legal basis for an act "must be based on objective factors which are amenable to judicial review and include in particular the aim and the content of the measure."<sup>2</sup>

If examination of the act "reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component."<sup>3</sup>

Exceptionally, "if it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect to the other, the measure must be founded on the corresponding legal bases."<sup>4</sup>

However, "no dual legal basis is possible where the procedures laid down for each legal basis are incompatible with each other."<sup>5</sup>

#### **V. AIM AND CONTENT OF THE PROPOSAL**

Recital 6 in the preamble to the proposed directive recalls that it "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 order to pursue this objective, the proposal establishes a fast-track procedure for the admission of third-country seasonal workers based on common definitions and common criteria. Articles 1 to 13 of the proposed directive lay down the rules governing the procedure for admission.

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<sup>1</sup> Emphasis supplied.

<sup>2</sup> Case C-178/03 *Commission v European Parliament and Council* [2006] ECR I-107, para. 41.

<sup>3</sup> *Ibid.*, para. 42.

<sup>4</sup> Case C-338/01 *Commission v Council* [2004] ECR I-4829, para. 55.

<sup>5</sup> *Ibid.*, para. 56.

Recital 20 recalls that "considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to define clearly the working conditions applicable to such workers in order to ensure legal certainty by referring such conditions to generally binding instruments providing effective protection of the rights of third-country seasonal workers, such as law or universally applicable collective agreements."

In order to pursue this objective, the proposed directive lays down in Articles 15 to 16 the mentioned rights and refers to the binding instruments applicable to that category of workers.

## **VI. DETERMINATION OF THE APPROPRIATE LEGAL BASIS**

Having regard to the fact that the aim and content of the proposal is (1) to prescribe the conditions of entry and residence of third-country nationals for the purposes of employment as seasonal workers and (2) to define the rights of that category of workers, Article 79(2)(a) and (b) TFEU constitutes the appropriate legal basis .

## **VII. ANALYSIS OF LEGAL BASIS PROPOSED TO BE ADDED**

Article 153(1)(a) and (b) TFEU refer to the working environment and the non-pay aspects of an employee's terms and conditions of employment. They cover such matters as the organisation of work and work activities, training, skills and employability, health, safety and well-being.

In the light of the foregoing analysis such matters do not constitute key aspects of the proposal such as to justify recourse to those provisions as an additional legal basis in accordance with the strictures of the Court of Justice.

As far as Article 153(1)(g) TFEU is concerned, it is concerned with conditions of employment for third country nationals legally residing in Union territory. However, the third subparagraph of Article 153(2) prescribes a special legislative procedure for Article 153(1)(g) ("*the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees*"). This legal basis is therefore incompatible with Article 79(2)(a) and (b) TFEU, which prescribes the ordinary legislative procedure (see Case C-338/01 *Commission v Council* cited above).

This, however, is not the only incompatibility. It is considered that Article 153 TFEU, under which legislation is adopted for the whole of the Union, cannot be used in conjunction with Article 79 TFEU, since Denmark does not participate at all in the adoption of legislation under that article and the United Kingdom and Ireland have the right not to so participate.

## **VII. CONCLUSION**

In the light of the foregoing analysis, Article 79(2)(a) and (b) TFEU is the sole appropriate

legal basis for the proposed directive.

At its meeting of 22 November 2011 the Committee on Legal Affairs accordingly decided, by 18 votes in favour, with 1 abstention<sup>1</sup>, to recommend that Article 79(2) (a) and (b) TFEU should be retained as the sole appropriate legal basis for the proposed directive.

Yours sincerely,

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<sup>1</sup> The following were present for the final vote: Klaus-Heiner Lehne (Chair), Luigi Berlinguer (Vice-Chair), Raffaele Baldassarre (Vice-Chair), Evelyn Regner (Vice-Chair), Sebastian Valentin Bodu (Vice-Chair), Philippe Boulland, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Kurt Lechner, Toine Manders, Antonio Masip Hidalgo, Jiří Maštálka, Gabriel Mato Adrover, Alajos Mészáros, Bernhard Rapkay, Alexandra Thein, Diana Wallis, Rainer Wieland.

1.12.2011

## **OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS(\*)**

for the Committee on Civil Liberties, Justice and Home Affairs

on the 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  
(COM(2010)0379 – C7-0180/2010 – 2010/0210(COD))

Rapporteur: Sergio Gaetano Cofferati

(\*) Associated committee – Rule 50 of the Rules of Procedure

### **SHORT JUSTIFICATION**

The proposal for a directive concerns the conditions of entry and residence of third-country nationals for the purposes of seasonal employment and constitutes a major step in seeking to build a comprehensive EU common migration policy. It forms part of the package on legal migration announced by the Commission at the end of 2005, which provides for the adoption of five separate legislative measures aimed at fleshing out and developing EU migration policy in a coherent manner. The first measure, i.e. the Blue Card Directive (Directive 2009/50/EC), was adopted on 25 May 2009. The proposal for a Single Permit Directive was adopted at first reading by Parliament on 24 March 2011 and is now the subject of discussions between the Council and Parliament. This proposal for a directive was submitted at the same time as the proposal for an ICT directive (COM(2010)0378).

It will need to take account of and be consistent with existing migration legislation.

The directive's main aims are:

- to establish a common framework, based on clear, appropriate and transparent rules, for nationals of third countries entering and staying in Europe for the purposes of seasonal work (hereinafter 'seasonal workers');
- to provide for incentives and measures to ensure that seasonal workers do not remain illegally in the EU at the end of their authorised period of residence;
- to protect seasonal workers and avoid them having to face situations of exploitation and working and living conditions that are not decent.

As your rapporteur, I wish to stress that this report only deals with those parts of the proposal which fall within the remit of the Committee on Employment and Social Affairs, whether exclusive (Recitals 20, 21 and 22 and Articles 3(f) and 16, and, as regards the exclusions relating to the employment market and social security, Recital 9 and Article 2(2)) or shared (Recitals 7, 10, 12, 13, 14, 19 and 23 and Articles 3(b), 3(c), 4(2), 5(1)(a), 5(1)(d), 6(2), 14



and 17).

The main issue within our committee's remit in relation to this directive is the exploitation and degrading living and working conditions which seasonal workers are forced to endure.

It should be pointed out, in this context, that those seasonal workers most easily affected by exploitation are those illegally resident in the EU. A vital tool in combating illegal immigration is the Directive on sanctions against employers (Directive 2009/52/EC). However, the directive under discussion will make a significant contribution in this area by establishing a clear, common and transparent framework for the entry and residence of migrants in a Member State for the purposes of seasonal employment and thereby promoting the use of legal migration channels.

In seeking to protect seasonal workers, we should closely follow the position set out in Parliament's resolution of 26 September 2007 on the Policy Plan on Legal Migration, of which this proposal for a directive forms a part: 'recalls the need to avoid double standards of rights amongst different categories of workers and to safeguard particularly the rights of seasonal workers and paid trainees, who are more vulnerable to abuse'. Achieving this objective is important not only for reasons of equity, social justice and respect for the dignity of the seasonal workers concerned, but also in recognition of the contribution they make through their work and the taxes and social security contributions they pay to the social and economic development of the Member States and the European Union. The EU needs these workers for demographic and skills-related reasons, just as it needs migrant workers more generally, and they must be guaranteed fair and decent working conditions.

In order to protect the rights of seasonal workers, steps must be taken – in particular as regards working conditions – to ensure that the principle of equal treatment of third-country seasonal workers and national of the host Member State is fully respected. The full observance of this principle is also a prerequisite for avoiding social dumping and unfair competition.

Moreover, housing is a key aspect of the decent living conditions which seasonal workers should be able to enjoy: such workers should be guaranteed 'adequate accommodation', and this term needs to be defined more clearly. It is also important to ensure that seasonal workers are not exploited by being obliged to pay an excessively large proportion of their net income in rent.

Monitoring is also important. Steps must be taken to set up effective and thorough inspection and monitoring mechanisms and to develop an effective means of facilitating complaints. The authorities responsible for monitoring action taken under this directive should be provided with all the resources they require to carry out their duties as effectively as possible.

## **AMENDMENTS**

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

## **Amendment 1**

### **Proposal for a directive Citation 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 15(3) and Articles 27, 28, 31, 33 thereof,**

## **Amendment 2**

### **Proposal for a directive Citation 5 b (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to Convention No 97 on "Migration for Employment" of the International Labour Organisation (ILO),**

## **Amendment 3**

### **Proposal for a directive Citation 5 c (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No 143 on "Migrant Workers",**

## **Amendment 4**

### **Proposal for a directive Citation 5 d (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No 102 on "Social Security (Minimum Standards)",**

**Amendment 5**

**Proposal for a directive  
Citation 5 e (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No 118 on "Equality of treatment (Social Security)",**

**Amendment 6**

**Proposal for a directive  
Citation 5 f (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No 111 on "Discrimination (Employment and Occupation)",**

**Amendment 7**

**Proposal for a directive  
Citation 5 g (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Recommendation No 86 on "Migration for Employment",**

**Amendment 8**

**Proposal for a directive  
Citation 5 h (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Recommendation No 151 on "Migrant workers",**

**Amendment 9**

**Proposal for a directive  
Citation 5 i (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No 98 on "The Right to Organise and Collective Bargaining",**

## **Amendment 10**

### **Proposal for a directive Recital 7**

*Text proposed by the Commission*

*Amendment*

(7) This Directive should be applied without prejudice to the principle of EU preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession.

(7) This Directive should be applied without prejudice to the principle of EU preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. ***In particular, preference should be given to workers from Member States for whom transitional arrangements as regards access to labour market still apply.***

## **Amendment 11**

### **Proposal for a directive Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7a) This Directive should set conditions and rights of third country national seasonal workers in full respect of the relevant ILO conventions.***

## **Amendment 12**

### **Proposal for a directive Recital 9**

*Text proposed by the Commission*

*Amendment*

(9) This Directive should not affect conditions of the provision of services in the framework of Article 56 of the TFEU.

(9) This Directive should not affect conditions of the provision of services in the framework of Article 56 of the TFEU,

*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.

*in particular 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. Seasonal workers should not be posted by an undertaking established in a Member State to provide a service in the territory of another Member State.*

### Amendment 13

#### Proposal for a directive Recital 10

##### *Text proposed by the Commission*

(10) Activities dependent on the passing of the seasons are **typically** to be found in **sectors such as** agriculture, during the planting or harvesting **period, or** tourism, during the holiday **period**.

##### *Amendment*

(10) Activities dependent on the passing of the seasons are to be found in **the agriculture and horticulture sectors, for example** during the planting or harvesting **periods, and in the tourism sector, for example** during the holiday **periods. There should be the possibility for Member States to decide, with the involvement of the social partners and in consultation with them, to consider additional activities dependent on the passing of seasons as seasonal activities, for the purposes of this Directive.**

##### *Justification*

*The horticulture sector is also dependent on the passing of the seasons and in certain Member States it is not covered by the term 'agriculture'. It should be clarified that it is within the scope of this Directive.*

### Amendment 14

#### Proposal for a directive Recital 12

*Text proposed by the Commission*

*Amendment*

(12) The Directive should not affect, **where granted**, the rights of third-country nationals already legally staying in a Member State to work.

(12) The Directive should not **adversely** affect the rights of third-country nationals already legally staying in a Member State to work.

*Justification*

*This is a technical amendment aimed at better clarifying that this Directive should not pejoratively affect the rights of third-country nationals already legally staying in a Member State to work.*

**Amendment 15**

**Proposal for a directive**  
**Recital 13**

*Text proposed by the Commission*

*Amendment*

(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**.

(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 **essential aspects of the contract or employment relationship**.

*Justification*

*The Authorities in charge should be able to ensure that all aspects of the contract or of the employment relationship, as defined in Union legislation, fully respect the provisions laid down in this Directive, in particular concerning equal treatment with the citizens of the host Member State, as defined in Art 16.*

**Amendment 16**

**Proposal for a directive**  
**Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.

(14) **To ensure that the labour market is not adversely affected by the entry of third country national seasonal workers**, Member States should have the possibility to apply a test demonstrating

that a post cannot be filled from within the domestic labour market *by nationals of the Member State concerned, by other Union citizens or by third-country nationals lawfully residing in the Member State and already forming part of its labour market by virtue of EU or national law.*

## Amendment 17

### Proposal for a directive Recital 17 a (new)

*Text proposed by the Commission*

*Amendment*

*(17a) Member States should provide for effective, proportionate and dissuasive sanctions against employers in the event of breaches of their obligations under this Directive. Such sanctions should include, if appropriate, adequate compensation for seasonal workers. Member States could also subject those employers to additional sanctions such as exclusion from entitlement to public benefits, aid or subsidies, exclusion from participation in a public contract, recovery of public benefits, aid or subsidies, including Union funding managed by Member States, or temporary or permanent closure of the establishments that have been used to commit the infringement.*

## Amendment 18

### Proposal for a directive Recital 19

*Text proposed by the Commission*

*Amendment*

(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 employers to provide *the* evidence of the accommodation they or third-parties *provide*.

(19) In order to ensure that seasonal workers have adequate accommodation *that ensures a decent standard of living* during their stay, provision should be made to require employers to provide evidence of the accommodation they *provide themselves* or *via* third parties. *The cost of*

*this accommodation should not be excessive and should reflect the market rate of the area in question. The cost of the rent should not be automatically deducted from the seasonal worker's wage. To ensure transparency, seasonal workers should be given a rental contract in which the conditions and cost of the accommodation are clearly stated. These provisions should be without prejudice to the possibility for seasonal workers to freely choose their own accommodation. Any change of accommodation should be reported to the competent authorities.*

## Amendment 19

### Proposal for a directive Recital 20

#### *Text proposed by the Commission*

(20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to ***define clearly the working conditions applicable to such workers in order to ensure legal certainty by referring such conditions to generally binding instruments providing effective protection of the rights of third-country seasonal workers, such as law or universally applicable collective agreements.***

#### *Amendment*

(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 the rights of third-country seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, following in particular the principles laid down in Articles 15, 21 and 34 of the Charter of Fundamental Rights of the European Union and abiding therefore by the principle of the same pay for the same work in the same workplace, by applying collective agreements and other arrangements on working conditions which have been concluded at all possible levels or for which there is statutory provision, in accordance with national law and practice, under the same terms as to nationals of the host Member State.***



## Amendment 20

### Proposal for a directive Recital 20 a (new)

*Text proposed by the Commission*

*Amendment*

***(20a) Member States should ratify without delay the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly of the United Nations on 18 December 1990.***

## Amendment 21

### Proposal for a directive Recital 20 b (new)

*Text proposed by the Commission*

*Amendment*

***(20b) This Directive shall apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961.***

## Amendment 22

### Proposal for a directive Recital 21

*Text proposed by the Commission*

*Amendment*

***(21) In the absence of a system for declaring collective agreements of universal application, Member States may base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.***

***(21) In addition to the legislative, administrative and regulatory provisions applicable to workers who are nationals of the host Member State, arbitration decisions and collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice, should also apply to third-country national seasonal workers under the same terms as to nationals of the host Member State.***

## Amendment 23

### Proposal for a directive Recital 22

*Text proposed by the Commission*

(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 on the coordination of social security systems. 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. Furthermore, this Directive should not grant rights in relation to situations which lie outside the scope of that EU legislation such as, for example, to family members 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.

*Amendment*

(22) ***Adequate social security coverage for seasonal workers is a key element of this Directive and important for ensuring that their working and living conditions while staying in the Union are decent.*** 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 883/2004 on the coordination of social security systems. 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. Furthermore, this Directive should not grant rights in relation to situations which lie outside the scope of that EU legislation such as, for example, to family members 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. ***Without prejudice to bilateral agreements providing for better social security coverage, Member States should establish mechanisms which ensure effective social security coverage during the stay and the mechanisms for exporting acquired rights where applicable. This may include special adjustments, for example in terms of the qualifying or the waiting period.***

## Amendment 24

### Proposal for a directive Recital 22 a (new)

*Text proposed by the Commission*

*Amendment*

***(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, each Member State is responsible for laying down in its legislation the rules governing the granting of social security benefits, as well as the amount and duration of such benefits. However, when exercising that power, Member States should comply with Union law.***

#### **Amendment 25**

**Proposal for a directive  
Recital 22 b (new)**

*Text proposed by the Commission*

*Amendment*

***(22b) Member States should at least give equal treatment to those third-country nationals who are in employment or who, after a period of employment, are registered as unemployed. Any restrictions to the equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred in application of Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.***

#### **Amendment 26**

**Proposal for a directive  
Recital 22 c (new)**

***(22c) To ensure the proper enforcement of this Directive, and in particular the provisions regarding rights, working conditions and accommodation, Member States should ensure that appropriate mechanisms for the monitoring of employers, recruitment agencies or other intermediaries are put in place and that effective and adequate inspections are carried out on their territory. With a view to increasing the effectiveness of those inspections, Member States should ensure that national legislation gives adequate powers and resources to competent authorities to carry out inspections; that the results of previous inspections are collected and processed for the effective implementation of this Directive; and that sufficient staff are available with the skills and qualifications needed to carry out inspections effectively.***

*Justification*

*An effective system of monitoring and inspections is needed in order to ensure that the rights of the seasonal workers and the provisions of this Directive will be fully respected throughout the entire duration of stay.*

**Amendment 27**

**Proposal for a directive**

**Recital 23**

(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

(23) To facilitate enforcement ***of this Directive, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through*** relevant third parties such as trade unions or other associations. This is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or

consequences.

hesitant to use these in their own name, out of fear of possible consequences. ***Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.***

## **Amendment 28**

### **Proposal for a directive Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23a) Nationals of third countries who are authorised to work in the territories of the Member States should be entitled to working conditions equivalent to those of citizens of the Union.***

## **Amendment 29**

### **Proposal for a directive Article 2 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. This Directive shall not apply to third-country nationals who are carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of service in accordance with Directive 96/71/EC.

2. This Directive shall not apply to third-country nationals who are carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of service in accordance with Directive 96/71/EC. ***Seasonal workers shall not be posted by an undertaking established in a Member State to provide a service in the territory of another Member State.***

*Justification*

## Amendment 30

### Proposal for a directive

#### Article 2 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. This Directive shall apply to the agriculture, horticulture and tourism sectors. Member States may, with the involvement of the social partners and in consultation with them, decide to extend its application to additional activities that are dependent on the passing of the seasons.**

#### *Justification*

*Some activities in the agriculture, horticulture and tourism sectors are naturally seasonal, being tied to peaks in workforce requirements, depending on the passing of seasons (see examples in Recital 10). Having regard to the wide variety of situations in the Member States, some additional activities, beyond these sectors, may be brought within the scope of this Directive, but this should only happen with the agreement of the social partners.*

## Amendment 31

### Proposal for a directive

#### Article 3 – point b

*Text proposed by the Commission*

*Amendment*

(b) ‘seasonal worker’ means a third-country national who **retains a legal domicile in a third country but** resides temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in a Member State;

(b) ‘seasonal worker’ means a third-country national who resides temporarily, **for no more than six months in a 12-month period**, for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, **within the scope of Article 2(2a)**, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in a Member State;

#### *Justification*

*This is a technical amendment to make the text consistent with other changes regarding definitions and scope.*

## Amendment 32

### Proposal for a directive Article 3 – point c

*Text proposed by the Commission*

(c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year by an event or pattern during which labour levels are **required that are** far above those necessary for usually ongoing operations;

*Amendment*

(c) ‘activity dependent on the passing of the seasons’ means an activity, **within the scope of Article 2(2a)**, that is tied to a certain time of the year by an event or **recurring pattern of events linked to seasonal conditions** during which **the required** labour levels are **regularly and predictably** far above those necessary for usually ongoing operations;

*Justification*

*For an activity to be considered seasonal it should be strictly linked to a certain period of the year, where labour requirements are predictably and regularly higher than normal.*

## Amendment 33

### Proposal for a directive Article 3 – point f

*Text proposed by the Commission*

**(f) ‘universally applicable collective agreement’ means a collective agreement which must be observed by all undertakings in the geographical area and in the profession or industry concerned. In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers‘ and labour organisations at**

*Amendment*

**deleted**

***national level and which are applied throughout national territory.***

*Justification*

*All collective agreements should be applied on an equal footing also to third country seasonal workers working in the EU. Therefore there is no need to include any definition of a universally applicable collective agreement.*

**Amendment 34**

**Proposal for a directive  
Article 4 – paragraph 2**

*Text proposed by the Commission*

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 to 17 of this Directive.

*Amendment*

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for ***third-country nationals*** to whom it applies in respect of Articles 13 to 17 of this Directive.

*Justification*

*This is a technical change to clarify that any more favourable provisions should relate to third-country nationals specifically (prospective seasonal workers under Article 13, and seasonal workers under Articles 14-17).*

**Amendment 35**

**Proposal for a directive  
Article 5 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) a valid work contract or, as provided for in national law, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State that specifies the ***rate of pay and the working hours per week or month and, when applicable, other relevant working conditions***;

*Amendment*

(a) a valid work contract or, as provided for in national law, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State that specifies the ***essential aspects of the contract or employment relationship as laid down in Article 2 of Council Directive 91/533/EC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship<sup>1</sup>, in accordance***



*with the provisions laid down in Article 16 of this Directive;*

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<sup>1</sup> *OJ L 228, 18.10.1991, p. 32.*

*Justification*

*This shall allow authorities in charge to ensure that all aspects of the contract or of the employment relationship, as defined in Union legislation, fully respect the provisions laid down in this Directive, in particular concerning equal treatment with the citizens of the host Member State, as defined in Art 16.*

**Amendment 36**

**Proposal for a directive**  
**Article 5 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) evidence ***of having*** accommodation ***as set out*** in Article 14.

*Amendment*

(d) evidence ***that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, in accordance with the provisions laid down*** in Article 14.

*Justification*

*This shall allow authorities in charge to ensure that the seasonal will benefit from adequate accommodation as required in Art 14.*

**Amendment 37**

**Proposal for a directive**  
**Article 6 – paragraph 2**

*Text proposed by the Commission*

2. Member States may verify whether the vacancy concerned could not be filled by ***national or EU***, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market by virtue of EU or national law and reject the application.

*Amendment*

2. Member States may ***examine the situation of their labour market and verify, in a timely and transparent manner***, whether the vacancy concerned could not be filled by ***nationals of the Member State concerned, by other Union citizens***, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market

by virtue of EU or national law and reject the application.

*Justification*

*This is a technical/linguistic amendment which clarifies the meaning of this provision.*

**Amendment 38**

**Proposal for a directive  
Article 6 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Private employment agencies or migration agencies shall not charge job-seekers or workers any fees in exchange for organising seasonal work or migration for seasonal work.***

**Amendment 39**

**Proposal for a directive  
Article 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 12a***

***Sanctions against employers***

***1. An employer who has not fulfilled the obligations arising under this Directive shall be subject to effective, proportionate and dissuasive sanctions. Such employers shall be excluded from applications for seasonal workers for one or more subsequent years.***

***2. In the case of subcontracting, Member States shall ensure that the main contractor and any intermediate subcontractor may be liable for any infringement of the provisions of this Directive and be subject to effective, proportionate and dissuasive sanctions.***

***3. Member States shall ensure that, if the seasonal worker permit is withdrawn***

*pursuant to point (b), (ba) or (bb) of Article 7(2), the seasonal worker shall be entitled to receive an adequate level of compensation from the employer, and that the necessary mechanisms are in place to facilitate this.*

## **Amendment 40**

### **Proposal for a directive Article 14**

#### *Text proposed by the Commission*

Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from accommodation that ensures *an adequate* standard of living. *If seasonal workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration.*

#### *Amendment*

*1. Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from adequate accommodation, pursuant to national legislation and practice, that ensures a decent standard of living for the duration of the employment contract. As a minimum, such accommodation shall provide the conditions and facilities essential for health, security, comfort and nutrition as certified by the competent authorities. These provisions shall be without prejudice to the possibility for seasonal workers to freely choose their own accommodation.*

*2. The seasonal worker shall be given a rental contract or equivalent document in which the conditions and cost of the accommodation are clearly stated for the duration of their stay. If the seasonal worker is required to pay rent for such accommodation, its cost shall not be excessive in relation to their net remuneration nor to the quality of the accommodation and it shall not be automatically deducted from their wage.*

*3. Any change of accommodation shall be reported to the competent authority. The new accommodation shall fulfil the conditions laid down in paragraphs 1 and 2.*

### *Justification*

*The accommodation shall be adequate, and shall comply with the requirements of national legislation and practice as well as with some minimum provisions. These minimum provisions are in line with indicators defining adequate housing set by the UN Committee on Economic, Social and Cultural Rights. Charging high rent compared to the net pay of seasonal workers or to the quality of the accommodation is a means through which they can be exploited. This should therefore be prevented.*

#### **Amendment 41**

##### **Proposal for a directive**

##### **Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 14a**

##### **Costs**

***Member States shall require employers of seasonal workers to pay for the cost of travel from the seasonal workers' place of origin to the place of work in the Member State concerned and the return journey.***

***Member States may require employers of seasonal workers to pay for:***

***(a) the visa fee and, if applicable, any service fees related to the visa;***

***(b) the cost of health insurance referred to in point (c) of Article 5(1).***

***When paid by the employers, such expenses shall not be recoverable from the seasonal worker.***

### *Justification*

*Some costs that are directly linked to the seasonal employment should be paid by the employers. The payment by the employer of the costs of travel shall facilitate the return of the seasonal workers to the place of origin upon the expiration of their permit.*

#### **Amendment 42**

##### **Proposal for a directive**

##### **Article 16**

*Text proposed by the Commission*

*Amendment*

***Whatever the law applicable to the***

Seasonal workers shall be entitled to ***equal***

*employment relationship*, seasonal workers shall be entitled to:

1. working conditions, including pay and dismissal as well as health and safety requirements at the workplace, ***applicable to seasonal work as laid down by law, regulation or administrative provision and/or universally applicable*** collective agreements ***in the Member State to which they have been admitted according to this Directive.***

***In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory;***

***2. equal treatment with nationals of the host Member State as regards at least with regard to:***

(a) 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;

(b) ***provisions in national laws regarding***

***treatment with nationals of the host Member State as a minimum with regard to:***

1. ***terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays,*** as well as health and safety requirements at the workplace, as laid down by law, regulation or administrative provision, collective agreements ***and contracts concluded at any level, in accordance with the host Member State's national law and practice and under the same terms as those applicable to nationals of the host Member State.***

2. 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 ***rights and benefits conferred by such organisations, inter alia the right to negotiate and conclude collective agreements and the right to strike and take industrial action, in accordance with the host Member State's national law and practices ,*** without prejudice to the national provisions on public policy and public security;

3. branches of social security, as defined in

*the* branches of social security as defined in Article 3 *of Council* Regulation (EC) No 883/04;

*(c) payment of statutory pensions based on the worker's previous employment under the same conditions as nationals of the Member States concerned when they move to a third country;*

*(d) access to goods and services and the supply of goods and services made available to the public, except public housing and counselling services afforded by employment services.*

Article 3 of Regulation (EC) No 883/2004. *Each Member State remains responsible, in the absence of harmonisation at Union level, for laying down in its legislation, in compliance with Union law, the non-discriminatory rules governing the granting of social security benefits, as well as the amount and duration of such benefits;*

4. access to goods and services and the supply of goods and services made available to the public *in accordance with national law. This paragraph shall be without prejudice to freedom of contract in accordance with national and Union law;*

5. *education and vocational training;*

6. *recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures and with Union law;*

7. *tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned.*

*Third-country workers moving to a third country, or the survivors of such workers residing in a third-country deriving rights from the worker, shall receive, in relation to old-age, employment injury, invalidity and death, statutory pensions based on the workers' previous employment and acquired in accordance with the legislation set out 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 they move to a third country.*

## **Amendment 43**

### **Proposal for a directive Article 16 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. back payments to be made by the employers. In respect of infringements of Article 16, the employer shall pay:**

**(a) any outstanding remuneration to the third-country national;**

**(b) any outstanding taxes and social security contributions, including relevant administrative fines.**

## **Amendment 44**

### **Proposal for a directive Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 16a**

##### **Monitoring and inspections**

**1. Member States shall ensure that appropriate monitoring mechanisms in respect of employers, recruitment agencies or other intermediaries are put in place and that adequate and regular inspections are carried out on their territory to ensure that the provisions laid down in this Directive, in particular regarding rights, working conditions and accommodation are fully respected throughout the duration of the seasonal workers' stay in the Member State concerned.**

**Member States shall ensure that organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation.**

**2. Member States shall ensure that at least 10 % of employers offering seasonal**

*employment established on their territory are subject to inspections every year.*

*3. The selection of employers to be inspected shall be based on a risk assessment to be drawn up by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.*

*Justification*

*An effective system of monitoring and inspections is needed in order to ensure that the rights of the seasonal workers and the provisions of this Directive will be fully respected.*

**Amendment 45**

**Proposal for a directive**

**Article 17 – subparagraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

*Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers, recruitment agencies or other intermediaries, directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or a competent authority of the Member State when provided for by national legislation.*

*Justification*

*Given the vulnerability of seasonal workers to exploitation it is essential that there are effective mechanisms in place for seasonal workers to complain themselves, or via third parties.*

**Amendment 46**

**Proposal for a directive**

**Article 17**

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that third

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 provided for with the objective of implementing this Directive.

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 ***and after providing clear and comprehensible information***, in any administrative or civil proceedings provided for with the objective of implementing this Directive.

#### **Amendment 47**

##### **Proposal for a directive Article 17 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall adopt such measures as are necessary to protect seasonal workers against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with this Directive.***

*Justification*

*Protection against victimisation for seasonal workers who complain is vital to make the complaints mechanism a realistic option and to protect seasonal workers in a vulnerable position.*

## PROCEDURE

<b>Title</b>	Conditions of entry and residence of third-country nationals for the purposes of seasonal employment			
<b>References</b>	COM(2010)0379 – C7-0180/2010 – 2010/0210(COD)			
<b>Committee responsible</b> Date announced in plenary	LIBE 7.9.2010			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 7.9.2010			
<b>Associated committee(s) - date announced in plenary</b>	12.5.2011			
<b>Rapporteur(s)</b> Date appointed	Sergio Gaetano Cofferati 9.9.2010			
<b>Discussed in committee</b>	16.6.2011	13.7.2011	5.10.2011	22.11.2011
<b>Date adopted</b>	23.11.2011			
<b>Result of final vote</b>	+: -: 0:	39 3 1		
<b>Members present for the final vote</b>	Regina Bastos, Heinz K. Becker, Jean-Luc Bennahmias, Philippe Boulland, Milan Cabrnock, David Casa, Alejandro Cercas, Derek Roland Clark, Sergio Gaetano Cofferati, Marije Cornelissen, Karima Delli, Sari Essayah, Ilda Figueiredo, Thomas Händel, Marian Harkin, Liisa Jaakonsaari, Danuta Jazłowiecka, Jean Lambert, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Jutta Steinruck, Traian Ungureanu, Andrea Zaroni			
<b>Substitute(s) present for the final vote</b>	Georges Bach, Raffaele Baldassarre, Silvia Costa, Jürgen Creutzmann, Jelko Kacin, Ria Oomen-Ruijten, Evelyn Regner, Csaba Sógor, Emilie Turunen			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Leonardo Domenici, Dimitrios Droutsas, Sylvie Guillaume, Karin Kadenbach, Guido Milana			

27.1.2011

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY**

for the Committee on Civil Liberties, Justice and Home Affairs

on the 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  
(COM(2010)0379 – C7-0180/2010 – 2010/0210(COD))

Rapporteur: Antigoni Papadopoulou

### **SHORT JUSTIFICATION**

There is a structural need for seasonal employment in the European Union not only in view of the demographic challenges it is facing and its ageing population, a situation which is likely to grow worse in future, but also because of a significant shortage of labour in this sector.

The 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 sets out common EU admission and residence requirements, as well as the rights of seasonal workers from third countries.

With regard to the proposed directive, the rapporteur of this opinion is concerned with gender mainstreaming welcoming, on the one hand, the incentives offered for circular migration while, on the other, expressing deep concern at the vulnerability of many seasonal workers, particularly women.

Despite the difficulty in compiling precise statistics, it is clear that women make up a substantial percentage of the migrant population, something which must be taken fully into account in order to manage effectively migration flows specifically conditioned by seasonal employment.

In many countries women are particularly vulnerable as a result of poverty, coupled with inadequate insurance cover, welfare benefits, skills (training) and financial resources, as well as being insufficiently well informed about their rights. Furthermore, they are confronted with prejudices and stereotyping based on gender, race and religion, as well as other forms of discrimination. All these and other related problems make life even harder for women employed as seasonal workers, particularly if they have other responsibilities such as caring for underage children.

Female seasonal workers are frequently employed for farm work during the planting and harvesting seasons and in the tourist sector during the holiday periods. However, they are in many cases given additional tasks not provided for in their seasonal employment contracts, including domestic work or caring for elderly or disabled persons or children. Existing inequalities in respect of pay or the terms and conditions of seasonal employment should not be perpetuated as a result of fluctuating demand for migrant seasonal workers as a specific category, the particular incentives and guarantees offered to them or the challenges facing them. Particular mention must be made in this opinion of the need to protect children living in the accommodation provided, as well as ensuring full compliance with health and safety requirements in respect of migrant seasonal workers who are pregnant, have just given birth or are breastfeeding.

Women employed as seasonal workers must be aware of their rights, the terms of their seasonal employment contracts and the nature of the tasks they are being called upon to perform, so that they are not obliged to work longer hours than they wish as household staff or carers, or be forced into trafficking and/or prostitution. Women in seasonal employment are frequently more vulnerable, since they are unaware of complaints mechanisms or are reluctant to make use of them for fear that this will adversely affect their future employment prospects.

It is therefore necessary to set out clearly the rights and obligations of seasonal workers in those sectors of the economy which fulfil seasonal employment criteria, so as to prevent arbitrary or inadmissible working conditions or exploitation. It is also necessary to provide a secure system of legal protection for seasonal workers, together with coordinated measures and regular inspections by the authorities in order to establish binding minimum standards regarding acceptable pay, accommodation and sanitation.

The relevant details concerning conditions for entry and residence, comprehensive information regarding workers' rights and all necessary documentation should be available in the language of the seasonal workers and provision made for the services of an interpreter, so that even illiterate workers, particularly women, can be given all possible assistance in fully comprehending their rights, making it easier for them to seek legal redress for infringement thereof, ill-treatment or sexual or other forms of exploitation.

This opinion must also stress the need for every effort to be made to empower women in seasonal employment by means of education/training and support programmes specially tailored to their needs. Use of the appropriate instrument and exchange of good practices between the EU Member States and coordinated actions by trade union or other organisations in third countries could achieve an ongoing and systematic improvement in their knowledge and skills, greater mobility and improved 'circular migration' to the benefit of the EU, third countries and the seasonal workers themselves. The objective is, on the one hand, to improve productivity, competitiveness and economic development in the Member States for the effective promotion/realisation of the EU 2020 strategy objectives, seeking to achieve a more social Europe and, on the other, to afford protection for third country nationals in seasonal employment.

In addition, this opinion must underline the need for the adoption of gender budgeting in drawing up and implementing national budgets, so as to ensure, on the one hand, the

availability of sufficient funding and, on the other, the accurate monitoring and evaluation regarding the effectiveness of targeted programmes and incentives to protect the rights of permanent and seasonal workers and to strengthen social cohesion.

The systematic compilation of statistical data for seasonal migration in respect of women provides the most rational basis for the mobilisation of suitable policies to meet the challenges and problems arising from seasonal migration.

## AMENDMENTS

The Committee on Women's Rights and Gender Equality calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive

##### Recital 6

*Text proposed by the Commission*

(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.

*Amendment*

(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 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.

***This Directive should, in addition, help to protect women in particular from precarious employment and exploitation.***

### Amendment 2

#### Proposal for a directive

##### Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) This Directive is expected to contribute to combating illegal migration, clandestine employment and the black***

*economy, which perpetuate and encourage racketeering and organised crime networks, of which the victims are generally vulnerable women and children.*

### **Amendment 3**

#### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

*(6b) This Directive should take into account the fact that according to reports by the UN, the OECD, the International Labour Office and other organisations, a large percentage of the seasonal migrants entering the EU annually are women from third countries affected by poverty, illiteracy and low standards of living.*

### **Amendment 4**

#### **Proposal for a directive Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

*(6c) This Directive should also take into account the obstacles which are generally encountered by female migrant seasonal workers, particularly women with underage children who, in addition to the difficulties of adapting to a foreign country and an unfamiliar working environment, also encounter prejudice and stereotyping based on gender, race, colour and religion, as well as other forms of discrimination.*

### **Amendment 5**

**Proposal for a directive  
Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***(16a) Third-country seasonal workers should be duly informed of their rights and obligations when they are issued with their work permits. The necessary information should be supplied by the competent authority of the host Member State. Measures should be taken against any infringement of their rights by their employer and/or any third party, as well as against those who engage in undeclared work simultaneously with their seasonal employment.***

**Amendment 6**

**Proposal for a directive  
Recital 16 b (new)**

*Text proposed by the Commission*

*Amendment*

***(16b) Seasonal workers should know their rights and be aware of the fact that their employment is required to be of a purely seasonal nature, especially in the case of women who, in addition to tasks agreed under the seasonal employment contract, are frequently obliged to carry out additional work which involves helping with domestic tasks or providing care for elderly or disabled people or small children or may even be forced into prostitution.***



## Amendment 7

### Proposal for a directive Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) The authorities should carry out regular inspections of the suitability of seasonal workers' accommodation in order to satisfy themselves that such workers enjoy adequate living conditions and standards of sanitation,, especially where accommodation is also occupied by children. The inspection authorities should be empowered to make recommendations to employers if irregularities are discovered and to fine offenders.***

## Amendment 8

### Proposal for a directive Recital 20 a (new)

*Text proposed by the Commission*

*Amendment*

***(20a) In order to guarantee the safety and security of female workers who are more likely than male workers to be engaged in seasonal work, there is a need for clear and adequate provisions which laying down the rights of female workers to negotiate working conditions with their employers and which focus in particular on special security provisions. Those provisions should cover all adverse situations with which female workers may be confronted as well as access to quality health care.***

## Amendment 9

**Proposal for a directive  
Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23a) Seasonal workers may be vulnerable to exploitation by their employers (sexual exploitation, the obligation to perform additional tasks or to work exhausting hours, inadmissible working conditions or unequal pay). That being the case, governments, local authorities, trade unions, and other bodies need to remain in closer touch with a view to working together more actively to support seasonal workers – male and female alike – by drawing up suitable programmes of empowerment, by providing training and support and devising strategies to resolve their problems.***

**Amendment 10**

**Proposal for a directive  
Recital 23 b (new)**

*Text proposed by the Commission*

*Amendment*

***(23b) Producing statistics on seasonal employment in the Member States should also help to clarify the differences between countries and highlight the role and specific problems of women who do seasonal work.***

**Amendment 11**

**Proposal for a directive  
Article 6 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. Member States may reject an application if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal

3. Member States may reject an application if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal

employment.

employment *and/or the harassment, ill-treatment or exploitation of workers.*

## Amendment 12

### Proposal for a directive Article 8

#### *Text proposed by the Commission*

Member States shall take the necessary measures to make available information on conditions of entry and residence, including rights and all documentary evidence needed for an application to reside and work in the territory of a Member State as a seasonal worker.

#### *Amendment*

Member States shall take the necessary measures to make available information on conditions of entry and residence, including rights and all documentary evidence needed for an application to reside and work in the territory of a Member State as a seasonal worker. ***This information shall be set out in a straightforward manner, comprehensible to people of every educational level.***

## Amendment 13

### Proposal for a directive Article 11 – paragraph 1

#### *Text proposed by the Commission*

1. Seasonal workers shall be allowed to reside for a maximum of six months in any calendar year, after which they shall return to a third country.

#### *Amendment*

1. Seasonal workers shall be allowed to reside for a maximum of six months in any calendar year, after which they shall return to a third country, ***unless they are entitled under national law to stay under a different permit or visa.***

## Amendment 14

### Proposal for a directive Article 14

#### *Text proposed by the Commission*

Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate

#### *Amendment*

Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate

standard of living. If seasonal workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration.

standard of living **and shall appoint an official or a department responsible for:**

***(i) carrying out regular inspections into the standard of accommodation and living conditions***

***(ii) making recommendations to the employer and***

***(iii) fining employers who fail to comply with recommendations. .***

If seasonal workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration.

## **Amendment 15**

### **Proposal for a directive Article 15 – point ca (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) the right to refuse without penalty to carry out additional tasks (this concerns, for example, attempts to oblige female seasonal migrant workers to carry out domestic tasks or care for elderly or disabled people or small children or to force them into prostitution), thereby infringing the terms of their seasonal employment contract.***

## **Amendment 16**

### **Proposal for a directive Article 16 – paragraph 1 – first part**

*Text proposed by the Commission*

*Amendment*

1. Working conditions, including pay and dismissal as well as health and safety requirements at the workplace, applicable to seasonal work as laid down by law, regulation or administrative provision and/or universally applicable collective agreements in the Member State to which

1. Working conditions, including pay and dismissal as well as health and safety requirements at the workplace, applicable to seasonal work as laid down by law, regulation or administrative provision and/or universally applicable collective agreements in the Member State to which

they have been admitted according to this Directive.

they have been admitted according to this Directive, ***without discrimination based on gender and in full compliance with health and safety protection standards in respect of seasonal workers who are pregnant, have just given birth or are breastfeeding.***

## **Amendment 17**

### **Proposal for a directive Article 17**

#### *Text proposed by the Commission*

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 provided for with the objective of implementing this Directive.

#### *Amendment*

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 provided for with the objective of implementing this Directive. ***Member States shall inform seasonal workers of the existence of complaints mechanisms, thereby providing complainants with easy access to legal redress for infringement of their rights, ill-treatment or harassment.***

## **Amendment 18**

### **Proposal for a directive Article 18 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

#### ***Article 18a***

#### ***Programmes of social integration in the host countries***

***Member States shall introduce accelerated programmes and measures as an effective means of providing information for male and female seasonal workers and helping them acquire basic proficiency in the language of the host***

*country. Seasonal workers shall be given a working knowledge of those areas of the law concerning their conditions of employment and of the culture, customs and usages of the European society in which they will be living and working, so as to ensure mutual respect for diversity and hence greater adaptability and socialisation for their mutual benefit and for the achievement of the EU 2020 strategy objectives.*

## PROCEDURE

<b>Title</b>	Conditions of entry and residence of third-country nationals for the purposes of seasonal employment
<b>References</b>	COM(2010)0379 – C7-0180/2010 – 2010/0210(COD)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	FEMM 7.9.2010
<b>Rapporteur</b> Date appointed	Antigoni Papadopoulou 2.9.2010
<b>Discussed in committee</b>	13.12.2010      27.1.2011
<b>Date adopted</b>	27.1.2011
<b>Result of final vote</b>	+:            23 -:            0 0:            1
<b>Members present for the final vote</b>	Regina Bastos, Edit Bauer, Emine Bozkurt, Andrea Češková, Marije Cornelissen, Edite Estrela, Ilda Figueiredo, Teresa Jiménez-Becerril Barrio, Nicole Kiil-Nielsen, Rodi Kratsa-Tsagaropoulou, Siiri Oviir, Raül Romeva i Rueda, Joanna Katarzyna Skrzydlewska, Marc Tarabella, Britta Thomsen, Marina Yannakoudakis
<b>Substitute(s) present for the final vote</b>	Anne Delvaux, Christa Klaß, Katarína Neveďalová, Norica Nicolai, Antigoni Papadopoulou, Rovana Plumb, Joanna Senyszyn
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Stanimir Ilchev

## PROCEDURE

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<b>Date submitted to Parliament</b>	13.7.2010			
<b>Committee responsible</b> Date announced in plenary	LIBE 7.9.2010			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 7.9.2010	FEMM 7.9.2010		
<b>Associated committee(s)</b> Date announced in plenary	EMPL 12.5.2011			
<b>Rapporteur(s)</b> Date appointed	Claude Moraes 27.9.2010			
<b>Legal basis disputed</b> Date of JURI opinion	JURI 22.11.2011			
<b>Discussed in committee</b>	29.11.2010	1.2.2011	16.6.2011	31.8.2011
	29.11.2011	14.11.2013		
<b>Date adopted</b>	14.11.2013			
<b>Result of final vote</b>	+: -: 0:	33 1 2		
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Edit Bauer, Arkadiusz Tomasz Bratkowski, Carlos Coelho, Cornelia Ernst, Monika Flašíková Beňová, Nathalie Griesbeck, Salvatore Iacolino, Sophia in 't Veld, Timothy Kirkhope, Svetoslav Hristov Malinov, Véronique Mathieu Houillon, Roberta Metsola, Louis Michel, Claude Moraes, Jacek Protasiewicz, Judith Sargentini, Kyriacos Triantaphyllides, Axel Voss, Josef Weidenholzer, Tatjana Ždanoka, Auke Zijlstra			
<b>Substitute(s) present for the final vote</b>	Michael Cashman, Anna Maria Corazza Bildt, Franco Frigo, Petru Constantin Luhan, Jan Mulder, Sir Graham Watson			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Phil Bennion, Françoise Castex, Alejandro Cercas, Spyros Danellis, Andrew Duff, Marian Harkin, Claudiu Ciprian Tănăsescu, Derek Vaughan			
<b>Date tabled</b>	3.12.2013			