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

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At its meeting on 8 December 2010, the Working Party on Integration, Migration and Expulsion examined compromise suggestions proposed by the Presidency in relation with Articles 2, 3, 5, 6, 9-14.

The results of these discussions, together with the comments delegations have made at previous meetings on other Articles, are set out in the footnotes of the document annexed to this Note.

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<sup>1</sup>**

**CHAPTER I**  
**GENERAL PROVISIONS**

*Article 1*

*Subject-matter<sup>2</sup>*

This Directive determines the conditions of entry and residence of third-country nationals for the purposes of employment as seasonal workers and defines the rights of seasonal workers.

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<sup>1</sup> **AT, BG, CZ, DE, EE, EL, ES, FI, HU, IT, LT, LV, MT, NL, PL, PT, SE, SI, SK:** general scrutiny reservations.

**HU, LT, MT, SE:** parliamentary scrutiny reservations.

**AT, EL, DE, LT, SE:** linguistic reservations.

**CZ, EL, FR, SI:** scrutiny reservations on all the compromise suggestions presented at the meeting on 8 December 2010.

<sup>2</sup> **PT:** scrutiny reservation.

## Article 2

### Scope<sup>3</sup>

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and apply to be admitted **or who have been admitted**<sup>4</sup> to the territory of a Member State for the purpose of employment as seasonal workers.

**This Directive may also, if provided for by national law, apply to third-country nationals who are legally staying in the territory of a Member State and who apply for a seasonal worker permit in that Member State.**<sup>5</sup>

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.<sup>6</sup>

## Article 3

### Definitions

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

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<sup>3</sup> **EE** suggested to add a new paragraph which is based on the wording in the Single Permit proposal: "(3) *The provisions of chapter II and III of the Directive do not apply to third-country nationals who are allowed to work on the basis of a visa*". **NL** noted that it should be specified that the rights for seasonal workers as set out in this directive do not apply to the applicants.

<sup>4</sup> **AT**: scrutiny reservation. **EL** wanted to know which basis for admission is being meant. **ES** wanted to know whether this provision can be applied retroactively. **PT** could accept the addition.

<sup>5</sup> **CY, CZ, DE, PL**: scrutiny reservations. **EL, NL, RO** asked for clarification regarding the categories of people concerned. **BE, ES, NL, PT** could accept the provision, especially considering its optional nature. **Cion** noted that this sentence undermines the logic of the text and needs to be considered further.

<sup>6</sup> **AT, DE**: scrutiny reservations.

- (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**<sup>7</sup> 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<sup>8</sup> concluded directly between the third-country national and the employer established in **that** Member State;<sup>9</sup>
- (c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year, [...] during which labour levels are required that are<sup>10</sup> [...] above those necessary for usually ongoing operations **or during which specific operations need to be carried out**;<sup>11</sup>
- (d) ‘seasonal worker permit’ means the authorisation bearing the words ‘seasonal worker’ entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;<sup>12</sup>
- (e) ‘single application procedure’ means a procedure leading, on the basis of one application for the authorisation of a third-country national’s residence and work in the territory of a Member State, to a decision on the application;<sup>13</sup>

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<sup>7</sup> **ES**: scrutiny reservation. **EL** queried about the criteria to be used to define a principal place of residence.

<sup>8</sup> **AT, LT**: scrutiny reservations.

<sup>9</sup> **DE, ES, FI, PT**: scrutiny reservations. **FI** noted that the definition needs to be further discussed and that **FI** does not use fixed-term contracts. **BG** pointed out that this provision might need to be changed following the introduction of the second sentence in paragraph 1 of Article 2. **BE** shared these concerns.

<sup>10</sup> **PL**: delete "required that are".

<sup>11</sup> **AT, DE, EL, ES, FR, NL, PL**: scrutiny reservations as the definition is too broad and vague. **AT, DE, ES, EL, LT, LV, NL, PL** could support the text if the following is added: "*Member States may determine which activities they consider to be seasonal work.*"

<sup>12</sup> **AT, DE, EE, EL, ES, PT, SI**: scrutiny reservations. **DE** and **AT** would prefer a less concrete wording in the permit along the following lines: "*admitted for the purpose of seasonal work*".

<sup>13</sup> **EE, PT**: scrutiny reservations.

- (f) ‘universally applicable collective agreement’ means a collective agreement which must be observed by all undertakings in the geographical area and<sup>14</sup> in the profession or industry concerned. [...]’<sup>15</sup>

#### *Article 4*

##### *More favourable provisions*<sup>16</sup>

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

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<sup>14</sup> **EL:** "and/or".

<sup>15</sup> **EL, IT:** scrutiny reservations. **FI** suggested to delete the paragraph as a reference to collective agreements in Article 16 would suffice. In case the paragraph is kept reference should also be made to "*other forms of collective agreements*". **PT** wished to add a reference to court rulings.

<sup>16</sup> **SE,** supported by **FI,** stated that Member States should be able to apply more favourable provisions if they so wish also in respect to other Articles and suggested to add a corresponding new paragraph 3.

<sup>17</sup> **SI, SK:** scrutiny reservations. **DE, SK:** linguistic reservations.

## CHAPTER II

### CONDITIONS OF ADMISSION

#### Article 5

#### *Criteria for admission*<sup>18</sup>

1. Applicants for admission to a Member State under the terms of this Directive shall [...] <sup>19</sup>:
  - (a) **present** a valid work contract or, **if** provided for **by** 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 **which** specifies the rate of pay and the working hours per week or month and, when applicable, other relevant working conditions. **Member States shall require that this contract or job offer is in conformity with the provisions of Article 16(1)**,<sup>20</sup>

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<sup>18</sup> **LT**: scrutiny reservation. **CY**: "*Conditions of admission*"

<sup>19</sup> **DE, EL**: scrutiny reservations. **SI** preferred the original proposal as the current wording is not in line with the principle that both employers and employees can submit applications. **EL, FI** expressed the same concern. **DE** insisted that the introductory sentence should state clearly that this is a list of minimum requirements and does not give the right for admission: "*Member States shall ensure that at least the following criteria for admission to a Member State under the terms of this Directive are fulfilled*". **AT** and **ES** were of the same opinion. **ES** added that Member States should be able to apply other criteria set out in national law, such as requirements for qualifications depending on the type of work. **CZ** wished to add another criterion giving Member States the possibility to require that the worker provides his/her address in the territory of the Member State concerned. **LV, PT, RO** would also like to add a criterion with regard to qualifications for regulated professions. **EL** reminded that it had also proposed an additional criterion and questioned whether it might not be appropriate to add a general provision making it possible for Member States to add other admission criteria. **DE** proposed to add the following new paragraph: "*The competent authority shall issue a visa or residence permit to seasonal workers at its own discretion.*"

<sup>20</sup> **DE, SE** could not support the compromise proposal and continued to insist on their joint proposal: "*Member States may require that all conditions according to applicable laws, regulations, administrative provisions, collective agreements or practices applicable to comparable seasonal workers in the relevant occupational branches are met with regard to pay, insurance cover and other terms of employment*". **AT**: scrutiny reservation, could support the DE/SE proposal. **PL** could support the compromise proposal in principle. **NL** welcomed the compromise proposal but indicated that a reference to minimum pay and working hours, rather than the entire Article 16(1) would suffice.

- (b) **present** a valid travel document as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;<sup>21</sup>
  - (c) **provide** 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 contract;<sup>22</sup>
  - (d) **provide** evidence of having accommodation as set out in Article 14.<sup>23</sup>
2. Member States shall require that the seasonal worker will have sufficient resources<sup>24</sup> during his/her stay to maintain him/herself without having recourse to the social assistance system of the Member State concerned.
  3. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.<sup>25</sup>

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<sup>21</sup> **LV**: scrutiny reservation. **EL** suggested the following wording similar to that in the Blue Card Directive: "present a valid travel document as determined by national law *and an application for a visa or a visa, if required*. Member States may require...". **DE**, supported by **AT**, insisted on the following wording: "*The third-country national must be in possession of a valid travel document recognised under national law*". **LT** stated that this should be a "shall-clause".

<sup>22</sup> **AT, BG, LV, SK**: scrutiny reservations. **AT, FI** and **LV** asked for clarification on the link between this provision and Article 16. **Cion** explained that the insurance referred to here is meant to cover the period prior to taking up employment.

<sup>23</sup> **IT, LV, PT, SI, SK**: scrutiny reservations. **IT** would prefer more flexible wording referring to "guarantees of accommodation". **SE** maintained that this provision should be optional for Member States.

<sup>24</sup> **CY**: reservation as in **CY**, according to national collective agreements, the minimum wages in certain sectors are lower than the income that gives rise to public assistance.

<sup>25</sup> **DE** proposed to add the following: "...public security, public health *or to other essential interests of the admitting Member State...*". **PL** supported this proposal and suggested to add other grounds for refusal referring to records of unwanted foreign persons and the SIS system. **SI** suggested moving this paragraph to Article 6. **CY** would like Member States to be able to request evidence to verify the lack of threat and suggested to move this provision to Article 6.

## Article 6

### Grounds for refusal<sup>26</sup>

1. Member States shall reject an application for admission to a Member State for the purposes of this Directive whenever the conditions set out in Article 5 are not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.<sup>27</sup>
2. Member States may verify whether the vacancy **in question** 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.<sup>28</sup>
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.<sup>29</sup>

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<sup>26</sup> **DE** stated that it should be clearly stated that this is not a closed list of grounds for refusal.

<sup>27</sup> **HU**: linguistic reservation.

<sup>28</sup> **AT, CY, NL, RO**: it should be a "shall-clause". **SE** would like this clause to be optional for Member States. **Cion** noted that Member States were free to make this a compulsory provision. **CZ** could support the amended proposal. **CY** suggested to add, in line with Article 2(1), that those third-country nationals already legally residing in Member States should be given priority.

<sup>29</sup> **AT** suggested adding "... and if the employer does not meet legal provisions regarding social security and taxation". **ES** made a similar proposal. **SK** suggested to add that the application can be rejected if the employer does not fulfil his/her obligations according to national legislation on social security or social insurance and the institution concerned of the Member State has registered a claim vis-à-vis such an employer who does not pay compulsory insurance contributions; and if a third-country national has not fulfilled the obligations resulting from the decision on entry during his/her previous stay as a seasonal worker.

4. Member States may reject an application on the grounds of volumes of admission of third-country nationals.<sup>30</sup>

### **Article 7**

#### *Withdrawal or non-renewal of the permit*<sup>31</sup>

1. Member States shall withdraw or refuse to renew the permit issued on the basis of this Directive in the following cases:
- (a) when it has been fraudulently acquired, or has been falsified, or tampered with;
  - or
  - (b) where the holder is residing for purposes other than those for which he/she was authorised to reside.
2. Member States may withdraw or refuse to renew the permit issued on the basis of this Directive in the following cases:

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<sup>30</sup> **AT** noted that this provision should be consistent with the wording in the Blue Card directive stating that an application in this case "may be considered inadmissible". **DE** suggested to add the following to paragraph 4: "... third-country nationals *in general or from certain third countries determined by themselves*" and to add the following new paragraph 5: "*Member States may reject an application on the grounds of the economic sectors determined by themselves in which the criteria laid down in Article 3 (c) are fulfilled or on the grounds of certain temporal limits they have set for the enterprises in these economic sectors*". **DE** also proposed to add the following sentence at the end of Recital 8: "*Moreover, regarding volumes of admission, Member States retain the possibility not to grant residence permits for seasonal employment in general or for certain professions, economic sectors or regions.*" **IT** wished to add a reference to quotas.

<sup>31</sup> **EE**, **ES** thought that 2b) should be a "shall-clause". **LT** thought that 2a) and 2b) should be obligatory for Member States. **SE** stated that point 2b) should remain optional. **EL** thought that the same structure should be used as in the corresponding article in the Blue Card Directive. **DE** found point 2b) redundant as it is already covered by Article 5. **SK** suggested to add the same reason for withdrawal or non-renewal of the permit as stated by it in footnote 29. **ES** also wished to provide for the possibility to withdraw or not renew the permit if the employer does not meet his/her social security or tax obligations.

(a) wherever the conditions laid down in Article 5 were not met or are no longer met;

or

(b) for reasons of public policy, public security or public health.

### **CHAPTER III PROCEDURE AND PERMIT**

#### *Article 8*

##### *Access to information*

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.

#### *Article 9*

##### *Applications for admission*<sup>32</sup>

1. Member States shall determine whether an application is to be made by the third-country national **and/or** by the employer.
2. Member States shall designate the authority competent to receive the application and to issue the seasonal worker permit.<sup>33</sup>
3. The application to reside and work in the territory of a Member State as a seasonal worker shall be submitted in a single application procedure.<sup>34</sup>

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<sup>32</sup> **AT, EE, HU, PT:** scrutiny reservations. **DE** would like to add the following new paragraph: "*Member States may determine that the placement of seasonal workers from third countries must be carried out by a government agency.*" **AT** could support that proposal.

<sup>33</sup> **DE:** reservation.

<sup>34</sup> **SI:** scrutiny reservation on paragraphs 1 and 3 regarding the single application procedure.

4. The Member State concerned shall grant the third-country national whose application for admission has been accepted every facility to obtain **a long-stay visa if the latter is required.**<sup>35</sup>
5. **Member States may accept, if provided for by national law, an application submitted when the third-country national concerned is legally staying in its territory.**<sup>36</sup>

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<sup>35</sup> **DE, EL, IT:** scrutiny reservations. **EL** was opposed to "every facility" as it is difficult to implement it in practice due to the high numbers of seasonal workers. There should be a distinction between short-stay visas and long-stay visas. **DE** preferred the original version but found that it would be best to delete this paragraph. **PL** supported **DE** and wondered about the relationship between this paragraph and Article 10. **Cion** explained that the objective of the provision is to guarantee that entry visas are issued to those who need them.

<sup>36</sup> **RO:** scrutiny reservation, asking about the meaning of "legally staying". **LV** supported the proposal.

## Article 10

### Seasonal worker permit<sup>3738</sup>

1. For stays exceeding three months, seasonal workers who fulfil the admission criteria as set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with a seasonal worker permit.
2. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in Council Regulation (EC) No 1030/2002<sup>39</sup>. In accordance with point (a) 6.4 of the Annex to that Regulation, Member States shall enter 'seasonal worker' under the heading 'type of permit'<sup>40</sup>.

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<sup>37</sup> In order to meet the concerns expressed by a number of delegations the following options could be considered:

Option 1: The following new paragraph could be added :

**"By way of derogation from paragraphs 1 and 2 of this Article, Member States may issue to seasonal workers long-stay visas within the meaning of Article 18 of the Schengen Convention, instead of the document foreseen in paragraph 1.**

**In accordance with Article 18 of the Schengen Convention, Member States shall enter "seasonal worker" under the heading "comments" on the visa sticker.**

**Procedural safeguards and rights provided for in this Directive shall apply to the holder of a long-stay visa. "**

Option 2: It could be established that during a transitional period of three years Member States are allowed to continue to issue long-stay visas instead of seasonal worker permits.

<sup>38</sup> **AT, DE, ES, EE, IT:** reservations. **EL, HU, SK:** scrutiny reservations. **DE, FI:** linguistic reservations.

**EE** supported option 1 but on the condition that Chapters II and III of the directive do not apply to persons working on the basis of a visa.

**AT, ES, EL, DE, LT, PL, PT** preferred option 1. **PT** and **EL** added that the rights guaranteed to seasonal workers are not linked to the type of a document issued.

**EE, LT** stated explicitly that they could not support option 2.

**BG** stated that it can be flexible provided Member States keep their right to require visas for first entry.

**LV** could accept the original Cion proposal but can also support option 1.

**FR, SE** were flexible regarding this and emphasised the importance of guaranteeing the rights to all seasonal workers. **FI** had no preference but stated that it does not support the issuing of long-stay visas as a permanent solution.

**Cion** expressed its opposition to option 1 stating that it would not be in line with the logic of the proposal. The conditions for admission would in any case have to be met.

<sup>39</sup> OJ L 157, 15.6.2002, p. 1.

<sup>40</sup> **DE** suggested less precise wording for the type of permit along the lines of "*for the purpose of seasonal employment*".

3. Member States shall not issue any additional documents to the holder of the seasonal worker permit as proof of the access given to the labour market.<sup>41</sup>

### *Article 11*

#### *Duration of stay*

1. Seasonal workers shall be allowed to reside for a maximum of six months in any **period of twelve months**, after which they shall return to a third country.<sup>42</sup>
2. Within the period referred to under paragraph 1<sup>43</sup>, and provided that the criteria of Article 5 are met, seasonal workers shall be allowed to extend their contract or to be employed as seasonal worker with a different employer.<sup>44</sup>

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<sup>41</sup> **FR, NL, HU** proposed the following wording: "*Member States may issue an additional document to the single permit holding all relevant information on the specific right and conditions to work.*"

<sup>42</sup> **AT, DE, LT**: scrutiny reservations. **AT** would prefer a maximum of 12 months over a period of 14 months. **NL** found the formulation too rigid and suggested a period between 5 and 9 months in any 12-month period thus giving Member States more flexibility in defining the period. **ES, IT**: reservation on 6 months. **ES** would prefer a maximum period of 9 months. **FI**: scrutiny reservation as 6 months can be too short in some cases. **SE** also found 6 months too short and would prefer "a season in any period of 12 months". **FR** suggested to add the following: "to reside *in a Member State which has issued a work permit*".

**CY, CZ, FR, PL** could accept the compromise proposal. **CZ** also expressed support for **NL** proposal.

**FI, NL, SE** stated that it should be optional for Member States to require that seasonal workers return to a third country.

<sup>43</sup> **SE** queried as to whether reference is being made to the period of 6 months or 12 months.

<sup>44</sup> **CY, MT** stated that this provision should be optional for Member States. **AT, DE, EE, EL, LV, LT, NL, PL**: scrutiny reservations. **CZ, LT** expressed support for **DE** proposal which would make this provision optional for Member States. **LV** supported **NL** proposal which includes a requirement to inform authorities in case of change of employers. **CZ, EE, EL, HU, LT, MT, SI** stated that the permit should be linked to an employer. **AT** was opposed to the possibility to change employers.

3. **By way of derogation from paragraphs 1 and 2, and provided that the criteria of Article 5 are met and if provided by national law, Member States may, at the end of the six-month period, allow seasonal workers to extend their contract with the same employer for a maximum period of three months.**<sup>45</sup>

### *Article 12*

#### *Facilitation of re-entry*<sup>46</sup>

1. Member States **may** either:
- (a) upon application, issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative act ('multi-seasonal worker permit'),<sup>47</sup>
  - or
  - (b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.
2. Member States **who apply paragraph 1 a) or b)** shall provide that:<sup>48</sup>

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<sup>45</sup> **AT, DE, EL:** scrutiny reservations. **IT, NL:** reservations. **IT** noted that the contract should not necessarily be with the same employer. **PL** expressed concerns regarding the application of the provision and noted that the extension of the contract should occur before the end of the 6-month period. **CY, LV, SE** could accept the compromise proposal.

<sup>46</sup> **EL:** scrutiny reservation.

<sup>47</sup> **PL, SI:** scrutiny reservations. **PL** stated that this provision is incompatible with the permit to be issued under Regulation (EC) No 1030/2002 in which the start and expiration date has to be specified.

<sup>48</sup> **DE:** reservation on the mandatory character of this paragraph. **IT:** scrutiny reservation. **NL** stated that paragraph 2 should be a separate one applying independently of paragraph 1 and as such it should be optional for Member States. **BG** agreed and **PL** and **IT** also thought that 2(b) should apply in all cases.

- (a) a third-country national who has not complied with the obligations arising from the admission decision during a previous stay as a seasonal worker, and in particular with the obligation to return to a third country on the expiry of the permit, shall be excluded from the possibility of recruiting<sup>49</sup> seasonal worker for one or more subsequent years;
- (b) an employer who has not fulfilled the obligations arising out of the work contract shall be subject to effective, proportionate and dissuasive sanctions. Such employers shall be excluded from **the possibility of recruiting** seasonal workers for one or more subsequent years.

### *Article 13*

#### *Procedural safeguards*

1. The competent authorities of the Member State shall adopt a decision on the application 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 and at the latest within 60** days of the complete application being lodged.<sup>50</sup>
2. Where the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.<sup>51</sup>

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<sup>49</sup> **BG**: "shall be excluded from the possibility of *being* recruited...".

<sup>50</sup> **BG, CZ, LT, PL, SI** could support the compromise proposal. **AT, EL, FI**: reservation on "60 days". **EL, DE, MT, SE** would prefer "as soon as possible" without a deadline. **LV**: scrutiny reservation. **ES**: reservation as 60 days is too short, would prefer 90 days. **SI** wanted to know how this relates to the Visa Code as a decision on the C-visa would have to be taken within 3 months.

<sup>51</sup> **PL** suggested to follow the example of the Blue Card Directive and provide for the possibility to suspend the period laid down in paragraph 1 or to reject the application.

3. Any decision rejecting an application, or any decision not to renew or to withdraw the permit, shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.<sup>52</sup>

#### *Article 14*

##### *Accommodation*

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 **according to national legislation and/or practice**. If seasonal workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration.<sup>53</sup>

## **CHAPTER IV RIGHTS**

#### *Article 15*

##### *Rights on the basis of the seasonal worker permit/visa*

During the period of validity of a seasonal worker permit, the holder shall enjoy at least the following rights:

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<sup>52</sup> **EL**: scrutiny reservation. **DE, FI**: reservations. **AT**: linguistic reservation.

<sup>53</sup> **AT, EL, CY, IT, LT, LV, PL, PT, SI**: scrutiny reservations. **EE**: reservation. **PL, PT** stated that it would be problematic to apply this provision since it does not correspond to national practice. **FI** stated that the addition does not help to clarify the Article and suggested that a point could be included prohibiting the exploitation of seasonal workers by employers. **AT** noted that the last sentence of the paragraph interferes with private law. **CY** queried as to whether the employer would be responsible to find and pay for the accommodation even in case where it is not in a position to provide accommodation. **CY** also asked whether the remuneration can be adjusted accordingly if the employer has to pay for accommodation. **EE** could not support references to the cost of accommodation or the standard of living. **NL, SE** thought that this provision should be optional for Member States. **HU, IT, LV, NL** found that this provision constitutes an excessive administrative burden for both employers and the administration. **BE, NL** stated that the employer should ensure that it is up to standard only if it is the responsibility of an employer to secure accommodation.

- (a) the right to enter and stay in the territory of the Member State issuing the permit;
- (b) free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;<sup>54</sup>
- (c) the right to exercise the concrete employment activity authorised under the permit in accordance with national law.<sup>55</sup>

### *Article 16*

#### *Rights*<sup>56</sup>

Whatever the law applicable to the 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;<sup>57</sup>

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<sup>54</sup> **LT** did not see the added value of points a) and b) as they are regulated in other acts.

<sup>55</sup> **NL**, supported by **HU**, suggested to add a reference to a concrete employer.

<sup>56</sup> **AT, EL, HU, IT, LV, LT**: scrutiny reservations. **FI**: reservation. **AT**: linguistic reservation.

<sup>57</sup> **FI** suggested to delete paragraph 1 as the objective should be to grant workers equal treatment with nationals. **EL, NL, SE** noted that working conditions should also be included under equal treatment as it is the case in Article 14 of the Blue Card Directive. **AT** noted that it is considering whether collective agreements are enough to prevent wage dumping. **Cion** explained that it was its intention to make a distinction between paragraphs 1 and 2. Recital 20 of the Directive clarifies that due to the specific situation of seasonal workers working conditions applicable to them should be clearly clearly defined.

2. equal treatment with nationals of the host Member State as regards at least with regard to:<sup>58</sup>
- (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 the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04;<sup>59</sup>
  - (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;<sup>60</sup>
  - (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.<sup>61</sup>

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<sup>58</sup> **EE**: scrutiny reservation.

<sup>59</sup> **CZ, ES, DE, PL**: scrutiny reservations. **DE** was opposed to granting equal treatment regarding family benefits. **AT**: reservation on equal treatment regarding family benefits. **EE** stated that equal treatment with nationals should not be given in respect to services that are meant to fight long-term unemployment. **FI**, referring to its residence-based social security system, noted that differences in Member States' systems would have to be taken into account and exceptions to certain entitlements should be allowed. **CY** would like the wording in points b) and c) to be in line with the wording in the corresponding Article in the Single Permit Directive and stressed that this Directive should not provide more rights than what is foreseen in Regulation 883/2004.

<sup>60</sup> **CZ, SI**: scrutiny reservations. **DE**: reservation and linguistic reservation. **SE** would prefer the wording used in Article 14 (1)(f) of the Blue Card Directive.

<sup>61</sup> **FI** asked why specifically public housing and counselling services are excluded as there might be other types of services that need to be excluded. **DE** asked for clarification pointing out that private educational services should not be covered either. **MT** would like to exclude not just public housing but all kinds of housing. **LV** would like to be able to exclude social assistance services as well. **EE**: scrutiny reservation as measures to fight against long-term unemployment should also be excluded.

The right to equal treatment provided for in paragraph 2 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.

### *Article 17*

#### *Facilitation of complaints*<sup>62</sup>

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

## **CHAPTER V FINAL PROVISIONS**

### *Article 18*

#### *Statistics*<sup>63</sup>

1. Member States shall communicate to the Commission statistics on the number of residence permits and visas issued for the first time or renewed and, as far as possible, on the number of residence permits and visas withdrawn for the purpose of seasonal employment to persons who are third-country nationals, disaggregated by citizenship, age and sex, length of validity of the permit and economic sector<sup>64 65</sup>.
2. 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>66</sup>.

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<sup>62</sup> **DE:** reservation. **AT, EL, IT:** scrutiny reservations. **SE** noted that the heading of the Article is not in line with the content and should be thus amended.

<sup>63</sup> **DE:** reservation. **AT:** scrutiny reservation. **LT** suggested to use "*seasonal worker permits*" instead of "residence permits" in the entire text.

<sup>64</sup> **SI:** delete "economic sector".

<sup>65</sup> **EL, ES, PL, PT:** scrutiny reservations.

<sup>66</sup> OJ L 199, 31.7.2007, p. 23.

3. 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)*].

### **Article 19**

#### *Reporting*

Every three years, and for the first time no later than [*three years after the date of transposition of this Directive*], the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary<sup>67</sup>.

### **Article 20**

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (*24 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 and a correlation table between those provisions and this Directive.<sup>68</sup>

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

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<sup>67</sup> **DE**: reservation.

<sup>68</sup> **DE, SI** were against the requirement to communicate correlation tables to the Commission. **PT**: reservation on the obligation to send correlation tables and the transposition period. **IT, LV**: scrutiny reservations on the obligation to send correlation tables. **CY, EL** were opposed to any references to correlation tables, even in the recitals. **AT, DE, CY** stated that the transposition period should be 3 years.

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 Brussels, [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*