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REPORT

of: JHA Counsellors

on: 15 October 2012

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

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

Delegations will find attached a report of the meeting of JHA Counsellors on 15 October at which Presidency compromise suggestions concerning the above mentioned proposal were discussed (doc. 14621/12, Articles 1, 3, 5, 5b, 5a, 6, 7(1) and Recitals 10, 11, 14a, 14b, 16a, 17, 19a). Since the rest of the amendments contained in doc. 14621/12 were not discussed due to lack of time, the previous version of these provisions as it appeared in doc. 12792/12 has been reproduced in this report. The results of the discussions at the meeting on 15 October have been incorporated in the text of the outcome of proceedings of the meeting of the Working Party on Integration, Migration and Expulsion on 17 July (doc 12792/12) and are set out in the Annex to this Note, with delegations' comments in the footnotes.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the conditions of entry and stay of third-country nationals for the purposes of seasonal
employment¹

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

¹ **AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IT, LT, MT, NL, PL, PT, SE, SI, SK:** general scrutiny reservations. **AT, CZ, NL, PL:** parliamentary reservations. **BE, FI, FR, HU, SE, SI:** parliamentary scrutiny reservations. **AT, EL, DE, LT, SE:** linguistic reservations. **PT:** scrutiny reservation on **Pres** suggestions contained in doc. 14621/12 as opposes the distinction between short and long stays. **CZ:** a general reservation concerning the inclusion of short stays in the scope of the Directive. **EE:** it should not be defined in the text which visas MS should issue for which stays.

Whereas:

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

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

² **IT:** reservation. **DE:** scrutiny reservation on the Recital. **AT, DE, EL:** the Recital should be worded along the lines of Recital 8 in the Blue Card Directive referring to the option of granting 0-quota. **NL** agreed that MS should be allowed to have 0-quota.

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

³ **BE, FI:** the construction sector should be explicitly excluded from the scope of the Directive. **ES:** the specification of sectors is too detailed; there is no need to refer to the actual seasons. **HU, FR:** it is up to MS to determine the sectors, the examples serve no purpose and could be misleading. **AT, DE** supported the examples given in the recital as they give direction to MS but would like to leave out the references to seasons. Alternatively, **AT** suggested to insert: "*in particular* during the planting or harvesting period" and "*in particular* during the holiday period" suggesting that there may be a need for seasonal work also outside these periods.

⁴ **SK:** scrutiny reservation on the Recital. **EL, PT** could not see the reason for adding the last sentence if it is clear that this category of persons does not fall under the scope of the Directive. Furthermore, **EL** asked whether the unreturnable persons could not be employed for the purpose of seasonal work.

- (13) The Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the level of remuneration applicable to seasonal workers in the sector concerned.
- (14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.
- (14a) Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to return to a third country on the expiry of a long-stay visa or a seasonal worker permit⁵.
- (14b) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed for granting, withdrawal or extension/renewal of the authorisation for [...] **admission as a seasonal worker** 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 organization and practice.
- (15a) *deleted*⁶
- (16) Member States should be able to determine the maximum duration of stay for the purposes of seasonal employment within any period of twelve months referred to in this Directive.

⁵ **DE:** replace with "... the expiry of *an authorisation for admission as a seasonal worker*".

⁶ **AT, EE, NL:** should be re-inserted despite the fact that it is included in the body of the text.

- (16a) The possibility to change employers [...] should be given in cases where the employer does not fulfil its obligations or⁷ **could be given** in order to reduce the risk of abuse that seasonal workers employed by one single employer might face.⁸
- (17) In order to promote circular migration of third-country national seasonal workers and to ensure their employment prospects in the EU for periods beyond a single season and for EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment for several consecutive years [...] **could** be provided, either through three seasonal worker permits covering up to three subsequent seasons issued in one administrative act or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required.⁹
- (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.

⁷ **NL:** "and"

⁸ **SK:** scrutiny reservation on the addition. **HU:** scrutiny reservation on "should be given". **AT:** "the possibility to change employers *could* be given ..." as the connection with Article 7 paras 3 and 3a is not clear. **EE, LT:** the first part of the sentence should not express an obligation either. **BE:** scrutiny reservation, reference to national law and practice should be included in the Recital too. **EL:** insert a reference to national legislation and delete the last part of the Recital starting with "or in order to ...". **Cion** pointed out that the first part of the sentence relates to situations set out in Article 7(3) and (3a). **PL, HU** suggested that the recital could be clarified further. **LT:** Article 7(3a) does not constitute an absolute right but one that is conditional upon fulfilment of certain requirements.

⁹ **AT** (supported by **DE**): scrutiny reservation on the recital as having doubts about the reference to circular migration in this context suggesting the following wording instead: "*With a view to additionally motivate seasonal workers to abstain from overstaying*, the possibility of access to seasonal employment for several consecutive years could be provided, either through three seasonal worker permits covering up to three subsequent seasons issued in one administrative act or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required. *Circular migration could also play a role in this context.*"

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

(19a) [...]

(20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to provide effective protection of their rights. For the sake of legal certainty, therefore, the work contract or a binding job offer should specify clearly the working conditions which should be in conformity with applicable laws, collective agreements and/or practices of the given Member State.¹⁰

(21) *deleted*

(22) Third-country national seasonal workers should be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems¹¹. The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. This Directive should not confer more rights than those already provided in existing EU legislation in the field of social security for third-country nationals who have cross-border interests between Member States. This Directive does not provide for family reunification and accordingly does not confer rights on family members of a seasonal worker. 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.¹²

¹⁰ **AT**: scrutiny reservation.

¹¹ OJ L 166, 30.4.2004, p. 1.

¹² **EL** wanted to know which rights exactly are referred to here.

- (23) To facilitate enforcement, relevant designated third parties such as trade unions or other associations should be able to lodge complaints in order to ensure effective application of the Directive. This is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use these in their own name, out of fear of possible consequences.
- (24) Since the objectives, namely the introduction of a special admission procedure and the adoption of conditions on entry and stay for the purpose of seasonal employment by third-country nationals, cannot be sufficiently achieved by Member States and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the subsidiarity principle as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. ¹³
- (25) This Directive respects the fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union.
- [(25a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.] ¹⁴
- (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.

¹³ **Cion** was opposed to the use of the term "stay" in this Directive.

¹⁴ **LV**: scrutiny reservation pending an explanation from the Cion.

(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*¹⁵

1. This Directive determines the conditions of entry and stay¹⁶ of third-country nationals for the purposes of employment as seasonal workers and defines the rights of seasonal workers.

¹⁵ **AT, BE, CZ, EE, ES, HU, IT, LT, NL, PT, SE, SK:** scrutiny reservations on the Article. **FR, PT, PL:** general reservations on all the provisions covering stays shorter than 3 months in this Directive. **EE:** it should not be defined in the text which visas MS should issue for which stays. **FR** expressed fundamental concerns about this approach due to its interference with the Schengen system pointing out that the admission for the purpose stays shorter than three months falls under national competence and should not be covered by this Directive. **CZ, SK** (reservations) on covering stays not exceeding 3 months as it interferes with the Visa Code pointing out that the legal base in Article 79 of TFEU does not cover short stays.

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

2. The provisions of this Directive shall apply without prejudice to the Schengen acquis **in particular Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas¹⁷, 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 borders¹⁸, 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 requirement¹⁹.²⁰**

Article 2

Scope²¹

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.²²
2. This Directive shall not apply to third-country nationals:²³
- (a) who are posted in the framework of the provision of services, irrespective of whether the undertaking is established in a Member State or in a non-Member State, as long as they are posted.²⁴

¹⁷ OJ L 243, 15.9.2009, p. 1.

¹⁸ OJ L 105, 13.4.2006, p. 1.

¹⁹ OJ L 81, 21.3.2001, p. 1.

²⁰ **PT**: simultaneous application of the Directive and the Schengen acquis will be problematic in practice.

²¹ **AT, EL, SE, SI**: scrutiny reservations on the Article.

²² **SE**: reservation as TCN legally staying in the territory of a MS should also fall under the scope of the Directive (supported by **PT**).

²³ **SI**: scrutiny reservation. **CZ** suggested to add the following new point (e) in this paragraph: "(e) who are family members of seasonal workers." (doc. 5688/12).

²⁴ **FI**: scrutiny reservation on point a).

- (b) who are working for and being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and ²⁵ direction of another undertaking. ²⁶
- (c) who are family members of Union citizens who have exercised their right to free movement within the Union, in conformity with Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
- (d) who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and the Member States or between the Union and third countries;

Article 3
Definitions

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

- (a) ‘third-country national’ means any person who is not a citizen of the European Union within the meaning of Article 20 (1) of the Treaty on the Functioning of the European Union;

²⁵ **EL:** "and/or".

²⁶ **ES, SE:** reservations, **FI, PL, PT:** scrutiny reservations on point b). **BE:** a positive scrutiny reservation with respect to the term "under the supervision". **ES, PT, SE:** temporary work agencies should not be excluded from the scope of the Directive as also those workers who use the services of agencies should be protected under this Directive. **SE:** this provision should thus be optional for MS.

- (b) 'seasonal worker' means a third-country national who retains his/her principal place of residence in a third country and stays legally and temporarily for the purposes of employment in the territory of a Member State to carry out an activity dependent on the passing of the seasons, as determined by national law and/or practice, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in that Member State;²⁷
- (c) 'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year during which required labour levels are above those necessary for usually ongoing operations or during which specific operations need to be carried out;²⁸
- (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 the words 'seasonal worker' entitling its holder to stay and work in the territory of a Member State under the terms of this Directive;²⁹
- (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;³⁰
- (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;³¹

²⁷ **IT:** reservation. **ES, PT:** reservation on the direct work contract. **FI** pointed out that there might be a need to explicitly exclude construction work from the scope of the Directive since it is seasonal in the case of FI.

²⁸ **AT, HU, NL, PL:** scrutiny reservations. **ES** pointed out that it would be more appropriate to link seasonal activities to an increased need for labour rather than the passing of the seasons.

²⁹ **EE, ES, FI, PT, SI:** scrutiny reservations. **DE:** reservation stating that the Directive should not regulate what to write on the permit suggesting to insert the following: "...bearing the words "seasonal worker" *or making otherwise clear that it was issued for seasonal work and entitling ...*"

³⁰ **SK:** scrutiny reservation.

³¹ **EE, PT:** scrutiny reservations.

- (g) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.
- (h) **"authorisation for admission as a seasonal worker" means either a short-stay visa with or without a work permit, a long-stay visa with or without a work permit or a seasonal worker permit. In the case of those third-country nationals listed in Annex II of Regulation 539/2001, Member States may either apply Article 4(3) of Regulation 539/2001 or issue a work permit or both.**³²
- (i) 'work permit' means an authorisation issued by a Member State in accordance with national law exclusively for the purpose of work in the territory of a Member State.³³

³² **FI:** the definition should be worded more clearly in order to facilitate implementation. **ES** supported the second sentence but expressed concerns about the inclusion of a reference to a short-stay visa in the first one. **FR:** the definition should be worded more clearly as "with or without a work permit" could be confusing pointing out that there is always a procedure for an authorisation for employment regardless of whether a permit is issued or not. **FR** suggested to the following wording: "... either a short-stay visa with *a work permit delivered according to national law*, a long-stay visa *with a work permit delivered according to national law* or a seasonal worker permit.". **DE:** the term "authorisation for admission as a seasonal worker" is inconsistent as this comprises an authorisation for employment too suggesting to use either "*authorisation as a seasonal worker*" or "*authorisation for the purpose of seasonal work*" (supported by **BE, PL**). **NL:** the first sentence gives the impression that an applicant could choose whether to opt for a visa with or without a work permit suggesting to add "... without a work permit *if this permit is not required*". **AT** supported the wording of the definition pointing out that the second sentence of it could be transferred to Article 10(2a). **HU:** the definition might be difficult to interpret together with Article 10(2a). **EL** wanted to know whether an approval of employment issued by the national administration certifying that the employer is entitled to employ foreign workers would qualify as a work permit for the purposes of this Directive. Such an approval would lead to a visa being issued. **Pres** confirmed that this practice appears to be in line with the Directive.

³³ **AT, EL, HU, NL, SK:** scrutiny reservations. **PT:** the definition should not refer to the concept of an "authorisation" which is too broad and contains no reference to seasonal work. **IT:** add "*any authorisation*". **AT:** scrutiny reservation as in AT work permit is also a residence title suggesting to use "*primarily*" instead of "exclusively" (supported by **FI**).

Article 4

More favourable provisions³⁴

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

³⁴ **PL** suggested to add the following new recital in relation to Article 4: "*As long as the criteria and requirements for admission to employment as a seasonal worker are met, Member States should have the possibility to facilitate the procedure of admission as a seasonal worker for nationals of certain third countries due to particularly close links with those countries in particular in the area of migration.*" **Cion**: it is not possible to change an Article through a recital. Furthermore, no exceptions are allowed to admission conditions. Article 4 allows for bilateral agreements. The PL suggestion seems to amount to a parallel national scheme. **SE**, supported by **FI**, stated that MS should be able to continue to apply more favourable national provisions and suggested to add a new paragraph 3 following the example of Article 3(4) of the Blue Card Directive: "*This Directive shall be without prejudice to the right of the Member States to issue residence permits other than a seasonal worker permit for any purpose of employment*".

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

CHAPTER II

Conditions of admission

Article 5

Criteria and requirements for admission to employment as a seasonal worker for stays not exceeding three months^{36 37}

³⁶ New Recital: "Criteria and requirements for admission as a seasonal worker for stays not exceeding three months are defined **in this Directive** as far as admission to employment [...] **as a seasonal worker** is concerned. In this case, **the** conditions for entry to and stay in the territory of Member States [...], **with the exception of UK and Ireland**, are governed by the relevant provisions of the Schengen acquis. **While in the case of Member States applying the Schengen acquis in full, both the Visa Code and the Schengen Borders Code apply, in the case of Member States not applying the Schengen acquis in full only the Schengen Borders Code applies.**"

AT, FI, FR, SK: scrutiny reservations on the Recital. **DE** suggested to replace "with the exception of UK and Ireland" by "... in the territory of the Member States *applying the Schengen acquis*". **PT** could not support the Recital as it implies two admission procedures for short stays also pointing out that the Visa Code should not be used for labour purposes.

³⁷ **AT, BE, DE, EE, ES, FR, HU, LT, NL, SK:** scrutiny reservations on the Article. **CZ, FR, PT:** reservations on the Article concerning the scope covering stays not exceeding 3 months. **CZ:** the approach leads to over-regulation. Furthermore, the Article contains overlaps with the Schengen acquis. **FR:** suggested to merge Articles 5 and 5b as there should be no separation into short and long stays and as admission conditions in the two cases should be similar. **EE:** there is no need to distinguish between short and long stays. **HU** could not agree with the addition in the title as it seems to indicate that the Article contains criteria that fall under the exclusive competence of the employment authorities. **AT** supported the addition in the title. **AT, DE:** MS should be able to apply other criteria of admission in accordance with their national legislations. **DE** suggested the following introductory sentence: "*Member States shall ensure that at least the following criteria* for admission to a Member State under the terms of this Directive *are fulfilled.*" and proposed to add the following new paragraph: "*The competent authority shall issue a visa or residence permit to seasonal workers at its own discretion.*" **EE:** add an admission criterion enabling Member States to apply a salary threshold (an obligation to pay a higher salary than the average salary in a given sector). The reference to practices in paragraph 1a is too broad and does thus not meet the concerns of **EE**. **Cion** replied that such a criterion would add an admission condition. Furthermore, it would amount to discrimination of EU citizens who would get a lower salary than third-country nationals. **EE:** some of the requirements set for employers in the ICT Directive could be included here too. **ES** suggested two additional criteria for admission enabling Member States to require the worker/employer to provide a guarantee of return to a country of origin, and to require the employer to organise and bear the costs of a travel of the worker from and to the country of origin. **CZ** wanted to include an additional criterion requiring the worker to provide his/her address in the territory of the Member State concerned. **BE, LT** suggested to add an additional condition for admission similar to the one in Article 5(3) of the Researchers' Directive requiring the employer to cover the expenses related to the return of the seasonal worker in case he/she remains illegally in the territory of the MS concerned. **Cion:** no need for the addition as national provisions apply in this respect. **EL** would either like to add that

1. Without prejudice to Article 9, a third-country national who applies to be admitted under the terms of this Directive or the employer shall:
 - (a) present a valid work contract or, if provided for by national law or administrative regulations or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State which specifies the remuneration and the working hours per week or month and, where applicable, other relevant working conditions.
 - (b) provide evidence that the third-country national has or is ³⁸ entitled to have by virtue of the application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in the Member State concerned. ³⁹

"Member States may require means of evidence, set by national legislation, which guarantee the capacity and/or needs of the respective employer to employ a certain number of seasonal workers" or provide that Member States may add other admission criteria. **SI** did not support the idea of adding new conditions but could accept a minimum list of conditions. **AT** was opposed to the deletion of Recital 13a as it appeared in doc 13194/11 which should instead be integrated in the body of the text.

³⁸ **Cion:** insert "*or having applied for ...*"

³⁹ **EE, FI, NL, PL, SK:** scrutiny reservations, **FI:** reservation on the paragraph. **CZ** stated that the provision collides with the corresponding one in the Visa Code pointing out that the insurance provided under the Visa Code should be sufficient. **BE, PT, SK:** there is a risk of double insurance - one under the Visa Code and another one under this Directive. **DE** pointed out that Article 15(6) of the Visa Code should be sufficient to ensure that there is no double insurance. **FI** (supported by **MT**) suggested the following wording: "(b) provide evidence that the third-country national has [...] a sickness insurance for all the risks normally covered for nationals of the Member State concerned for *the whole period of employment* [...] where no such insurance coverage and corresponding entitlement to benefits *in kind* are provided in connection with, or as a result of, the work carried out in the Member State concerned." **LV:** sickness insurance can be connected with residence and it should be possible for MS to require that sickness insurance covers the entire period of seasonal work. **SE** also expressed concerns about "...or as a result of the work carried out.." **EE:** MS has to be able to require that a TCN has sickness insurance before entering the territory of a MS. **Cion:** seasonal workers will benefit from the coverage on the basis of the equal treatment clause of Article 16, Article 5(1)(b) will cover very specific situations (e.g. weekend before commencing work); insurances under the Visa Code and Art 5(1)(b) do not cover the same risks.

(c) provide evidence that the third-country national has accommodation as set out in Article 14.⁴⁰

1a. Member States shall require that the conditions listed in paragraph 1(a) are in conformity with applicable laws, collective agreements and/or practices;⁴¹

2. **Member States shall require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to the social assistance system of the Member State concerned.**⁴²

3. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens⁴³ of the regulated profession specified in the work contract or binding job offer as provided for in national law.⁴⁴

⁴⁰ **SE, SI:** scrutiny reservations. **IT** would prefer a more flexible wording referring to "*guarantees of accommodation*". **SE** maintained that this provision should be optional for MS.

⁴¹ **HU:** scrutiny reservation. **FR** enquired whether reference is made to the laws of the MS in question. **Pres** confirmed that this is indeed the case pointing out that this is clearly stated in Recital 20. **NL** (supported by **DE**) suggested to insert: "*and may require that it is in conformity with applicable collective agreements*" since it would be difficult to check all the requirements contained in collective agreements. Alternatively, **DE, SE**, supported by **EE**, proposed the following new paragraph: "*Member States may require that all conditions according to applicable laws, regulations, administrative provisions, collective agreements or practices applicable to comparable seasonal workers in the relevant occupational branches are met with regard to pay, insurance cover and other terms of employment*". **Cion:** the paragraph is overly complicated and would lead to problems in practice; a requirement for a binding work contract in this Article together with a requirement for equal treatment in respect of working conditions in Article 16(1) should suffice. **NL** suggestion would result in complete ambiguity.

⁴² **PL** expressed doubts regarding the necessity of adding this criterion since it could lead to confusion when read together with the Schengen acquis. **HU:** this provision should only apply to those who are not required to hold a Schengen visa as it otherwise conflicts with Article 14 of the Visa Code. **AT** supported the paragraph.

⁴³ **DE:** delete "by Union citizens".

⁴⁴ **EL:** reservation. **FR** expressed doubts about the relevance of this paragraph since seasonal work covers only a limited number of activities.

Article 5b

*Criteria and requirements for admission as a seasonal worker for stays exceeding three months*⁴⁵

1. Without prejudice to Article 9, a third-country national who applies to be admitted under the terms of this Directive or the employer shall:
 - (a) present a valid work contract or, if provided for by national law or administrative regulations or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State which specifies the remuneration and the working hours per week or month and, where applicable, other relevant working conditions.
 - (b) provide evidence that the third-country national has or is entitled to have by virtue of the application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in the Member State concerned.⁴⁶
 - (c) provide evidence that the third-country national has accommodation as set out 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.

⁴⁵ **CZ, FR:** reservations on the Article. **AT, BE, ES, HU:** scrutiny reservations on the Article. **FR, HU:** Article 5 and Article 5b should differentiate between conditions for access to the territory and to employment.

⁴⁶ AT suggested to insert, in order to align the wording with the one in the ICT Directive: "*Without prejudice to existing bilateral agreements, present evidence that..*".

2. Member States shall require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to the social assistance system of the Member State concerned.⁴⁷
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.⁴⁸
4. When examining an application for [...] **authorisation for admission as a seasonal worker** 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**.⁴⁹
5. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law.

⁴⁷ **IT** enquired as to whether there is an obligation for a seasonal worker to prove that he/she has sufficient resources. **AT**: the wording should be aligned with the one agreed upon in the ICT Directive in the following manner: "Member States *may* require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself *and his/her family members* without having recourse to *social benefits including* the social assistance system of the Member State concerned".

⁴⁸ **NL**: the paragraph is formulated as a ground for refusal rather than a criterion for admission. **ES**: this criterion is better here since it should be checked before admission pointing out that all admission criteria are also criteria for rejection.

⁴⁹ **SI**: scrutiny reservation. **ES**: scrutiny reservation stating that this should be an optional clause and enquiring how to verify whether a TCN presents a risk of illegal employment. **SE** (scrutiny reservation) maintained that this should be an optional clause for MS also expressing concerns regarding the content of the paragraph. **Cion** could not support this provision being obligatory pointing out that this kind of requirement is not used for other groups of migrants.

6. Third-country nationals shall be in possession of a valid travel document determined by national law. Member States shall require the period of validity of the travel document to cover at least the validity of the seasonal worker permit or the long-stay visa.⁵⁰ In this case Member States may also require the period of validity to exceed the intended duration of stay by a maximum of 6 months.⁵¹

Article 5a

*Volumes of admission*⁵²

1. This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory for the purpose of seasonal work. [...] **On this basis**, an application for admission to a Member State for the purposes of this Directive may be considered inadmissible [...].⁵³

⁵⁰ **FI, NL, SE**: should be a "may-clause" as in the Blue Card Directive. **DE, BG** insisted on a "shall-clause".

⁵¹ **DE** (supported by **PL**) pointed to inconsistency with Article 12 of the Visa Code which provides that the validity of a travel document shall extend at least three months after the intended date of departure.

⁵² **DE**: reservation on the grounds set out in the comments on Recital 8.

⁵³ **BE, FI**: there should be no possibility to appeal against a decision on inadmissibility. **FI** asked whether this would render the related visa application also inadmissible. **FI** (supported by **HU, SK**): "... an application for *authorisation for admission as a seasonal worker ...*". **AT** suggested the following wording in order to align the text with the ICT Directive: "This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory. An application for admission to a Member State for the purposes of this Directive may be considered inadmissible."

Article 6
*Grounds for refusal*⁵⁴

1. Member States shall reject an application for **authorisation**⁵⁵ for admission to as a seasonal worker⁵⁶ whenever the conditions set out in Article 5 or 5b are not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.

2. Member States may verify whether the vacancy in question could be filled by nationals of the Member State concerned or by other EU citizens, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market in accordance with national or Union law, in which case they may reject the application. This paragraph shall apply without prejudice to the principle of Union preference as expressed in the relevant provisions of the Act of Accession of 2005.⁵⁷

- 2a. Member States may reject an application for **authorisation for** admission as a seasonal worker on the ground set out in Article 5a (1).⁵⁸

⁵⁴ **CZ:** reservation, **HU:** scrutiny reservation on the Article pointing out that access to employment and access to territory should be separated.

⁵⁵ **DE:** it is not necessary to refer to "authorisation" in this Article.

⁵⁶ **FI, SE** suggested to use the same wording as in Article 7 ("an application for the authorisation to work, the long-stay visa or the seasonal worker permit"). **CZ** could not support the term used pointing out that workers always apply for a concrete permit.

⁵⁷ **AT:** scrutiny reservation on the paragraph and the related Recital. **NL:** scrutiny reservation on the paragraph on whether this should be a "may-" or a "shall-clause". This is national competence but since it should be possible to find the workers in question also in the EU, it could also be a shall-clause. **LT:** this should be a shall-clause. **EL** suggested to insert in the paragraph the following: "... in accordance with national or Union law *or by a third-country national falling under the scope of a bilateral agreement on employment between the Member State and the third country*, in which case ...".

⁵⁸ **AT** suggested to align the provision with the respective one in the Blue Card Directive: "Member States *may consider inadmissible* an application for authorisation.."

3. Member States may reject an application for **authorisation for admission** as a seasonal worker if the employer: ⁵⁹
- (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment; ⁶⁰
- or
- (b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment according to applicable laws, collective agreements and/or practices are not met;⁶¹
 - (c) **appears to have purposefully** eliminated [...] the positions he is trying to fill through the new application within the 12 months immediately preceding the date of the application. ⁶²

⁵⁹ **IT**: scrutiny reservation. **EL** would like to add a new criterion related to the pre-selection of the employer as a condition for authorising it to hire foreign workers. This would be a way to test the productive capacity of the employer in relation to the number of seasonal workers it has asked to hire or to examine the real needs of the employer in order to prevent abuse and illegal immigration. **Pres** assured **EL** that nothing in the current text forbids them from carrying out such checks when conducting a labour market test. **LT** suggested to add the following new paragraph: "*Member States may reject an application for admission as a seasonal worker if there are objective reasons to believe that the employer does not intend to employ seasonal workers or have objective reasons to believe that the employer intends to commit fraud.*"

⁶⁰ **IT**: scrutiny reservation. **SK**: should be a "shall-clause".

⁶¹ **EE, EL, FR, IT, PT**: scrutiny reservations. **FR**: add at the end of the sentence: "... applicable in the MS where the work is carried out." **EL**: insert "... taxation , recruitment requirements and/or ..." as an alternative way of meeting the concerns of **EL** expressed in above.

⁶² **ES**: scrutiny reservation. **DE**: scrutiny reservation asking how to interpret "appears to have.." **NL**: delete "purposefully" as it is difficult to prove. **AT**: scrutiny reservation for reasons of legal certainty. **EL** expressed concerns about this provision regarding legal certainty. **HU**: it might be problematic to apply this provision in practice. **SK** asked for an explanation regarding this provision, especially in light of Article 7(1).

4. Member States may reject an application for admission as a seasonal worker if the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.

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Article 7

Withdrawal or non-extension/non-renewal of the authorisation for admission as a seasonal worker^{64 65}

1. Member States may withdraw or refuse to extend or renew the authorisation for admission as a seasonal worker granted on the basis of this Directive whenever the provisions of Articles 5, 5b or 6, **with the exception of Article 6(3)(c)**, were not or are no longer complied with.⁶⁶

⁶³ **AT, DE** suggested to add the following new paragraph: "*Member States may reject an application if the applicant has committed a breach of legal provisions, court rulings or official orders, excepting isolated or minor breaches, or has committed an offence outside the territory of a Member State which is regarded in the Member State's territory as an intentionally committed offence.*" (The explanation is provided in doc. 6176/12) **Cion**: the provision is not precise enough, it raises concerns of legal certainty and stigmatises this particular group of migrants. **PL** agreed with **Cion** stating that the provision goes too far and referring to the SIS that already contains a provision on public order. **LT** suggested to add the following new paragraph: "*Member States may reject an application for admission as a seasonal worker if there are objective reasons to believe that the employer does not intend to employ seasonal workers or have objective reasons to believe that the employer intends to commit fraud.*"

⁶⁴ **CZ, FR**: reservations on the Article. **AT, HU**: scrutiny reservations on the Article. **NL**: scrutiny reservation suggesting to insert "authorisation for admission *and/or work* as ..." as a work permit is not an authorisation for admission. **DE** suggested to use the term "authorisation *for the purpose of seasonal work*".

⁶⁵ New Recital: "**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. 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.**"

PT objected to merging the Schengen regime with the one designed for the purpose of employment. Schengen visas are designed for crossing external borders and for travelling within the Union and not for employment purposes.

⁶⁶ **DE, LT, LV** asked for clarifications regarding the addition in the paragraph. **Pres**: if this ground was included, it would leave the seasonal worker legally in an uncertain situation whereby his/her authorisation to work could be withdrawn at any time when it becomes apparent that the position he/she is occupying was formally held by an employee whose position had been purposefully eliminated. **AT, EL, NL, SK**: add a reference to Article 5a.

2. Member States shall withdraw or refuse to extend or renew the authorisation [...] **for admission as a seasonal worker** granted on the basis of this Directive if the documents presented for the purpose of Article 5, 5b or 6 had been fraudulently acquired, or falsified, or tampered with or where the holder is residing for purposes other than those for which he/she was authorised to reside.⁶⁷
3. Member States may withdraw or refuse to extend or renew the authorisation [...] **for admission as a seasonal worker** granted on the basis of this Directive if the employer:⁶⁸
- (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment;⁶⁹
 - (b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment according to applicable labour laws, collective agreements and/or practices are not met, or
 - (c) has not fulfilled the obligations based on the work contract.
- 3a. **Article 7(3) does not apply to a seasonal worker who has a valid contract or a binding job offer for seasonal work in the Member State concerned and can⁷⁰ be employed by a different employer in accordance with Articles 5, 5b and 6, on the basis of a procedure defined by national law and/or practice.⁷¹**

⁶⁷ **EL:** the last part of the paragraph could be turned into a separate provision.

⁶⁸ **PT** pointed out that this should be a basis for sanctions for the employer and not for the employee. **EL** also found that it is excessive to sanction the worker in this case and suggested that in such a situation seasonal workers would be allowed to change employers as provided for in Article 11.3 (**PT** could support that).

⁶⁹ **DE:** scrutiny reservation as this is covered by the Sanctions Directive.

⁷⁰ **DE:** insert "*therefore*".

⁷¹ **BE, EE, SK:** scrutiny reservations. **FR:** the paragraph seems to imply that an initial authorisation procedure will apply but it is not clear. **HU:** the wording should be clearer pointing out that paragraph 3a applies to a different employer to the one referred to in paragraph 3 and it is not clear what conditions would apply then.

2. Member States may withdraw or refuse to extend or renew the authorisation [...] **for admission as a seasonal worker** granted on the basis of this Directive if the third-country national has not complied with the obligations arising from the [...] **for admission as a seasonal worker**⁷² during a previous stay as a seasonal worker.
- 4a. **Member States may withdraw or refuse to extend or renew the authorisation for admission as a seasonal worker granted on the basis of this Directive if the third-country national applies for social assistance, provided that the appropriate written information concerning this consequence has been provided to him/her in advance by the Member State concerned.**⁷³
5. Member States shall refuse to extend or renew the authorisation [...] **for admission as a seasonal worker** where the maximum duration of stay as defined in Article 11(1) has been reached.⁷⁴

⁷² **SE:** "... from the decision *on authorisation to work, the long-stay visa or the seasonal worker permit*".

⁷³ **DE** (reservation) doubted whether the provision is necessary since Article 7(1) already covers it. **DE, FI:** the last part of the paragraph "provided that ..." should be deleted. **HU:** scrutiny reservation pointing out that the last part of the paragraph is problematic as it is not clear when and to whom the written information referred to should be provided. **BE:** scrutiny reservation regarding the requirement to provide written information. **Cion:** the requirement to provide relevant written information is also contained in Article 9(3) of the Blue Card Directive.

⁷⁴ **FR:** scrutiny reservation on the maximum duration of validity of the permit. **PT:** there should be a possibility for the status of a seasonal worker to be converted into another status if the person concerned finds another job. **EL** was opposed to this as it could open up a window for other types of migration.

6. Member States may withdraw or refuse to extend or renew the authorisation [...] **for admission as a seasonal worker** 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.**⁷⁵

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Article 7a

*Obligation of cooperation*⁷⁷

Member States shall require the employer to provide all relevant information needed for granting, withdrawing or extending the authorisation [...] **for admission as a seasonal worker.**⁷⁸

Article 7b

*Sanctions*⁷⁹

1. Member States shall provide for sanctions against employers who have not fulfilled the obligations based on this Directive. Those sanctions shall be effective, proportionate and dissuasive.⁸⁰

⁷⁵ **EE:** reservation. **CZ, EE:** this should be a shall-clause. **DE** suggested to add that "Member States may determine that the authorisation expires or may withdraw...": **Cion:** an automatic expiry of the authorisation would be problematic for reasons of legal security enquiring how the employer or the person concerned would know that the permit has expired. **NL, SE** could support the paragraph as long as it remains a may-provision.

⁷⁶ **AT** suggested to add the following new paragraph 6: "*Member States may refuse to extend or renew the authorisation for the purpose of seasonal work, the long-stay visa or the seasonal worker permit because of the grounds under Article 5a and 6(2) to (4)*".

⁷⁷ **EE, FR:** scrutiny reservations. **AT:** insert "... extending or renewing".

⁷⁸ **ES:** scrutiny reservation. **AT, DE** (reservation), **IT** (scrutiny reservation), **SE:** it should be a "may-clause". **EL** supported this being a mandatory clause but suggested to insert: "... the employer or the employee to provide..."

⁷⁹ **EL, FR:** scrutiny reservations on the Article. **LT:** reservation on the Article as it is superfluous as sanctions for illegal employment are provided for in Directive 2009/52/EC. If this Article is kept, then it should not provide for any particular sanctions which is up to MS to define. **DE:** reservation.

⁸⁰ **FI** would prefer a more general wording without a specific reference to employers as it might also be necessary to provide sanctions against employees.

2. Sanctions in accordance with paragraph 1 may include the exclusion of employers who have not fulfilled the obligations based on this directive from applications for seasonal workers for up to 3 years.⁸¹
3. An application for admission as a seasonal worker [...] may be considered inadmissible if the employer has been excluded from applications for seasonal workers on the grounds set out in paragraph 1.

CHAPTER III

Procedure and authorisations [...] for admission as a seasonal worker⁸²

Article 8

Access to information

Member States shall take the necessary measures to make available information on conditions of entry and stay, including rights and all documentary evidence needed for an application [...] **for admission** as a seasonal worker.

⁸¹ **BE, DE, FR:** scrutiny reservations on the timeline of 3 years. **FR:** there is no need for such as a precise provision as national legislation should apply suggesting to insert: "*in application of national law*". **FI, LT** pointed out that three years seems like a very long time in this context.

⁸² **SE:** the heading could be simplified to say "Procedure and authorisation". **FR:** scrutiny reservation on the new title and a reservation on Chapter III regarding the scope of application of the Directive. **ES:** there might be a need to include an Article on fees such as Article 10 in the Single Permit Directive.

Article 9

*Applications for [...] for admission as a seasonal worker*⁸³

1. Member States shall determine whether an application is to be made by the third-country national and/or by the employer.⁸⁴
2. Member States shall designate the authorities competent to:⁸⁵
 - (a) receive and decide on the application for [...] **for admission as a seasonal worker**⁸⁶ and, if applicable, to issue a work permit;
 - (b) receive and decide on the application and to issue the seasonal worker permit and/or a long-stay visa.⁸⁷
3. The application for a seasonal worker permit shall be submitted in a single application procedure.⁸⁸

⁸³ **AT, EE, HU, PT**: scrutiny reservations. **AT** suggested to provide for the possibility of social partners to participate in the decision-making procedure. **SE** suggested to add the following paragraph: "*Member States may accept, in accordance with national law, an application submitted when the third-country national concerned is legally staying in its territory*".

⁸⁴ **HU**: it should be specified whether reference is being made to an application for a work permit or a visa or a seasonal worker permit.

⁸⁵ **AT, EL, HU**: scrutiny reservations on the paragraph. **HU, NL**: points a) and b) could be merged. **HU**: there is no need to refer to a work permit, etc. since admission as a seasonal worker covers all the different possibilities. **CZ** asked whether one or two applications are foreseen in paragraph 2. **SE** suggested to merge points a) and b). **FI** suggested to adjust the wording in the way that it would be clear that MS can have only one authority issuing one visa.

⁸⁶ **SE**: "an authorisation *to* work and ..."

⁸⁷ **AT**: "seasonal worker permit and/or a visa".

⁸⁸ **EE, EL, AT**: scrutiny reservations. **AT** asked whether the single application procedure applies to long-stay visas as well.

4. If required for initial entry, the Member State concerned shall facilitate the obtaining of a long-stay visa by the third-country national whose application for a seasonal worker permit has been accepted.⁸⁹

Article 10

*Authorisations for [...] for admission as a seasonal worker*⁹⁰

1. **For stays exceeding three months**, Member States shall grant [...] **applicants** who fulfil the admission criteria as set out in Article [...] 5b, and for whom the competent authorities have taken a positive decision a long-stay visa or a seasonal worker permit.⁹¹
2. Member States may [...] **grant applicants who fulfil the admission criteria set out in Article 5 [...] or 5b, and for whom the competent authorities have taken a positive decision**, a work permit [...] **authorising a third-country national to work as a seasonal worker** when Member States issue a long-stay visa for the purpose of seasonal work or when a seasonal worker is admitted for less than [...] **three months**.⁹²

⁸⁹ **BG**: the paragraph adds no value and should therefore be deleted. **DE, EL, ES**: scrutiny reservations on the paragraph. **DE** suggested to delete the paragraph as it is not clear what purpose it serves. Furthermore, it could create confusion and lead to discrimination as a long-stay visa can be used as a basis for seasonal work. **EL**: it is not clear whether a work permit should be granted before an entry visa is issued. **EE, IT** suggested to refer to visas without specifying the type of a visa or to delete the paragraph (**IT**).

⁹⁰ **AT, FR**: reservations, **DE, EE, ES, FI, IT, PL, RO**: scrutiny reservations on the Article. **DE**: the Article is overly complex suggesting to keep only paragraphs 3 and 5 as the rest would be covered by the Recital in footnote 3. If, however, the other paragraphs are kept, reference should also be made to the grounds of refusal in Article 6 could be added. **NL**: references to Articles 6 and 5a should be inserted in the relevant paragraphs.

⁹¹ **AT**: scrutiny reservation. **DE**: reservation as the paragraph is misleading and should be deleted. **HU**: "for whom the competent authorities have granted a positive decision" means the same thing as those who fulfil the necessary criteria. **PL**: the use of the term "applicants" is not correct since this can also cover employers. **Cion**: the reference to applicants enables to cover employers in cases where work permits are issued to employers.

⁹² **AT, EL, SK**: scrutiny reservations. **CZ, PT**: reservations on the paragraph. **EE, PT** would like to be able to issue national visas also for stays shorter than 3 months. **DE**: reference should also be made to short-term visas. **AT**: use the term "*for stays not exceeding three months*" instead.

- 2a. Member States shall [...] **grant applicants who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision**, a work permit [...] **authorising a third-country national to work** ⁹³ **as a seasonal worker** when a third-country national is exempted from the visa obligation for stays not exceeding [...] **three months**. ⁹⁴
3. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in Council Regulation (EC) No 1030/2002 ⁹⁵. 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'. ⁹⁶
4. In accordance with 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 ⁹⁷, Member States shall enter 'seasonal worker' under the heading 'remarks' on the long-stay visa sticker. ⁹⁸

⁹³ **NL:** insert "to work *or to be employed*..."

⁹⁴ **AT, EL, ES, FI, FR, HU, IT, SK:** scrutiny reservations. **CZ, PT:** reservations on the paragraph. **FI** suggested to add a reference to Regulation 539/2001. **LV:** MS should not be obliged to provide a work permit in this case. In **LV** a permit for work is integrated in a document allowing to reside. **EL** also stated that it is important for a seasonal worker to have a document but this should not necessarily be a work permit suggesting to add: "... if a MS does not avail itself of the possibility in Regulation 539/2001". **CZ, DE, EE, PL, PT, SK:** this should be a may-clause. **PT:** there should be no obligation to issue a work permit; a visa should be issued instead. **PT** enquired about the link between paragraphs 1 and 2 asking what the difference is between the two.

⁹⁵ **EL:** "... *as amended by Regulation (EC) 380/2008*".

⁹⁶ **AT:** scrutiny reservation.

⁹⁷ **OJ L 164, 14.7.1995, p. 1.**

⁹⁸ **ES, PT, SK:** scrutiny reservations. **CZ** noted that "seasonal worker" would not fit on the visa sticker. **EL** suggested to add: "Article 18 of the Schengen Convention *as amended by Regulation (EU) 265/2010*" pointing out that the comment must be inserted in the language of the MS concerned. **DE:** scrutiny reservation as this issue falls under national competence; furthermore, intra-EU mobility does not concern this category of workers.

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

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Article 11

*Duration of stay*¹⁰⁰

1. Seasonal workers shall be allowed to stay for a maximum of five to nine months in any period of twelve months, after which they shall return to a third country unless granted a residence permit under national law or Union law for purposes other than seasonal work.¹⁰¹

⁹⁹ **AT**: scrutiny reservation as it is a "may-clause".

¹⁰⁰ **AT**: reservation on the Article. **BE, BG, DE, EL, ES, FR, PT**: scrutiny reservations on the Article.

¹⁰¹ **SE** could not support the addition of "for purposes other than seasonal work". **BE**: scrutiny reservation on the addition of "unless granted..." as it does not serve the purpose of promoting circular migration. **ES** agreed with the idea expressed with the addition but could not understand why it would be necessary to include it in an Article. **EL**: reservation as there should not be a possibility to change the status since it would convey the wrong message implying that seasonal workers are able to stay on. **FR** (scrutiny reservation): delete the reference to "Union law". **BG**: the last part of the paragraph referring to a residence permit for purposes other than seasonal work could be transferred to a recital instead as it could send a wrong signal when placed in an Article.

AT (reservation): the paragraph does not provide sufficient flexibility to MS suggesting the following wording instead: "Seasonal workers shall be allowed to stay for a maximum of five to *twelve* months in any period of *fourteen* months. After *the maximum of twelve months* they shall return to a third country unless granted a residence permit under national law or Union law for purposes other than seasonal work". **AT** explained that it has two seasons and many seasonal workers are employed during both seasons. After 12 months of employment the foreign worker has to leave the country for two months. The system has worked well so far and any changes to it would endanger business prospects and jobs. **DE, FI**: scrutiny reservations on the time period. **FI** asked whether the indicated time period applies to stays for which visas are issued. **EL, FI** regretted such an open formulation that does not lead to harmonisation. **EL**: reservation on the 12-month period. **FR** would prefer the maximum of 6 months in a year with a residence card that is valid for 3 years after which it can be renewed.

- 1a. Member States may [...] determine a maximum aggregate period of time during which an employer is allowed to hire seasonal workers in any period of twelve months. This period should not be shorter than the maximum period set out in paragraph 1.
2. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the [...] **provisions** of Articles 5, 5b and/or 6 are [...] **complied with**, seasonal workers may be allowed to extend their contract and apply for an extension of their stay. ¹⁰²
- 2a. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the [...] **provisions** of Articles 5, 5b and/or 6 are [...] **complied with**, seasonal workers may be allowed to be employed with a different employer **on the basis of a procedure defined by national law and/or practice** and, if necessary, apply for an extension of their stay. ¹⁰³
3. For the purposes of paragraphs 2 and 2a, Member States shall accept the submission of an application by a seasonal worker admitted under the terms of this Directive and staying on the territory of the Member State concerned. ¹⁰⁴

¹⁰² **EE, HU:** scrutiny reservations concerning the renewal of the long-stay visa as it contradicts the temporary nature of this kind of employment. **NL:** also the criteria set out in Article 5a should be met. **AT:** it should be up to MS to decide whether long-stay visas can be extended or not. **EL:** add in paragraphs 2 and 2a) a reference to "a maximum period of five to nine months after which they shall return to a third country". **HU:** reservation on "and/or".

¹⁰³ **EL:** reservation. **NL:** also the criteria set out in Article 5a should be met. **EE, HU:** it is not clear whether a permission from the authorities is required for the change of employers. **SE** stated that it is hard to see how the criteria in Article 5 can be checked as the change of employers is not notified to the authorities. **DE** proposed an alternative wording: "*without prejudice to the right of Member States to allow for the change of employers ...*" **MT** enquired whether seasonal workers can have more than one job at the same time. **BE** insisted that a seasonal worker status should be connected to one contract only. **HU:** reservation on "and/or".

¹⁰⁴ **BE, BG, EL, SK** (scrutiny reservation): this should be an optional clause. **Cion:** it should stay a "shall-clause". **HU:** scrutiny reservation on the renewal of the long-stay visa due to the short nature of seasonal work.

4. For the purposes of paragraphs 2 and 2a, and if the seasonal worker has been admitted for stays not exceeding 3 months and the extension would result in the overall duration of the stay exceeding 3 months, the competent authorities shall issue ¹⁰⁵ a long-stay visa or a seasonal worker permit covering the duration of the extended stay.¹⁰⁶
5. Seasonal workers may be allowed to be employed with a different employer as long as the [...] provisions of Articles 5, 5b and/or 6 are [...] **complied with and on the basis of a procedure defined by national law and/or practice.**¹⁰⁷

¹⁰⁵ **IT:** "shall *extend*".

¹⁰⁶ **BE, EL, ES, FR, HU, PL, NL:** scrutiny reservations on the paragraph. **BG, CZ, LT, NL, PT, SK:** reservations on the extension of short stays. **PL** asked on what basis a long-stay visa or a seasonal worker permit would be issued. **AT, DE** supported the paragraph. **CZ:** the provision encroaches on the Schengen acquis; furthermore, the extension of short stays cannot be an obligation for MS. **HU, NL:** the implementation of this provision would cause practical problems. **BE** could not support the extension as it would involve lengthy procedures. **BG, ES** referred to legal problems that the extension would cause. **LT** (reservation): the paragraph should be deleted as issues related to the possibility of extending a Schengen visa should not be dealt with in this Directive. In addition, the paragraph makes no sense for countries that are not in the Schengen area. **PL, SK:** extension/changing of a Schengen visa is problematic as there are no grounds for it asking what kind of a document would be granted in case a stay is extended by 2 weeks. **SK:** it should be a may-clause. **FR** could not support the extension of a short stay as it could be a way of going around the rules leading to irregular stays. **HU:** the extension would essentially amount to lodging an application for a new authorisation. **DE** suggested by way of a compromise that the provision could be made optional for MS. **Cion:** this is not a matter of extension but a transition from short stay to long stay which does not encroach upon the Schengen acquis speaking in favour of a harmonised approach, i.e. a 'shall' clause. **LT** asked what the deadline would be for deciding on the extension. **Cion** replied that the deadline should be shorter than 90 days referring to 30 days as a possible compromise.

¹⁰⁷ **EL:** reservation. **AT** stated that this possibility should be available only if there is an agreement of the Member State (or a decision by its authorities) taking also into account Articles 5a and 6. **BE, EL, SE:** the same comments as on paragraph 2a. **SE** asked whether both paragraphs 2a and 5 are necessary suggesting to delete paragraph 5.

Article 12
Facilitation of re-entry

1. Member States may
 - (a) upon application, issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative act,

and/or
 - (b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.¹⁰⁸

¹⁰⁸ **EL** noted that issuing multiple-entry visas could involve a number of problems and stated that a facilitated procedure could only be applied to cases that concern the same employer and the same employee and suggested to add "... *under the terms set out by national legislation*". **PL**: it would be difficult to carry out a labour market test in case of a multi-season authorisation as it is impossible to predict the situation in three years' time. **SI**: it would be technically problematic to issue multiple-entry visas as it is not possible to insert 3 separate remarks on the document. **Cion** clarified that it could be one administrative act covering 3 seasons and only the end of the third season would be indicated on the card.

Article 13
*Procedural safeguards*¹⁰⁹

1. The competent authorities of the Member State shall [...] **adopt a decision on the application for** admission as a seasonal worker¹¹⁰ 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.¹¹¹

[...]

2. Where the information supplied in support of the application to be admitted to employment as a seasonal worker or for a seasonal worker permit or a long-stay visa 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.¹¹²

¹⁰⁹ **SK:** reservation on the Article.

¹¹⁰ **SE:** replace this with "decide on *the authorisation to work*" and delete paragraph 1b.

¹¹¹ **HU** asked whether the 90-day period covers the labour market test and the issuance of the permit. **Pres** confirmed that it covers the entire procedure. **FI** (scrutiny reservation) suggested that it should be possible to extend it in exceptional circumstances similarly to Article 23(3) of the Visa Code asking whether the applicant should have received the application within the 90 days.

¹¹² **PL** suggested to follow the example of the Blue Card Directive and provide for the possibility to suspend the period laid down in paragraph 1 or to reject the application. **DE:** the paragraph should be deleted as unnecessary.

3. Any decision rejecting an application to be admitted to employment as a seasonal worker or for a seasonal worker permit or a long-stay visa or any decision not to extend/renew or to withdraw the long-stay visa or the seasonal worker 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.¹¹³ The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.¹¹⁴

Article 13a

*Fees*¹¹⁵

Member States may require applicants to pay fees for handling applications in accordance with this Directive. The level of such fees shall be proportionate and may be based on the services actually provided for the processing of applications and the issuance of permits.

¹¹³ **DE** suggested the following wording: "... shall be notified ... to the applicant *in accordance with the notification procedures under the relevant national legislation*. The notification shall specify ... the possible redress procedures available and the time limit for taking action." **EE**: scrutiny reservation concerning "legal challenge" as an administrative appeals procedure is used in the case of visas; suggested "*an appeals procedure according to national law*" (supported by **AT**).

¹¹⁴ **EL**: scrutiny reservation. **CZ, FI**: reservations. **DE**: reservation as far the visa procedure for initial entry is concerned suggesting to add: "*Without prejudice to the visa procedure which may be required for initial entry, any decision ...*" following the example of Article 4(3) of the Single Permit Directive. **CZ**: this issue falls under national competence. **AT**: linguistic reservation. **HU**: a delayed entry into force of the legal remedy could be foreseen.

¹¹⁵ **EL**: scrutiny reservation asking whether the Article also applies to applications for visas.

Article 14
Accommodation

Member States shall require the applicant to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national legislation and/or practice. If the accommodation is provided by the employer and the seasonal worker is required to pay rent for such accommodation, its costs shall not be excessive in relation to their remuneration.¹¹⁶

Article 14a
Placement by public employment services

Member States may determine that the placement of seasonal workers from third countries shall only be carried out by public employment services.¹¹⁷

CHAPTER IV
Rights

*Article 15*¹¹⁸
Rights on the basis of the seasonal worker permit or the long-stay visa

During the period of validity of a seasonal worker permit or a long-stay visa, issued for the purpose of seasonal employment, the holder shall enjoy at least the following rights:¹¹⁹

¹¹⁶ **DE** would have preferred the original Cion proposal. **SE**: reservation on this being an obligatory provision as it would be difficult to apply in practice. **FI**: scrutiny reservation asking how MS would ensure an adequate standard of living as no relevant national legislation or practice exists in all MS. **FR**: scrutiny reservation as the employer should provide evidence of accommodation.

¹¹⁷ **ES, PL, SI**: scrutiny reservations.

¹¹⁸ **AT, ES**: scrutiny reservations on the Article.

¹¹⁹ **DE**: scrutiny reservation.

- (a) the right to enter and stay in the territory of the Member State issuing the seasonal worker permit or the long-stay visa, provided that the holder meets all the admission requirements in accordance with national law;¹²⁰
- (b) free access to the entire territory of the Member State issuing the seasonal worker permit or the long-stay visa within the limits provided for by national law;
- (c) the right to exercise the concrete employment activity authorised under the seasonal worker permit as well as under or the long-stay visa and the work permit, if required, in accordance with national law.¹²¹

Article 16

*Right to equal treatment*¹²²

1. Seasonal workers admitted under this directive shall enjoy equal treatment with nationals of the Member State concerned with regard to:
 - (a) Working conditions, including pay and dismissal as well as health and safety requirements at the workplace;
 - (b) freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

¹²⁰ SE questioned whether the part of the sentence starting with "provided that ..." is necessary.

¹²¹ NL, supported by HU, suggested to add a reference to a concrete employer.

¹²² BE, EL, EE, RO, SI: scrutiny reservations. BG, EL, FI, LT, SK: reservations on the Article.

- (c) provisions in national laws regarding the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04;¹²³
- (d) payment of statutory pensions based on the worker's previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when moving to a third country;¹²⁴

¹²³ **BG, FI:** reservations. **AT, EE, EL, ES, IT, MT, PL, SI, SK:** scrutiny reservations. **ES** found the wording too vague; it should be specified which branches apply. **DE, FI, LT:** reference should be made to Article 3(1) of Regulation 883/04. **IT:** reservation regarding unemployment benefits. **EL** referring to unemployment benefits in particular, questioned whether equal treatment with respect to all branches of social security is justified for this category of persons who stay in a MS only temporarily. **EE** suggested to add the following in the paragraph: "*An employment office may offer to the seasonal worker, who has the right to receive unemployment benefits, suitable vacancies of seasonal work.*" **MT:** the paragraph is drafted too broadly, it should be clear that only benefits stemming from employment relationship are granted excluding unemployment benefits. **Cion:** there is normally a qualifying period for unemployment benefits. **BG** was against granting any residence-based benefits to seasonal workers also suggesting that the legal base should be extended to Article 153 of the Treaty. **LT:** MS should have the right to decide that equal treatment in social security does not apply to residence-based benefits which are not related to the employment relationship of seasonal workers. **FR:** the general principle of full equal treatment of seasonal workers regarding social security should apply. **FI** could support the general principle of equal treatment but this should not infringe on MS' rights to organise their social security systems; thus certain exceptions should be possible as seasonal workers do not fulfil the residence condition in FI system. **FI** referred to its proposal in doc. 7877/11 but could also support **CZ** proposal (alternative 2) in doc. 17269/10. **SK** expressed support for FI proposal in doc. 7877/11 stating that seasonal workers do not qualify for all benefits due to their short stay. **SI** also stated that certain exceptions to equal treatment should be allowed and residence-based benefits could be excluded favouring **CZ** proposal in doc. 17269/10. **LV** considered that for this reason it is not appropriate to refer to all the branches in Regulation 883/04. **Cion** did not support the suggestion to change the reference to Article 3(1) and explained that the purpose of the reference to Regulation 883/04 is only to define the categories of benefits and noted that limiting equal treatment to contribution-based benefits only is far below the practice in the EU, furthermore, contrary to national systems, no clear distinction between contributory and non-contributory benefits is made at the EU level. **Cion** also commented that it is clear from the Directive that seasonal workers reside temporarily in the territory of the EU. It added that while there is a clear distinction between residents and non-residents in the field of social security, there is no such clear distinction in migration law.

¹²⁴ **BG:** reservation. **AT, EE, EL:** scrutiny reservations. **NL, IT:** reference should be made to bilateral agreements similarly to the corresponding provision in the ICT Directive. **Cion:** equal treatment with nationals should be given in all cases.

(e) access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining housing as provided for by national law, without prejudice to the freedom of contract in accordance with Union and national law, and services afforded by employment offices.¹²⁵

2. Member States may decide that equal treatment under point (c) of paragraph 1 shall not apply as regards family benefits without prejudice to Council Regulation (EC) No 1231/2010.¹²⁶

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 admission as a seasonal worker** in accordance with Article 7.¹²⁷

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¹²⁵ **EL**: scrutiny reservation. **BG**: reservation. **MT**: replace with "... *except* services afforded by employment offices" pointing out that Cion proposal excluded both housing and counselling services.

¹²⁶ **ES, PT**: scrutiny reservations. **BG, FR, IT**: reservations. **AT, BE** suggested to align the wording with Article 14 (2)(c) of the ICT Directive for the sake of consistency. **FR, PT** could not support exceptions from the principle of equal treatment. **FR** suggested to use the same approach as was adopted in the Single Permit Directive. **FI, LT**: MS should have a right to decide on exceptions in other fields besides family benefits such as residence-based benefits. **FI**: add the following paragraph: "*In addition, Member States may decide that point (c) of paragraph 1 with regard to sickness benefits in kind is conditional to having sickness insurance as set out in Article 5(1) (b) of this Directive*". **Cion** opposed any derogations from the principle of equal treatment with national workers and explained that although no family reunification is foreseen under the Directive, family members could be on the territory of a MS on the basis of national provisions.

¹²⁷ **AT, PT, SK**: scrutiny reservations.

¹²⁸ **DE**, supported by **SK**, suggested to add the following subparagraph by way of a clarification on Article 16(1)(e): "*The right to equal treatment provided for in this Article does not include study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training*". **Pres** pointed out that equal treatment regarding education and training is not provided for in this Directive.

Article 17

Facilitation of complaints¹²⁹

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 Schengen visas**, provided for with the objective of implementing this Directive.

CHAPTER V

Final provisions

Article 18

Statistics¹³⁰

1. Member States shall communicate to the Commission statistics on the number of seasonal worker permits, work permits and long-stay visas issued for the first time or extended/renewed and, as far as possible, on the number of seasonal worker permits, work permits and long-stay 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.¹³¹

¹²⁹ **DE, EE:** reservations. **EL, IT:** scrutiny reservations. **SE** noted that the heading of the Article is not in line with the content and should thus be amended. **FI:** it should be clarified that the Article does not apply to short-stay visas as according to Article 32(3) of the Visa Code only applicants have the right to appeal. **FI**, thus, (supported by **NL**) suggested to insert "*as regards a long-stay visa or a seasonal worker permit*".

¹³⁰ **AT, DE, FR:** scrutiny reservations on the Article. **PT:** scrutiny reservation on the types of data to be provided, data should be provided in accordance with Regulation No 862/2007 (supported by **AT, DE**).

¹³¹ **EL, ES, PL:** scrutiny reservations. **FR:** reservation. **FR:** the long list of statistics to be provided would constitute a huge administrative burden. **NL** expressed doubts as to whether statistics are deliverable for such short periods of time. **DE** (supported by **AT**): delete "or renewed and, as far as possible, on the number of residence permits and visas withdrawn" and "disaggregated by citizenship, age and sex, length of validity of the permit". **Cion:** the statistics should also be disaggregated by economic sectors.

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. ¹³²
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. ¹³³

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (*three years from the date of publication in the Official Journal of the European Union*) at the latest. They shall forthwith communicate to the Commission the text of those provisions. ¹³⁴

¹³² OJ L 199, 31.7.2007, p. 23.

¹³³ **DE:** reservation.

¹³⁴ **LV:** scrutiny reservation pending an explanation from the Cion. **Cion:** the transposition deadline should be two years.

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 Brussels, [...]

For the European Parliament

For the Council

The President

The President
