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NOTE

from Presidency
to: Permanent Representatives Committee (Part II)

No. Cion prop.: 12211/10 MIGR 67 SOC 462 DRS 27 CODEC 691

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 [**First reading**]
- Mandate for negotiations with the European Parliament

1. On 13 July 2010, the Commission submitted a proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals for the purposes of seasonal employment. The aim of the seasonal workers' proposal is to set out fair and transparent rules for entry and residence based on a common definition and common criteria, as well as a common set of rights to be granted to third-country seasonal workers.
2. On 25 April 2012, the European Parliament's LIBE Committee held its orientation vote on the proposal. The result of the vote incorporates the opinion of the EMPL Committee which acts as an associated committee according to Rule 50 of the European Parliament's Rules of Procedure. The result of the orientation vote serves as a mandate for the European Parliament for negotiations with the Council.

3. The Working Party on Integration, Migration and Expulsion started discussing the proposal in September 2010. On 3 October 2012, the Permanent Representatives Committee discussed a central outstanding issue concerning the scope of the Directive and supported the approach proposed by the Presidency on this. On 15 October 2012, the discussions were moved to the level of JHA Counsellors in order to conclude negotiations on the Council's position for the proposal. The result of these examinations with delegations' comments in the footnotes is set out in document 16976/12. As a result of these discussions, the Presidency has prepared a compromise text which is reflected in the Annex to this Note. Changes to the previous text as discussed at the latest Counsellors' meeting on 29 November (document 16656/12) are indicated with **bold** and [...].
4. At the meeting of the Permanent Representatives Committee, the Commission will provide its position on explanatory documents in accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011.
5. The Permanent Representatives Committee is asked to agree on the annexed text that could serve as a mandate for the Presidency for engaging in informal trilogues with the representatives of the European Parliament. The Presidency aims to achieve a first reading agreement with the European Parliament on the proposal.

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

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,

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.
- (9) This Directive should not affect conditions of the provision of services in the framework of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. Nor should this Directive apply to workers posted by undertakings established in a third-country to provide a service in the territory of a Member State.

- (10) Member States should be able to determine specific sectors of the economy and/or activities that meet the criteria for seasonal work as defined in this Directive such as agriculture, in particular during the planting or harvesting period, or tourism, in particular during the holiday period.
- (10a) For reasons of justified national policy considerations and when laid down in national law and in accordance with the principle of non-discrimination as set out in Article 10 of the Treaty, Member States are allowed to apply different treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions concerning the labour market test and the authorisations to be issued to seasonal workers.**
- (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.
- (12) The Directive should not affect, where granted, the rights of third-country nationals already legally staying in a Member State to work.
- (12a) Criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding three months are defined in this Directive as far as employment as a seasonal worker is concerned. When short-stay visas are issued for the purpose of seasonal work the relevant provisions of the Schengen acquis concerning the conditions of entry and stay in the territory of Member States as well as grounds for refusal, extension, annulment or revocation of those visas apply accordingly. In particular, any decision on refusal, annulment or revocation of a visa and the reasons on which it is based should be notified, in accordance with Article 32(2) and 34(6) of the Visa Code, to the applicant by means of the standard form set out in Annex VI of the Visa Code.

- (12b) 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, with the exception of UK and Ireland,** only the Schengen Borders Code applies. The provisions of the Schengen acquis referred to in the present Directive belong to that part of the Schengen *acquis* in which Ireland and the United Kingdom do not take part and therefore these provisions do not apply to them.
- (13) The Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the level of remuneration applicable to seasonal workers in the sector concerned.
- (14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.
- (14a) Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to return to a third country on the expiry of an authorisation for the purpose of seasonal work.
- (14b) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed for granting, withdrawal or extension/renewal of the authorisation for the purpose of seasonal work in order to prevent possible abuse and misuse of the procedure set out in this Directive.
- (15) Provision for a single procedure leading to one combined permit encompassing both stay and work permit, should contribute to simplifying the rules currently applicable in Member States. This should not affect the right of Member States to determine the national authorities and the way they should be involved in the single procedure, in accordance with national specificities of administrative organisation and practice.

- (15a) The designation of the competent authorities under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, with regard to the examination of, and the decision on, the application.
- (15b) The Directive provides for a degree of flexibility for Member States regarding the authorisations to be issued for the admission (entry, stay and work) of seasonal workers. Member States are, therefore, free to decide whether to issue work permits in addition to short-stay visas and long-stay visas. Nevertheless, in order to ensure that the conditions of employment as provided by the Directive have been checked and are met it should be made clear on the authorisations that they were issued for the purpose of seasonal work. In case only short-stay visas are issued, Member States should make use of the "remarks" heading of the visa sticker for this purpose.
- (16) Member States should be able to determine the maximum duration of stay for the purposes of seasonal employment within any period of twelve months referred to in this Directive.
- (16a) When deciding on the extension and renewal of the authorisation for the purpose of seasonal work Member States should be able to take into consideration the labour market situation as well as any quota set in general or for certain professions, economic sectors or regions.**
- (16b) The possibility to change employers, in accordance with the procedure defined by national law and/or practice, should be given in the specific cases referred to in the Directive where the employer does not fulfil its obligations and could be given in order to reduce the risk of abuse that seasonal workers employed by one single employer might face.
- (16b) In cases where a seasonal worker has been admitted for a stay not exceeding three months and where the Member State decides to extend it beyond three months, the short-stay visa should be replaced either by a long-stay visa or a seasonal worker permit provided that the seasonal worker complies with the provisions of Articles 5, 5b and 6.

- (17) Taking into account certain aspects of circular migration as well as employment prospects of third-country seasonal workers beyond one single season and interests of EU employers to be able to rely on a more stable and already trained workforce, the possibility of 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.
- (18) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.
- (18a) In the case of short-stay visas the procedural safeguards are governed by the relevant provisions of the Schengen *acquis*.
- (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.
- (20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to provide effective protection of their rights. For the sake of legal certainty, therefore, the work contract or a binding job offer should specify clearly the working conditions which should be in conformity with applicable laws, collective agreements and/or practices of the given Member State.
- (21) *deleted*

(22) Third-country national seasonal workers should be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems¹. 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 Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. Due to the temporary nature of their stay in the territory of a Member State, third-country nationals admitted for the purpose of seasonal employment under this Directive would not, in most cases, qualify for unemployment benefits. Member States are, therefore, given the possibility to restrict equal treatment in respect of unemployment benefits. 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.

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

(22b) Similarly to other Directives in the field of legal migration, the notion of goods and services in this Directive does not include study [...] **and** maintenance grants [...] **and** loans or other grants regarding [...] education and vocational training.

¹ OJ L 166, 30.4.2004, p. 1.

- (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.
- (25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- [(25a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.]
- (26) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by it or subject to its application.

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

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject-matter

1. This Directive determines the conditions of entry and stay of third-country nationals for the purposes of employment as seasonal workers and defines the rights of seasonal workers.
2. 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 Visas², 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 borders³, 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 requirement⁴.

² OJ L 243, 15.9.2009, p. 1.

³ OJ L 105, 13.4.2006, p. 1.

⁴ OJ L 81, 21.3.2001, p. 1.

Article 2

Scope

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and apply to be admitted or who have been admitted, under the terms of this Directive, to the territory of a Member State for the purpose of employment as seasonal workers.
2. This Directive shall not apply to third-country nationals:
 - a) who are posted in the framework of the provision of services, irrespective of whether the undertaking is established in a Member State or in a non-Member State, as long as they are posted.
 - b) who are working for and being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking.
 - 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;
- (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.
- (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;
- (d) ‘seasonal worker permit’ means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals bearing a reference to seasonal work and entitling its holder to stay and work in the territory of a Member State under the terms of this Directive;

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

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:
 - (a) Union law, including bilateral and multilateral agreements concluded between the Union or between the Union and its Member States on the one hand and one or more third countries on the other;

- (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
- 2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 13, 14, 16 and 17 of this Directive.

CHAPTER II

Conditions of admission

Article 5

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

- 1. 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.
 - (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.
 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.
 3. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law.
 4. When examining an application for authorisation for the purpose of seasonal work, Member States not applying the Schengen acquis in full, shall verify whether the third-country national does not present a risk of illegal immigration and that he/she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.

Article 5b

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

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.
 - (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.
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.

3. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.
4. When examining an application for authorisation for the purpose of seasonal work Member States shall verify whether the third-country national does not present a risk of illegal immigration and that he/she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.
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.
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. Member States may also require the period of validity to exceed the intended duration of stay by a maximum of 6 months.

Article 5a

Volumes of admission

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

Article 6
Grounds for refusal

1. Member States shall reject an application for authorisation for the purpose of seasonal work 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, 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.

- 2a. Member States may reject an application for authorisation for the purpose of seasonal work on the ground set out in Article 5a.

3. Member States may reject an application for authorisation for the purpose of seasonal work if the employer:
 - (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place;

or

 - (b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment, including remuneration, according to applicable laws, collective agreements and/or practices are not met;

or

(c) has eliminated the positions he is trying to fill, within the 12 months immediately preceding the date of the application, in order to employ third-country nationals through the new application.

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

Article 7

Withdrawal or non-extension/non-renewal of the authorisation for the purpose of seasonal work

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

- (b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment, including remuneration, according to applicable laws, collective agreements and/or practices are not met, or
 - (c) has not fulfilled the obligations based on the work contract, or
 - (d) has eliminated the positions he is trying to fill, within the 12 months immediately preceding the date of the application, in order to employ third-country nationals through the new application.
- 3a. Article 7(3) does not apply to a seasonal worker who has a valid contract or a binding job offer for seasonal work in the Member State concerned and can, therefore, be employed by a different employer in accordance with Articles 5, 5b and 6, on the basis of a procedure defined by national law and/or practice.
4. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the third-country national has not complied with the obligations arising from the authorisation for the purpose of seasonal work during a previous stay as a seasonal worker.
5. Member States may refuse to extend or renew the authorisation for the purpose of seasonal work when the vacancy in question could be filled by nationals of the Member State concerned or by other EU citizens, or by third-country nationals lawfully residing in the Member State, **or when the relevant quota set has been filled.**
6. Member States shall refuse to extend or renew the authorisation for the purpose of seasonal work where the maximum duration of stay as defined in Article 11(1) has been reached.

7. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the third-country national applies for international protection under Council Directive 2011/95/EU of 13 December 2011 or if the third-country national applies for protection in accordance with national law, international obligations or practice of the Member State concerned.
8. Without prejudice to Article 11(2a), Member States may withdraw an authorisation for the purpose of seasonal work following the termination of a work contract.

Article 7a

Obligation of cooperation

Member States shall require the employer to provide all relevant information needed for granting, withdrawing, extending or renewing the authorisation for the purpose of seasonal work.

Article 7b

Sanctions

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

CHAPTER III

Procedure and authorisations for the purpose of seasonal work

Article 8

Access to information

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

Article 9

Applications for authorisations for the purpose of seasonal work

1. Member States shall determine whether an application for a seasonal worker permit is to be made by the third-country national and/or by the employer.
2. Member States shall designate the authorities competent to receive and decide on the application for and to issue an authorisation for the purpose of seasonal work.
3. The application for a seasonal worker permit shall be submitted in a single application procedure.
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.

Article 10

Authorisations for the purpose of seasonal work

1. For stays exceeding three months, Member States shall grant applicants who comply with the provisions of Article 5b and do not fall under the grounds set out in Article 6 a long-stay visa or a seasonal worker permit.
2. Member States may grant applicants who comply with the provisions of Articles 5 or 5b and do not fall under the grounds set out in Article 6, a work permit authorising a third-country national to work as a seasonal worker in connection with the issuance of a short-stay visa or a long-stay visa for the purpose of seasonal work.
- 2a. Member States shall grant a work permit, in the case of stays not exceeding three months, to those applicants who comply with the provisions of Article 5 and do not fall under the grounds set out in Article 6, where the third-country national is exempted from the visa obligation in accordance with Annex II of Regulation 539/2001 and to whom Member States do not apply Article 4 (3) of Regulation 539/2001.
3. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in Council Regulation (EC) No 1030/2002. Member States shall enter a reference on the permit stating that it is issued for the purpose of seasonal work.
4. In accordance with Article 18 of the Schengen Convention and with point 12 of the Annex to Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas, Member States shall enter a reference stating that it is issued for the purpose of seasonal work under the heading 'remarks' on the visa sticker issued for long stays.
5. Member States may indicate additional information related to the employment relationship of the seasonal worker (such as the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and in point (a)16 of the Annex thereto.

Article 11

Duration of stay

1. Seasonal workers shall be allowed to stay for a maximum of five to nine months in any period of twelve months, after which they shall return to a third country unless the Member State concerned has granted a residence permit under national law or Union law for purposes other than seasonal work.
 - 1a. Member States may determine a maximum aggregate period of time during which an employer is allowed to hire seasonal workers in any period of twelve months. This period should not be shorter than the maximum period determined by a Member State in accordance with paragraph 1.
 2. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the provisions of Articles 5 and 5b are complied with and the grounds set out in Article 6 are not met, seasonal workers may be allowed to extend their contract and apply for an extension of their stay, on the basis of a procedure defined by national law and/or practice.
 - 2a. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the provisions of Articles 5 and 5b are complied with and the grounds set out in Article 6 are not met, seasonal workers may be allowed to be employed with a different employer on the basis of a procedure defined by national law and/or practice and, if necessary, apply for an extension of their stay.
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 staying on the territory of the Member State concerned.

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

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.

Article 13

Procedural safeguards

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

2. Where the information supplied in support of the application for authorisation for the purpose of seasonal work is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.
3. Without prejudice to the procedure which may be required for the issuance of a visa referred to in Article 9(4), any decision rejecting an application for authorisation for the purpose of seasonal work or any decision not to extend/renew or to withdraw the authorisation for the purpose of seasonal work shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.
4. Procedures and decisions concerning short-stay visas are regulated in the relevant provisions of the Schengen acquis.

Article 13a

Fees

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

Article 14
Accommodation

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

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.

CHAPTER IV
Rights

Article 15
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:

- (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;

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

Article 16

Right to equal treatment

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;
 - (c) provisions in national laws regarding the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04;
 - (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;

- (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.
2. Member States may decide that equal treatment under point (c) of paragraph 1 shall not apply as regards family benefits and unemployment benefits, without prejudice to Council Regulation (EC) No 1231/2010.
3. The right to equal treatment provided for in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to extend or renew the authorisation for the purpose of seasonal work in accordance with Article 7.

Article 17

Facilitation of complaints

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

CHAPTER V

Final provisions

Article 18

Statistics

1. Member States shall communicate to the Commission statistics on the number of authorisations for the purpose of seasonal work issued for the first time and, as far as possible, on the number of third-country nationals whose authorisation for the purpose of seasonal work has been extended/renewed or withdrawn. These statistics should be disaggregated by citizenship, the length of validity of the authorisation and, as far as possible, by the economic sector.
2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be [*the year following the point of time referred to in Article 20(1)*].
3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No. 862/2007 of the European Parliament and the Council⁵.

⁵ OJ L 199, 31.7.2007, p. 23.

Article 19

Reporting

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

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.

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
