



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 May 2011**

**10571/11**

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**Interinstitutional File:  
2010/0210 (COD)**

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**LIMITE**

**MIGR 111  
SOC 428  
CODEC 882**

### **OUTCOME OF PROCEEDINGS**

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of: Working Party on Integration, Migration and Expulsion

on: 20 May 2011

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

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

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At the meeting of the Working Party on Integration, Migration and Expulsion held on 20 May, Presidency compromise suggestions for Articles 2-7a, 9, 11, 15 and 16 of the above proposal were discussed. The results of the discussions at the above meeting have been incorporated in the text of the previous outcome of proceedings 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 residence of third-country nationals for the purposes of**  
**seasonal employment<sup>1</sup>**

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<sup>1</sup> **AT, BE, BG, CZ, DE, EE, EL, ES, FI, HU, IT, LT, LV, MT, NL, PL, PT, SE, SI, SK:** general scrutiny reservations. **AT** reservation relates mainly to subsidiarity, legal base and labour market concerns. **NL** reservation relates mainly to subsidiarity. **BG:** legal basis should also include Article 153 of the Treaty. **LT, MT, SE:** parliamentary scrutiny reservations. **AT, EL, DE, LT, SE:** linguistic reservations. **CZ, EL:** reservations (related to subsidiarity and inclusion of short-stay visas in the scope of this directive), **AT, DE, MT, PL** (related to the compatibility of the criteria in the Visa Code and in this Directive for issuing short-stay visas), **FR** would like the directive to cover stays longer than 3 months as extending the scope to stays shorter than 3 months would raise lots of issues, especially regarding visas. Stays shorter than 3 months could be covered by national legislation. **EL** noted that the terminology should be aligned to that in the Visa Regulation. **FI** asked for clarification regarding the application of this Directive in case short-stay visas are included in the scope. **PL** expressed concerns regarding the compatibility of the criteria in the Visa Code and in this Directive for issuing short-stay visas. **NL** stated that while the rights under this Directive should be granted also to those staying less than 3 months, the conditions of admission under this Directive should not apply to this category of persons. **EE** suggested that either stays shorter than 3 months should be left out of the scope of the Directive or more flexibility should be left for MS so that they could issue long-stay visas also for stays shorter than 3 months. **PT** stated that only two possibilities should be provided for - either long-stay visas or permits as Schengen visas do not give a right to work. **ES** would also prefer the option to issue long-term visas also for short stays. **EL** expressed doubts as to whether short-stay visas can be used for work purposes. **SI, SK** welcomed the option to issue permits for stays shorter than 3 months. **BE** could support the proposal as it gives flexibility to MS. **AT, BE, FI, FR, EL, SK** suggested that the opinion of the Visa Working Party should be sought on the visa issues in the context of this Directive. **Cion** clarified that the rights and admission conditions in this proposal should apply to all seasonal workers from the very start. It is up to MS to decide whether third-country nationals entering with a Schengen visa are allowed to work or not. **Pres** added that in addition to the conditions of entry stipulated in the Visa Code, MS can decide which supporting documents can be required depending on the purpose of entry. The list of supporting documents in Annex 2 of the Visa Code is indicative and can include work permits. **CLS** stated that while national practice differs and some MS issue long-stay visas for short stays, it is clearly stipulated in the Schengen Convention that national long-stay visas should be issued only for stays longer than three months. When it comes to admission conditions, both the ones in the Visa Code as regards entry and stay as well as the ones related to admission for the purpose of work in this Directive would apply to stays shorter than 3 months. **PT**, supported by **EE**, argued that according to Article 18 of the Schengen Convention visas for stays exceeding 3 months shall be national visas but this does not mean that national visas cannot be issued for stays shorter than 3 months.

# CHAPTER I

## General provisions

### *Article 1*

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

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

**The provisions of this Directive shall be applied without prejudice to Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)<sup>3 4</sup> and the Convention implementing the Schengen Agreement (hereinafter 'the Schengen Convention').<sup>5 6 7</sup>**

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<sup>2</sup> CZ, FR: reservations. EE, FI, PL, PT: scrutiny reservations.

<sup>3</sup> OJ L 243, 15.9.2009, p. 1.

<sup>4</sup> DE suggested a reference to Regulation (EC) No 539/2001 as well.

<sup>5</sup> **Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.09.2000 p. 19.**

<sup>6</sup> New Recital: **“This Directive covers both stays not exceeding three months and those exceeding three months.”**

Cion pointed out that the recital is not necessary in view of Article 10.

<sup>7</sup> EL suggested a reference to Regulation (EU) No 265/2010 instead. EL noted that the wording should be made clearer, especially the link between the two paragraphs. FI also pointed out that it is not clear from the wording which aspects are applicable when seasonal work is carried out under the Schengen Convention.

## Article 2

### Scope<sup>8</sup>

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and apply to be admitted or who have been admitted, under the terms of this Directive, to the territory of a Member State for the purpose of employment as seasonal workers.

This Directive may also, if provided for by national law, apply to third-country nationals who are legally staying<sup>9</sup> in the territory of a Member State and who apply for a seasonal worker permit in that Member State<sup>10</sup>, **except for the following categories of third-country nationals<sup>11</sup>:**

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<sup>8</sup> **DE, SE, SI:** scrutiny reservations. **EE** suggested to add a new paragraph based on the wording in the "Single Permit proposal": "(3) *The provisions of chapter II and III of the Directive do not apply to third-country nationals who are allowed to work on the basis of a visa*". **NL** noted that it should be specified that the rights of seasonal workers as set out in this directive do not apply to the applicants.

<sup>9</sup> **RO:** reservation. **EL, SI** sought further clarification as to who is covered by this notion. **SI** suggested to instead refer to "*third-country nationals who are legally living and have a residence permit*" thus leaving out those third-country nationals entering with visas or passports that do not require a visa.

<sup>10</sup> **DE:** reservation. **CY, CZ:** scrutiny reservations. **DE, ES** would prefer the original **Cion** proposal since the scope of the directive should be consistent with the objective which is to regulate the entry and residence of third-country nationals. Including persons already legally staying in MS would complicate the implementation of the directive. **SE** argued that the purpose of this directive is to meet the demand for seasonal labour in MS and that the scope is not limited to entry and residence but could also cover residence for the purpose of seasonal work persons who have already been legally admitted to a MS.

<sup>11</sup> **EL, FI, IT:** scrutiny reservations. **DE:** reservation. **PL:** foreigners whose removal has been suspended for practical or legal reasons should be excluded too. **AT** stated that Article 3(2) of the Blue Card Directive could be used as an example for the list of categories excluded from the scope. **EE, RO:** those entering with a tourist visa and other short-stayers should be excluded. **DE, EL** and **PL** queried as to whether national provisions could be used to employ the categories of persons excluded from the scope of this directive. **CLS** confirmed that national authorities can continue issuing national work permits for the categories of persons not falling under the scope of this directive.

- (a) who are beneficiaries of international protection under Council Directive 2004/83/EC of 29 April 2004 or have applied for international protection under that Directive and whose application has not yet given rise to a final decision;
- (b) who are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
- (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;
- (d) who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC of 25 November 2003 and exercise their right to reside in another Member State in order to engage in seasonal employment activity;

[...]

**2. This Directive shall not apply to third-country nationals:**<sup>12</sup>

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<sup>12</sup> **AT, ES, FI, PT, SI:** scrutiny reservations. **CZ** could agree with paragraph 2 but suggested to have all the excluded categories in one paragraph. **EL, NL, SI, SK** supported **Pres** suggestions for this paragraph. **SE** deemed it necessary to specify that this Directive does not apply to the citizens of EEA and Switzerland.

- (a) who are temporarily posted<sup>13</sup> 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.<sup>14</sup>
- (b) working for and being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour in a similar manner.<sup>15</sup>

### *Article 3*

#### *Definitions*

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

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<sup>13</sup> **BE, FR:** delete "temporarily" since posting is by nature temporary. **Cion** insisted on referring to the temporary nature of posting and also on "as long as they are posted", especially in light of the current wording in the second subparagraph of Article 2.1.

<sup>14</sup> Recital (9): "This Directive should not affect conditions of the provision of services in the framework of Article 56 of the TFEU. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>14</sup>, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. **Similarly, this Directive should not apply to workers posted by undertakings established in a third-country to provide a service in the territory of a Member State.**"

<sup>15</sup> **PL:** scrutiny reservation. **SE** did not agree to exclude employment agencies located in the MS concerned as there is no need to distinguish between these and other employers. **ES, PT** were opposed to excluding temporary work agencies since this would create two different categories of seasonal workers. **AT, FI** could support **Pres** suggestion noting that temporary work agencies are regulated in a separate directive. **DE, FR** had no objections to the paragraph but did not consider it absolutely necessary since the idea is already included in the definition of seasonal workers in Article 3. **SE, PT** enquired whether employment agencies could be regarded as employers and wanted to know who is considered to constitute an employer. **Cion** supported explicit exclusion of temporary work agencies to avoid contradiction with the Posting of Workers Directive which sets out the level of protection for this category of workers. **Cion** also suggested to add the following: "*.. or who are assigned by employment agencies .... to work under the supervision and direction of another undertaking*". **AT:** delete "in a similar manner" as it is unclear and leaves room for interpretation. **FR** objected to "in a similar manner" and suggested instead to refer to those who make labour available without calling themselves temporary work agencies.

- (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 but resides temporarily<sup>16</sup> 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 practice**<sup>17</sup>, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in that Member State;<sup>18 19</sup>
- (c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year during which labour levels are required that are above those necessary for usually ongoing operations or during which specific operations need to be carried out;<sup>20</sup>

<sup>16</sup> **FI**: scrutiny reservation linked to the issue of "stay" and "reside". **LV, SE** agreed that these terms should be kept separate, **SE** preferred to refer to "stay". **CLS** pointed out that there is no clear-cut distinction between stay and reside in the Treaty, Article 79.2 of the Treaty refers to residence and Article 77 to "short-stay residence permits". In the migration field the terms are used interchangeably. In the field of irregular migration a distinction is drawn but it is not specified further. **LT** would prefer "permanent place of residence" and suggested to use "enters the territory".

<sup>17</sup> **DE, EL, ES, FI, IT, SE, PT**: "national law and/or practice". **SE, PT** enquired whether employment agencies could be regarded as employers and wanted to know who is considered to constitute an employer.

<sup>18</sup> Recital (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. Activities dependent on the passing of the seasons are typically found in sectors such as agriculture or tourism."

**BE** would also like to include a reference to sectors in which seasonal work is not possible, such as construction work. **EL** would prefer not to include any examples at all since sectors vary in each MS. **CY**: the text of the Recital should be incorporated in the Article. **EL**: reservation on the deletions in the second sentence of the Recital.

<sup>19</sup> **IT**: reservation. **ES, PT**: scrutiny reservations linked to the direct work contract. **EL, ES, FI, DE, LV** expressed support for Pres suggestion in general terms. **Cion** did not oppose MS specifying the sectors but MS should not be obliged to do it and it should be stated in the text of a separate Article ("*Member States may determine...*") that it should be done respecting the conditions set out in the Directive.

<sup>20</sup> **FR**: scrutiny reservation. **AT, EL, 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

- (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 reside<sup>21</sup> and work in the territory of a Member State under the terms of this Directive;<sup>22</sup>
- (e) 'short-stay visa' means an authorisation issued by a Member State in accordance with Article 2 (2) of the Visa Code;<sup>23</sup>
- (f) 'multiple-entry visa' means an authorisation issued by a Member State in accordance with Article 24 (2) of the Visa Code;<sup>24</sup>
- (g) 'long-stay visa' means an authorisation issued by a Member State in accordance with Article 18 of the Schengen Convention as amended by Article 1 (1) of Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa;<sup>25,26</sup>
- (h) 'single application procedure' means a procedure leading, on the basis of one application for the authorisation of a third-country national's residence<sup>27</sup> and work in the territory of a Member State, to a decision on the application;<sup>28</sup>

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<sup>21</sup> **LT:** "*stay and reside*".

<sup>22</sup> **AT, EE, EL, ES, FI, PT, SI:** scrutiny reservations. **DE:** reservation stating that the directive should not regulate what to write on the permit. **AT** would prefer a less concrete remark on the permit.

<sup>23</sup> **FI:** scrutiny reservation. **DE** pointed out that the relevant reference would be Article 2(2) a). **UK** noted (regarding points e), f), g)) that also those MS not applying the Schengen acquis should be taken into account. **Cion** agreed that it might be necessary to include a definition of national short-stay visas.

<sup>24</sup> **FI:** scrutiny reservation.

<sup>25</sup> **OJ L 85, 31.3.2010, p. 1.**

<sup>26</sup> **FI:** scrutiny reservation.

<sup>27</sup> **LT** suggested to add "*stay and residence*".

<sup>28</sup> **EE, EL, PT:** scrutiny reservations.

[...] <sup>29</sup>

- (i) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.

#### **Article 4**

##### *More favourable provisions* <sup>30</sup>

1. This Directive shall apply without prejudice to more favourable provisions of:
  - (a) Union law, including bilateral and multilateral agreements concluded between the Union or between the Union and its Member States on the one hand and one or more third countries on the other;
  - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 13, 14, 16 and 17 of this Directive. <sup>31</sup>

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<sup>29</sup> **FR, PT** agreed with the deletion given that equal treatment is provided for in Article 16.1. **PL, EL**: scrutiny reservation since this cannot be decided until solution is found on Article 16.1

<sup>30</sup> **SE**, supported by **FI**, stated that MS should be able to continue to apply more favourable nationals 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*".

<sup>31</sup> **SI, SK**: scrutiny reservations. **DE, SK**: linguistic reservations. **ES** would like to be able to adopt more favourable provisions also in respect of Article 12.

## CHAPTER II

### Conditions of admission

#### Article 5<sup>32 33</sup>

##### Criteria for admission

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, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State which specifies the rate of pay and the working hours per week or month and, when applicable, other relevant working conditions.<sup>34</sup> Member States shall

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<sup>32</sup> New Recital: "In case of doubts concerning the grounds of the application for admission, Member States should be able to require all the necessary evidence to assess its coherence, in particular evidence concerning the third-country national's purpose of stay, in order to fight against abuse and misuse of the procedure set out in this Directive." **AT**: the Recital should be incorporated in the text of the Article.

<sup>33</sup> **BE**: scrutiny reservation. **AT, DE**: reservations as this should be an open list of criteria. **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** would like to 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). **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. **LT** suggested to add an additional condition for admission requiring the employer to cover the expenses related to the return of the seasonal worker in case he/she overstays the permit. **EL** would either like to add that "*Member States may require means of evidence, set by national legislation, which guarantee the capacity and/or needs of the respective employer to employ a certain number of seasonal workers*" or provide that Member States may add other admission criteria. **SI** did not support the idea of adding new conditions but could accept a minimum list of conditions.

<sup>34</sup> **BE, FI**: reference should be made to "pay" instead of "rate of pay" and "working conditions" should be specified (BE).

require that this contract or job offer is in conformity with the provisions of Article 16(1);<sup>35</sup>

- (b) provide evidence that the third-country national has [...] **sickness insurance from the country of origin or on a private basis or, if provided for by national law of the host country, has** applied for sickness insurance for all the risks normally covered for nationals of **that** Member State [...], for **the whole period of residence in the Member State concerned** 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 EU**<sup>36,37</sup>

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<sup>35</sup> **AT**: scrutiny reservation. **DE**: the second sentence in the paragraph should be consistent with Article 6.4 b). **DE, SE**, supported by **SK**, 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*". **FI**: reservation on the reference to Article 16(1). **NL** indicated that a reference to minimum pay and working hours, rather than the entire Article 16(1) would suffice.

<sup>36</sup> **AT, FI**: replace "in the EU" with "in the Member State".

<sup>37</sup> **CY, EL, NL, PL, SK**: scrutiny reservations. **FI** could support the paragraph in principle but the exact wording should be discussed. **FI, SE**: seasonal workers should provide evidence of having sickness insurance rather than only having applied for it. **SE** suggested the following wording: "provide evidence that the third-country national has sickness insurance from the country of origin or on a private basis *for the whole period of stay*". **EL**: "*present evidence according to the national legislation of having or having applied for 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 resulting from, the work contract." **CY**: "provide evidence that the third-country national has sickness insurance, *as provided by national law* or has applied for sickness insurance ... " **FR**: reservation as deems the requirement for sickness insurance unnecessary as seasonal workers should be automatically affiliated to the national social security system. **ES** queried as to whether it is obligatory to have sickness insurance or whether it is required only when the person is not affiliated to the social security system. **LV**: separate the two aspects, ie the requirement to have sickness insurance upon arrival and during the rest of the period if a person is not affiliated to the social security system in the host country. **Pres** confirmed that the intention is to make sure that the person is covered in all cases. **Cion** preferred its original proposal as it made clear that the basic principle is that a TCN is admitted to the national health care system but should have insurance for any periods falling outside that coverage.

- (c) provide evidence that the third-country national has accommodation as set out in Article 14.<sup>38</sup>
2. Member States shall<sup>39</sup> require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to the social assistance system of the Member State concerned.<sup>40</sup>
  3. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.
  4. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens<sup>41</sup> of the regulated profession specified in the work contract or binding job offer as provided for in national law.<sup>42</sup>
  5. Third-country nationals shall be in possession of a valid travel document determined by national law. For stays exceeding three months, Member States shall require the period of validity of the travel document to cover at least the duration of the seasonal worker permit or the long-stay visa.<sup>43</sup> In this case Member States may also require the period of validity to exceed the intended duration of stay by a maximum of 6 months.<sup>44</sup>

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<sup>38</sup> **IT, PT, SE, SI, SK:** scrutiny reservations. **IT** would prefer a more flexible wording referring to "*guarantees of accommodation*". **SE** maintained that this provision should be optional for MS and questioned how this provision should be read together with Article 14.

<sup>39</sup> **ES:** "*may*".

<sup>40</sup> **ES:** no need for such a requirement as a work contract guaranteeing the minimum wage should be sufficient.

<sup>41</sup> **DE:** delete "by Union citizens".

<sup>42</sup> **DE:** scrutiny reservation. **FR** expressed doubts about the relevance of this paragraph since seasonal work covers only a limited number of activities.

<sup>43</sup> **FI, NL, SE:** should be a may-clause following the example of the Blue Card Directive. **DE, BG, LT** insisted on "shall".

<sup>44</sup> **EL** suggested a wording similar to that in the Blue Card Directive: "... a valid travel document as determined by national law *and an application for a visa or a visa, if required.* Member States may require...".

### *Article 5a*

#### *Volumes of admission*<sup>45</sup>

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.<sup>46</sup>

### *Article 6*

#### *Grounds for refusal*<sup>47</sup>

1. Member States shall reject an application for admission to a Member State for the purposes of this Directive whenever the conditions set out in Article 5 are not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.
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.

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<sup>45</sup> **DE:** reservation.

<sup>46</sup> Recital (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 Article 79(5) of the Treaty on the Functioning of the European Union."

**IT:** reservation. **DE:** scrutiny reservation. **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.

<sup>47</sup> **AT:** reservation. **DE:** this should not be an exhaustive list of grounds for refusal.

**This paragraph shall be applied without prejudice to the principle of EU preference as expressed in the relevant provisions of the Act of Accession of 2005.**<sup>48 49</sup>

3. Member States may reject an application for admission to a Member State for the purposes of this Directive on the ground set out in Article 5a.<sup>50</sup>
4. Member States may reject an application if the employer:<sup>51</sup>
  - (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment;<sup>52</sup>

or

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<sup>48</sup> **New Recital: “The Directive should be applied in conformity with the Act of Accession of 2005 by those Member States that still make use of the transitional arrangements and with any similar future agreements. Therefore, nationals of these Member States should be given preference over third-country nationals, during the transitional period specified in the relevant provisions of the accession treaties, with respect to access to the labour market.”**

<sup>49</sup> **FR:** scrutiny reservation. **RO:** reservation on Article 6.2 and the Recital as EU preference should be interpreted as preference to all EU citizens and thus the first subparagraph should be mandatory for MS. **AT:** scrutiny reservation on Article 6.2 and the Recital. **NL:** scrutiny reservation on paragraph 2 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. **PL** expressed doubts about "may" or "shall" and about the reference to the concrete Acts of Accession in subparagraph 2. **CLS** replied that the primary law sets out only one type of mandatory EU preference with a limited geographical scope which is set out in the accession treaties during the transitional periods referred to therein, and since access to employment remains in MS' competence there cannot be a generalised EU preference would be obligatory to MS. In response to PL comment **CLS** stated that it is not possible to refer to future treaties, which are not in effect at the time of discussion, in the body of the text.

<sup>50</sup> **AT:** the wording should be aligned with Article 8(3) of the Blue Card Directive thus stating that an application may be considered as inadmissible on the grounds of Article 5a.

<sup>51</sup> **ES** would like to add the following ground for refusal: "*When, within the 12 months immediately preceding the date of the application, the employer has eliminated, by means of a null or unfair dismissal, the positions he is trying to fill.*"

<sup>52</sup> **IT:** scrutiny reservation. **SK:** should be a shall-clause.

(b) does not meet the legal obligations regarding social security, taxation and<sup>53</sup> working conditions, in conformity with national law.<sup>54</sup>

5. Member States shall reject an application if the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.<sup>55 56</sup>

## Article 7

### *Withdrawal or non-renewal of the permit*

1. Member States shall withdraw or refuse to renew the permit issued on the basis of this Directive in the following cases:<sup>57</sup>
  - (a) when it has been fraudulently acquired, or has been falsified, or tampered with;  
  
or
  - (b) where the holder is residing for purposes other than those for which he/she was authorised to reside.
  
2. Member States may withdraw or refuse to renew the permit issued on the basis of this Directive **whenever the conditions laid down in Article 5 were not met or are no longer met.**

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<sup>53</sup> **PL:** replace with "or" or "and/or."

<sup>54</sup> **EE, EL, FR, IT, LT, PT:** scrutiny reservations. **SE,** supported by **DE:** "does not meet the legal obligations regarding social security *or* taxation or *if terms of employment according to applicable laws, collective agreements or practices in the relevant occupational brnaces are not met.* "

<sup>55</sup> New Recital: "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 the permit."

<sup>56</sup> **EL:** a similar provision should be added with respect to employers. **DE, FI, PL, PT, SE:** should be a may-clause. **DE** pointed out that this is presented as optional for MS in the corresponding recital.

<sup>57</sup> **CZ** proposed an additional ground stating that the permit will not be renewed if the maximum duration of stay has been reached.

3. Member States may withdraw or refuse to renew the permit issued on the basis of this Directive **if the employer**:<sup>58 59</sup>
- (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment;<sup>60</sup>
  - (b) does not meet the legal **obligations** regarding social security, taxation and working conditions, in conformity with national law;<sup>61</sup>
- or
- (c) **has not fulfilled the obligations based on the work contract.**
4. Member States shall withdraw or refuse to renew the permit issued on the basis of this Directive **if the third-country national has not complied with the obligations arising from the decision on admission during a previous stay as a seasonal worker.**<sup>62</sup>

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<sup>58</sup> New Recital: "Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information concerning the seasonal employment of the third-country national concerned in order to prevent possible abuse and misuse of the procedure set out in this Directive."

<sup>59</sup> **PT** pointed out that this should be a basis for sanctions for the employer and not for the employee. **EL** also found the provision disproportionate and stated that in this case seasonal workers would be allowed to change employers as provided for in Article 11.3 (**PT** could support that). **ES** would like to add the following ground: "*When, within the 12 months immediately preceding the date of the application, the employer has eliminated, by means of a null or unfair dismissal, the positions he is trying to fill.*"

<sup>60</sup> **DE**: scrutiny reservation as this is covered by the Sanctions Directive.

<sup>61</sup> **SE**, supported by **DE**: the same proposal as for Article 6.4 b). **DE**: scrutiny reservation.

<sup>62</sup> **DE, EL, FI, PT, SE**: should be a may-clause as it should be left for MS to decide on a case by case basis. **RO**: should remain a shall-clause. **EL**: a similar provision should be included with respect to employers.

## Article 7a

### [...] *Sanctions*

1. Member States shall provide for sanctions against employers who have not fulfilled the obligations based on the work contract<sup>63</sup>. Those sanctions shall be effective, proportionate and dissuasive.<sup>64</sup>

[...] <sup>65</sup>

## CHAPTER III

### Procedure and permit

#### Article 8

##### *Access to information*

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

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<sup>63</sup> **FI:** replace "work contract" with "*national labour law*".

<sup>64</sup> **DE:** reservation as should be an optional provision. **DE** queried who is covered by the term "employers" and whether companies can be considered as employers. **SE:** such a provision should not be in this Directive.

<sup>65</sup> **DE:** could agree with the deletion.

**Article 9**  
*Applications for admission*<sup>66</sup>

1. Member States shall determine whether an application is to be made by the third-country national and/or by the employer.
2. Member States shall designate the authority competent to receive the application and to issue the seasonal worker permit.<sup>67</sup>
3. The application to reside and work in the territory of a Member State as a seasonal worker shall be submitted in a single application procedure.<sup>68</sup>

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<sup>66</sup> **AT, EE, HU, PT:** scrutiny reservations. **DE** would like to add the following new paragraph: "*Member States may determine that the placement of seasonal workers from third countries must be carried out by a government agency.*" **AT** supported that proposal and suggested to provide for the possibility of social partners to participate in the decision-making procedure. In line with the second sentence of Article 2 (1) **SE** suggested to add that "*Member States may accept, in accordance with national law, an application submitted when the third-country national concerned is legally staying in its territory*".

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

<sup>68</sup> **EE, EL:** scrutiny reservations. **PL** stated that it should be made clear that the single application procedure only concerns the seasonal work aspect and not the visa procedure. **NL**, supported by **SE**, in light of Article 10(1) a single application procedure cannot apply to stays shorter than 3 months for which both a visa and an authorisation to work is issued, it needs to be analysed whether the single application procedure can be applied to stays above 3 months.

4. The Member State concerned shall grant the third-country national whose application for a seasonal worker permit has been accepted every facility<sup>69</sup> to obtain a long-stay visa required for the purpose of initial entry.<sup>70</sup>
5. Member States may accept, if provided for by national law, an application submitted when the third-country national concerned is legally staying in its territory.<sup>71</sup>
6. For the purposes of **Article 11 (2) and (3)**, Member States shall accept an application for a new authorisation for the purpose of seasonal employment submitted by a third-country national admitted under the terms of this Directive to the territory of the Member State concerned.

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<sup>69</sup> **NL** found this wording too broad and potentially problematic, suggested "*shall facilitate in obtaining a visa*" instead. **DE** expressed similar concerns and suggested to delete the paragraph. **ES**: reservation (the term "every facility" is too vague and confusing). **EL** suggested using the wording in Article 7(1) of the Blue Card Directive.

<sup>70</sup> **FR**: reservation (regarding the long-stay visa). **EL**: scrutiny reservation (questioned why reference is made to a long-stay visa only and not a short-stay visa). **Pres** clarified that reference is made to national visas that are used for initial entry. **SI**: scrutiny reservation (found the wording too restrictive as there is no need for someone who already has a residence permit to also have a visa). **Pres** clarified that the visa is needed for the person to be able to enter the territory of a MS and "to receive" a residence permit (instead of "to apply for"), because the TCN does not have to apply for a permit, it is issued to him/her on the basis of an already existing positive decision, thus this visa authorises the person to collect the permit. **EE** suggested referring to visas without specifying the type of a visa. **SE** suggested adding "...if required for the purpose..." and expressed doubts about "long-stay visa". **CY**: "a visa if required by national law". **PT** queried about cases where a MS does not issue permits.

<sup>71</sup> **RO**: scrutiny reservation. **DE**: reservation.

## Article 10

### Authorisation for the purpose of seasonal work<sup>72</sup>

1. For stays not exceeding three months, Member States shall grant seasonal workers<sup>73</sup> who fulfil the admission criteria as set out in Article 5, and for whom the competent authorities have issued a positive decision, a short-stay visa if required<sup>74</sup> by Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement<sup>75</sup> or a seasonal worker permit.<sup>76</sup>

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<sup>72</sup> **AT, FI, FR:** reservations. **DE, EE, FI, IT, PL, RO:** general scrutiny reservation.

<sup>73</sup> **CY** pointed out that reference should be made to "applicants" instead as this is not in line with the definition in Article 3(b).

<sup>74</sup> **Cion:** "in accordance with".

<sup>75</sup> **OJ L 81, 21.3.2001, p. 1.**

<sup>76</sup> **FR** pointed out that two different procedures are mixed up in paragraph one - one related to the authorisation for seasonal work and another one for issuing visas. **EE, PT** found that the best solution would be to delete paragraph 1 and include the possibility to issue national visas also for stays shorter than 3 months. **NL** supported the deletion of paragraph 1 and asked whether this directive enables MS to issue a national authorisation for employment in the case of stays shorter than 3 months and enquired whether such an authorisation could be issued by a different authority given that consulates would not be able to do that. **SI** was against deleting paragraph 1 and stated that MS should be able to issue residence permits for short stays. **SE** noted that the rights under this Directive should apply to all seasonal workers regardless of the length of their stay and queried how this provision tallies with the single application procedure set out in Article 9(3). **CZ:** reservation as the Directive should not cover stays shorter than 3 months as this constitutes interference with the Visa Code. **DE, EL, ES, FI, SE** questioned the obligatory nature of the paragraph as in addition to the criteria in Article 5 the criteria in the Visa Code would have to be met and suggested that it should be a "may-clause" instead. **Pres** replied that this is not an automated procedure referring to Article 1 which states that the provisions of the Visa Code and the Schengen Convention apply. **Cion:** this should stay a "shall-clause". **PL** wanted to know whether this paragraph also covered those who are exempt from visa requirement and **ES, DE** enquired whether an explicit reference should be made to Article 4(3) of Regulation (EC) 539/2001. **FI, SK** stated that MS should be able to issue residence permits regardless of the length of stay. **AT** also enquired whether national work permits can be issued in addition to visas in the case of stays shorter than three months. **Cion** suggested that a reference to national short-stay visas could be added to cater for the needs of those MS who are not part of the Schengen area.

2. For stays exceeding three months, Member States may grant seasonal workers who fulfil the admission criteria as set out in Article 5 a seasonal worker permit or a long-stay visa.<sup>77</sup>
3. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in Council Regulation (EC) No 1030/2002<sup>78</sup>. In accordance with point (a) 6.4 of the Annex to that Regulation, Member States shall enter 'seasonal worker' under the heading 'type of permit'.
4. In accordance with with point 12 of the Annex to Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas<sup>79</sup>, Member States shall enter 'seasonal worker' under the heading 'comments' on the visa sticker.<sup>80</sup>
5. Member States may issue a long-stay visa in accordance with paragraph (2), provided that at the time of entry into force of this Directive, the Member State concerned issues long-stay visas for the purpose of seasonal work.<sup>81</sup> In accordance with Article 18 of the Schengen Convention, Member States shall enter 'seasonal worker' under the heading 'comments' on the visa sticker.<sup>82</sup>

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<sup>77</sup> **CZ** welcomed the flexibility in this provision. **PL**: should be a "shall-clause". **DE, CY** stated that it should remain a "may-clause".

<sup>78</sup> **EL**: "... as amended by Regulation (EC) 380/2008".

<sup>79</sup> **OJ L 164, 14.7.1995, p. 1.**

<sup>80</sup> **ES**: scrutiny reservation. **CZ** noted that "seasonal worker" would not fit on the visa sticker.

<sup>81</sup> **AT, EL, FI, IT, PL, PT** found this provision too restrictive and stated that MS should be given full flexibility to decide whether to use visas or permits.

<sup>82</sup> **ES**: scrutiny reservation. **FR** inquired as to whether this obligation would amount to the modification of the Schengen Convention. **Pres** replied that this should not be the case since MS are free to enter comments in the field provided for that purpose. **DE** suggested that the details in paragraphs 3-5 could be left for MS to decide.

## *Article 11*

### *Duration of stay*<sup>83</sup>

1. Seasonal workers shall be allowed to reside for a maximum of five to nine months in any period of twelve months, after which they shall return to a third country.<sup>84 85</sup>
2. Within the maximum period determined by Member States in accordance with paragraph 1, and provided that the criteria of Article 5 are met, seasonal workers shall be allowed to extend their contract and apply for a renewal of the authorisation issued for the purpose of seasonal employment within the meaning of Article 10.<sup>86</sup>
3. **Within the maximum period determined by Member States in accordance with Paragraph (1), seasonal workers may be allowed to be employed with a different employer.**<sup>87</sup>

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<sup>83</sup> **IT:** reservation on the Article, including on the deletion of the third paragraph. **AT** preferred the time period of 12 months within 14 months as it has two seasons. **PL:** scrutiny reservation.

<sup>84</sup> New Recital: "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." **IT:** reservation on the Recital.

<sup>85</sup> **DE, FI:** scrutiny reservations. **EL, FI** regretted such an open formulation that leads to no harmonisation. **EL:** reservation on the 12-month period. **FR** would prefer the maximum of 6 months stating that 9 months is excessive and that this would no longer qualify as seasonal work. **BE, NL, PL** could support the Pres suggestion. **SE** stated that it should be optional for MS to require that seasonal workers return after the indicated period.

<sup>86</sup> **DE** found this provision more restrictive now that the possibility to change employers has been deleted. **SE** would also like to return to the possibility to change employers. **EL, FR:** scrutiny reservation (mainly related to the possibility to extend a short-term visa). **EL** also expressed concerns about Article 7a (2). **EE:** reservation and **BE:** scrutiny reservation on paragraph 2 and Article 7a (2) and Article 9 (6).

<sup>87</sup> **New Recital: "The possibility to change employers is important to reduce the risk of abuse seasonal workers tied to one single employer might face."**

**Article 12**  
*Facilitation of re-entry*

1. Member States may [...]
- (a) upon application, issue up to three seasonal worker permits **or multiple-entry visas** covering up to three subsequent seasons within one administrative act [...],

**and/or**

- (b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.<sup>88</sup>

[...]

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<sup>88</sup> **EL** noted that issuing multiple-entry visas could involve a number of problems and stated that a facilitated procedure could only be applied to cases that concern the same employer and the same employee and suggested to add "*.. under the terms set out by national legislation*". **Pres** clarified that the maximum period of validity of the visa would be 5 years during which period a seasonal worker could spend in a MS 3 months out of 6 months during one season. **PL** stated that 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** stated that 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 would 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*

1. The competent authorities of the Member State shall adopt a decision on the application and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State, as soon as possible but not later than 60 days of the complete application being lodged.<sup>89</sup>
2. Where the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.<sup>90</sup>
3. Any decision rejecting an application, or any decision not to renew or to withdraw the permit, shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned in accordance with national law.<sup>91</sup> The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.<sup>92</sup>

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<sup>89</sup> **AT, EL, FI:** reservations on "60 days". **EL, DE, MT, SE** would prefer "as soon as possible" without a deadline. **LV:** scrutiny reservation. **ES:** reservation as 60 days is too short, would prefer 90 days. **SI** wanted to know how this relates to the "Visa Code" as a decision on the C-visa would have to be taken within 3 months.

<sup>90</sup> **PL** suggested to follow the example of the Blue Card Directive and provide for the possibility to suspend the period laid down in paragraph 1 or to reject the application. **DE:** the paragraph should be deleted as unnecessary.

<sup>91</sup> **DE,** supported by **SK,** 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."

<sup>92</sup> **EL:** scrutiny reservation. **DE, FI:** reservations. **AT:** linguistic reservation.

## *Article 14*

### *Accommodation*

Member States shall require the applicant to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national legislation and/or practice. If the accommodation is provided by the employer and the seasonal worker is required to pay rent for such accommodation, its costs shall not be excessive in relation to their remuneration.<sup>93</sup>

## *Article 15*

### *Rights on the basis of the seasonal worker permit/visa*<sup>94</sup>

During the period of validity of a seasonal worker permit, the holder shall enjoy at least the following rights:<sup>95</sup>

- (a) the right to enter and stay in the territory of the Member State issuing the permit;

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<sup>93</sup> **FR** would prefer the previous version referring to "employers" and pointed out that the term "applicant" has not been used elsewhere in the directive. **EL** also preferred the previous version. **DE** could not support the **Pres** suggestion as the costs of accommodation should not be excessive in other cases either and not only when the accommodation is provided by the employer.

<sup>94</sup> **DE**: reservation as the Article read in conjunction with the new recital could be misinterpreted in a way that the Schengen Borders Code does not apply to third-country nationals who are in possession of a seasonal workers permit or a visa.

<sup>95</sup> **New Recital: "Third-country nationals who are in possession of a valid travel document and an authorisation for the purpose of seasonal work issued under this Directive by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Article 21 of the Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention)."**

**AT, EL**: scrutiny reservations on the Recital.

- (b) free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;<sup>96</sup>
- (c) the right to exercise the concrete employment activity authorised under the permit in accordance with national law.<sup>97</sup>

### *Article 16*

#### *Rights*<sup>98</sup>

Whatever the law applicable to the employment relationship, seasonal workers shall be entitled to:

1. working conditions<sup>99</sup>, including pay and dismissal<sup>100</sup> as well as health and safety requirements at the workplace, applicable to seasonal work as laid down by law, regulation or administrative provision and/or universally<sup>101</sup> applicable collective agreements in the Member State to which they have been admitted according to this Directive.

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<sup>96</sup> **LT** did not see the added value of points a) and b) as they are regulated in other acts.

<sup>97</sup> **NL**, supported by **HU**, suggested to add a reference to a concrete employer.

<sup>98</sup> **CZ, SK**: scrutiny reservations. **SE**: the Article should be called "*Equal treatment*"

<sup>99</sup> **PT** noted that "working conditions" should be set out more clearly.

<sup>100</sup> **AT**: replace "dismissal" with "*termination of the contract*" as dismissal under national law means termination of a contract with immediate effect.

<sup>101</sup> **FR**: delete "universally".

In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory;<sup>102</sup>

2. Equal treatment with nationals of the host Member State as regards at least with regard to:<sup>103</sup>
  - (a) freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

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<sup>102</sup> **FI, BE, CY, ES, FR, SE, PT** favoured equal treatment with respect to matters set out in paragraph 1 and advocated for **ES** proposal in doc 7993/11 + COR 1 incorporating paragraph 1 into paragraph 2: "Third-country nationals who have been admitted to the territory of a Member State shall enjoy equal treatment with nationals of the Member States where they are employed with regards to **a) working conditions, including pay and dismissal as well as health and safety at the workplace;...**"

**DE:** scrutiny reservation on the **ES** proposal. **NL:** scrutiny reservation on paragraph 1 but indicated that **ES** proposal is going in the right direction. **PL** expressed initial support for **ES** proposal. **SI** considered it important to provide for equal treatment in matters set out in paragraph 1 but was still scrutinising **ES** proposal. **EL:** reservation on providing for equal treatment in paragraph 1. **Cion** maintained its position explaining that seasonal workers should not be given more favourable treatment than posted workers.

<sup>103</sup> **DE:** reservation on equal treatment in the field of social security emphasising, together with **EL** and **BE** the importance of awaiting the outcome of negotiations on the Single Permit Directive. **DE,** supported by **SK,** suggested to add the following subparagraph: "*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*".

- (b) provisions in national laws regarding the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04;<sup>104</sup>

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<sup>104</sup> **BG**: reservation. **AT, EL, IT, MT, PL, SI**: scrutiny reservations. **CY**: scrutiny reservation on equal treatment regarding all benefits. **AT, DE** opposed the granting of equal treatment with regard to family benefits. **DE** proposed the following wording instead: "*(b) provisions in national law regarding the branches of social security defined in Article 3 (1) (a) through (i) of Regulation (EC) No 883/04 (except for family benefits).*" **DE** also stated that it should be clarified in the text that the directive does not grant a right for family reunification. **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. **PL**, while supporting equal treatment, was of the opinion that due to short stay and obligation to return seasonal workers should not be entitled to family and unemployment benefits and suggested that equal treatment could be restricted to contribution-based benefits. **LT**: equal treatment in social security should be limited to contribution-based benefits. **NL**: seasonal workers should be granted equal treatment regarding benefits stemming from employment. **IT** also stated that family and unemployment benefits should be excluded. **MT**: the paragraph is drafted too broadly, it should be clear that only benefits stemming from employment relationship are granted excluding unemployment benefits. **FR**: the general principle of full equal treatment of seasonal workers regarding social security should apply and then it would be up to MS to apply their national law accordingly. **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. **BE** could support equal treatment with respect to social security but pointed out that seasonal workers retain their principal place outside the EU while there is a requirement for residence for some benefits. **BE, LV** echoed this concern. **LV** considered that for this reason it is not appropriate to refer to all the branches in Regulation 883/04. **LV, MT, SK**: it is important to distinguish between residence and stay. **Cion** 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. **CLS** stressed the importance of determining the status of seasonal workers in terms of their residence for the purpose of deciding which benefits they qualify for. The general principle should be that seasonal workers should be granted all the benefits they qualify for and for which they fulfil the conditions in the particular national system in question. **CLS** added that while at the EU level there is no harmonisation of what constitutes contributory or non-contributory benefits there is, however, a reference to national systems in that respect.

- (c) payment of statutory pensions based on the worker's previous employment under the same conditions as nationals of the Member States concerned when they move to a third country;<sup>105</sup>
- (d) access to goods and services and the supply of goods and services made available to the public, except public housing and counselling services afforded by employment services.<sup>106</sup>

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

### *Article 17*

#### *Facilitation of complaints*<sup>107</sup>

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

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<sup>105</sup> **BG:** reservation. **AT, EL:** scrutiny reservations. **FR:** full equal treatment should be granted as seasonal workers pay their contributions.

<sup>106</sup> **AT:** scrutiny reservation. **FI** suggested to delete "counselling" as equal treatment regarding counselling services should be granted to seasonal workers while public employment services should not due to the fact that they are not entering the employment market. **EL:** scrutiny reservation as seasonal workers are linked to a concrete employer and access to employment services is not justified. **AT:** scrutiny reservation as labour market services, including counselling services, are meant for long-term workers, only general information services could be offered to all. **NL** agreed with FI and AT.

<sup>107</sup> **DE:** reservation. **AT, EL, IT:** scrutiny reservations. **SE** noted that the heading of the Article is not in line with the content and should thus be amended.

# CHAPTER V

## Final provisions

### *Article 18* *Statistics*<sup>108</sup>

1. Member States shall communicate to the Commission statistics on the number of residence permits and visas issued for the first time or renewed and, as far as possible, on the number of residence permits and visas withdrawn for the purpose of seasonal employment to persons who are third-country nationals, disaggregated by citizenship, age and sex, length of validity of the permit and economic sector<sup>109 110</sup>
2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council.<sup>111</sup>
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)*].

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<sup>108</sup> **DE:** reservation. **AT:** scrutiny reservation. **LT** suggested to use "*seasonal worker permits*" instead of "residence permits" in the entire text.

<sup>109</sup> **SI:** delete "economic sector". **DE:** 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 and economic sector".

<sup>110</sup> **EL, ES, PL, PT:** scrutiny reservations.

<sup>111</sup> OJ L 199, 31.7.2007, p. 23.

## **Article 19**

### *Reporting*

Every three years, and for the first time no later than [*three years after the date of transposition of this Directive*], the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.<sup>112</sup>

## **Article 20**

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (*24 months from the date of publication in the Official Journal of the European Union*) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.<sup>113</sup>

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

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

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<sup>112</sup> **DE**: reservation.

<sup>113</sup> **DE, SI** were opposed to the requirement to communicate correlation tables to the Commission. **PT**: reservation on the obligation to send correlation tables and the transposition period. **IT, LV**: scrutiny reservations on the obligation to send correlation tables. **CY, EL** were opposed to any references to correlation tables, even in the recitals. **AT, DE, CY** stated that the transposition period should be 3 years.

**Article 21**

*Entry into force*

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

**Article 22**

*Addressees*

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

Done at Brussels, [...]

*For the European Parliament*

*For the Council*

*The President*

*The President*

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