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INFORMATION NOTE

from:	General Secretariat of the Council
to:	Permanent Representatives Committee/Council
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 – Outcome of the European Parliament's first reading (Strasbourg, 3 to 6 February 2014)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Mr Claude MORAES (S&D, UK)) presented one amendment (amendment 1) to the proposal for a Directive, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 5 February 2014, the plenary adopted the single amendment (amendment 1) to the proposal for a Directive. The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first-reading position¹, it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Conditions of entry and residence of third-country nationals for the purposes of seasonal employment *I**

European Parliament legislative resolution of 5 February 2014 on the proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010)0379 – C7-0180/2010 – 2010/0210(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0379),
- having regard to Article 294(2) and points (a) and (b) of Article 79(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0180/2010),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Chamber of Deputies, the Czech Senate, the Netherlands Senate, the Netherlands House of Representatives, the Austrian National Council and the Austrian Federal Council, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 4 May 2011¹,
- having regard to the opinion of the Committee of the Regions of 31 March 2011²,
- having regard to the undertaking given by the Council representative by letter of 6 November 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rules 55 and 37 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs and the Committee on Women's Rights and Gender Equality (A7-0428/2013),

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

¹ OJ C 218, 23.7.2011, p. 97.

² OJ C 166, 7.6.2011, p. 59.

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

Position of the European Parliament adopted at first reading on 5 February 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council on the conditions of entry and *stay* of third-country nationals for the purpose of employment as seasonal workers

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 points (a) and (b) of Article 79(2) 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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 218, 23.7.2011, p. 97.

² OJ C 166, 7.6.2011, p. 59.

³ Position of the European Parliament of 5 February 2014.

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) ***The TFEU provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals staying legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and stay of third-country nationals and on the definition of their rights.***

- (3) The Hague Programme, adopted by the European Council on 4 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.
- (4) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007. Those steps 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.
- (5) The European Pact on Immigration and Asylum, adopted by the European Council on 16 October 2008, expresses the commitment of the 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.

- (6) The Stockholm Programme, adopted by the European Council on 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 Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. ***It also highlights the importance of ensuring fair treatment of third-country nationals staying legally on the territory of the Member States and of optimising the link between migration and development.*** It invites the Commission and the European Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's communication of 21 December 2005.
- (7) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration ***and to ensuring decent working and living conditions for seasonal workers,*** by setting out fair and transparent rules for admission and stay ***and by defining the rights of seasonal workers*** while at the same time providing for incentives and safeguards to prevent ***overstaying or*** temporary stay from becoming permanent. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the Council¹ will contribute to avoiding such temporary stay turning into ***unauthorised*** stay.

¹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

- (8) *Member States should give effect to this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disability, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC¹ and Council Directive 2000/78/EC².*
- (9) This Directive should be without prejudice to the principle of **■** preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of *the relevant* Acts of Accession.
- (10) 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 *TFEU*:-

¹ *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).*

² *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).*

- (11) This Directive should not affect the 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 Council¹, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State.
- (12) *This Directive should cover direct working relationships between seasonal workers and employers. However, where a Member State's national law allows admission of third-country nationals as seasonal workers through employment or temporary work agencies established on its territory and which have a direct contract with the seasonal worker, such agencies should not be excluded from the scope of this Directive.*
- (13) *When transposing this Directive, Member States should, where appropriate in consultation with social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. Activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture **and horticulture, in particular** during the planting or harvesting period, or tourism, **in particular** during the holiday period.*

¹ 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 (OJ L 18, 21.1.1997, p. 1).

- (14) *If so provided under national law and in accordance with the principle of non-discrimination as set out in Article 10 of the TFEU, Member States are allowed to apply more favourable treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive.*
- (15) It should only be possible to apply for admission as a seasonal worker while the **third-country national** is residing outside the territory of the Member States.
- (16) *It should be possible to refuse admission for the purposes of this Directive on duly justified grounds. In particular, it should be possible to refuse admission if a Member State considers, on the basis of an assessment of the facts, that the third-country national concerned is a potential threat to public policy, public security or public health.*
- (17) *This Directive should be without prejudice to the application of Directive 2008/115/EC of the European Parliament and of the Council ¹.*
- (18) This Directive should not **adversely** affect the rights that have been granted to third-country nationals who are already legally staying in a Member State for the purpose of work.

¹ *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).*

(19) *In the case of Member States applying the Schengen acquis in full, Regulation (EC) No 810/2009 of the European Parliament and of the Council¹ (Visa Code), Regulation (EC) No 562/2006 of the European Parliament and of the Council² (Schengen Borders Code), and Council Regulation (EC) No 539/2001³ apply in their entirety. Accordingly, for stays not exceeding 90 days, the conditions for admission of seasonal workers to the territory of the Member States applying the Schengen acquis in full are regulated by those instruments, while this Directive should only regulate the criteria and requirements for access to employment. In the case of Member States not applying the Schengen acquis in full, with the exception of the United Kingdom and Ireland, only the Schengen Borders Code applies. The provisions of the Schengen acquis referred to in this Directive belong to that part of the Schengen acquis in which Ireland and the United Kingdom do not take part and therefore those provisions do not apply to them.*

¹ ***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)(OJ L 243, 15.9.2009, p. 1).***

² ***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)(OJ L 105, 13.4.2006, p. 1).***

³ ***Council Regulation (EC) No 539/2001 of 15 March 2001 listing third countries whose nationals must be in possession of visas when crossing the external borders and those nationals exempt from that requirement (OJ L 81, 21.3.2001, p. 1).***

- (20) *Criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding 90 days should be 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 to the Visa Code.*
- (21) *For seasonal workers who are admitted for stays of longer than 90 days, this Directive should define both the conditions for admission to and stay in the territory and the criteria and requirements for access to employment in the Member States.*
- (22) This Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the *essential aspects of the contract or employment relationship*.
- (23) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.

- (24) *Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to leave the territory of the Member State concerned on the expiry of an authorisation for the purpose of seasonal work.*
- (25) *Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed in order to prevent possible abuse and misuse of the procedure set out in this Directive.*
- (26) Provision for a single procedure leading to one combined **permit**, encompassing both *stay* and work, should contribute to simplifying the rules currently applicable in Member States. That should not affect the right of Member States to designate the competent authorities and the way in which they should be involved in the single procedure, in accordance with national specificities of administrative organisation and practice.
- (27) *The designation of the competent authorities under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, in accordance with national law and/or practice, with regard to the examination of, and the decision on, the application.*

- (28) *This Directive should provide for a degree of flexibility for Member States regarding the authorisations to be issued for the admission (entry, stay and work) of seasonal workers. The issuing of a long-stay visa in accordance with point (a) of Article 12(2) should be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned. Nevertheless, in order to ensure that the conditions of employment as provided for by this Directive have been checked and are met, it should be made clear on those authorisations that they were issued for the purpose of seasonal work. Where only short-stay visas are issued, Member States should make use of the "remarks" heading of the visa sticker for that purpose.*
- (29) *For all stays not exceeding 90 days, Member States should choose to issue either a short-stay visa or a short-stay visa accompanied by a work permit in cases where the third-country national requires a visa in accordance with Regulation (EC) No 539/2001. Where the third-country national is not subject to the visa requirement and where the Member State did not apply Article 4(3) of that Regulation, the Member States should issue a work permit to him or her as an authorisation for the purpose of seasonal work. For all stays exceeding 90 days, Member States should choose to issue one of the following authorisations: a long-stay visa; a seasonal worker permit; or a seasonal worker permit accompanied by a long-stay visa, if the long-stay visa is required under national law for entering the territory. Nothing in this Directive should preclude Member States from delivering a work permit directly to the employer.*

- (30) *Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued a seasonal worker permit, the Member State concerned should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.*
- (31) The **maximum** duration of stay should be ***fixed by Member States and*** limited to a **■** period ***of between five and nine months*** which, together with the definition of seasonal work, should ensure that the work is of genuinely seasonal nature. Provision should be made to the effect that within that maximum duration of stay, an extension of the contract or change of employer is possible, ***provided that the admission criteria continue to be met***. That should serve to reduce the risk of abuse that seasonal workers may face if tied to a single employer and at the same time provide for a flexible response to employers' ***actual workforce needs***. ***The possibility for the seasonal worker to be employed by a different employer under the conditions laid down in this Directive should not entail the possibility for the seasonal worker to seek employment on the territory of the Member States while being unemployed.***
- (32) *When deciding on the extension of stay or the renewal of the authorisation for the purpose of seasonal work, Member States should be able to take into consideration the labour market situation.*

- (33) *In cases where a seasonal worker has been admitted for a stay not exceeding 90 days and where the Member State has decided to extend the stay beyond 90 days, the short-stay visa should be replaced either by a long-stay visa or by a seasonal worker permit.*
- (34) *Taking into account certain aspects of circular migration as well as the employment prospects of third-country seasonal workers beyond a single season and the interests of Union employers in being able to rely on a more stable and already trained workforce, the possibility of facilitated admission procedures should be provided for in respect of bona fide third-country nationals who have been admitted as seasonal workers in a Member State at least once within the previous five years, and who have always respected all criteria and conditions provided under this Directive for entry and stay in the Member State concerned. Such procedures should not affect, or circumvent, the requirement that the employment be of a seasonal nature.*
- (35) *Member States should do their best to ensure that information on conditions of entry and stay, including the rights and obligations and the procedural safeguards as laid down in this Directive and all documentary evidence needed for an application to stay and work in the territory of a Member State as a seasonal worker, is made available to applicants.*

- (36) *Member States should provide for effective, proportionate and dissuasive sanctions against employers in the event of breaches of their obligations under this Directive. Those sanctions could consist of measures as provided for in Article 7 of Directive 2009/52/EC and should include, if appropriate, liability of the employer to pay compensation to seasonal workers. The necessary mechanisms should be in place to enable seasonal workers to obtain the compensation to which they are entitled even if they are no longer on the territory of the Member State in question.*
- (37) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. That procedure 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.
- (38) *In the case of short-stay visas, the procedural safeguards are governed by the relevant provisions of the Schengen acquis.*

- (39) *The competent authorities of the Member States should decide on applications for an authorisation for the purpose of seasonal work as soon as possible after they are submitted. In relation to applications for an extension or renewal, where submitted within the period of validity of the authorisation, Member States should take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employers, due to on-going administrative procedures. Applicants should submit their application for extension or renewal as soon as possible. In any event, the seasonal worker should be allowed to stay on the territory of the Member State concerned, and where appropriate to continue working, until a final decision on the application for an extension or renewal has been taken by the competent authorities.*
- (40) *Given the nature of seasonal work, Member States should be encouraged not to charge a fee for the handling of applications. In the event that a Member State nevertheless decides to charge a fee, such a fee should not be disproportionate or excessive.*
- (41) *Seasonal workers should all benefit from accommodation that ensures an adequate standard of living. The competent authority should be informed of any change of accommodation. Where the accommodation is arranged by or through the employer the rent should not be excessive compared with the net remuneration of the seasonal worker and compared with the quality of that accommodation, the seasonal worker's rent should not be automatically deducted from his or her wage, the employer should provide the seasonal worker with a rental contract or equivalent document stating the rental conditions for the accommodation, and the employer should ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.*

- (42) *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 are 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 90 days in any 180-day period in accordance with the Schengen Borders Code and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders¹ (Schengen Implementing Convention).*
- (43) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to **provide** effective protection of the rights of third-country *national seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, abiding by the concept of the same pay for the same work in the same workplace, by applying collective agreements and other arrangements on working conditions which have been concluded at any level or for which there is statutory provision, in accordance with national law and practice, under the same terms as to nationals of the host Member State.*

¹ *OJ L 239, 22.9.2000, p. 19.*

- (44) *This Directive should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and, where relevant, the European Convention on the Legal Status of Migrant Workers of 24 November 1977.*
- (45) *In addition to the legislative, administrative and regulatory provisions applicable to workers who are nationals of the host Member State, arbitration decisions and collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice, should also apply to third-country national seasonal workers under the same terms as to nationals of the host Member State.*
- (46) Third-country national seasonal workers should be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 *of the European Parliament and of the Council*¹. *This Directive does not harmonise the social security legislation of Member States and does not cover social assistance. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its 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.

¹ *Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).*

Due to the temporary nature of the stay of seasonal workers and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council¹, Member States should be able to exclude family benefits and unemployment benefits from equal treatment between seasonal workers and their own nationals and should be able to limit the application of equal treatment in relation to education and vocational training, as well as tax benefits.

This Directive does not provide for family reunification. Furthermore, this Directive *does* not grant rights in relation to situations which lie outside the scope of Union law such as, for example, situations where family members reside in a third country. That *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 should be without prejudice to the non-discriminatory application by Member States of national law providing for *de minimis* rules on contributions to pension systems. *Mechanisms should be in place in order to ensure effective social security coverage during the stay and the exporting of acquired rights of the seasonal workers, where applicable.*

- (47) *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.*

¹ *Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).*

- (48) *Any restrictions on equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred in application of Regulation (EU) No 1231/2010.*
- (49) *To ensure the proper enforcement of this Directive, and in particular the provisions regarding rights, working conditions and accommodation, Member States should ensure that appropriate mechanisms are in place for the monitoring of employers and that, where appropriate, effective and adequate inspections are carried out on their respective territories. The selection of employers to be inspected should be based primarily on a risk assessment to be carried out by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.*
- (50) *To facilitate enforcement of this Directive, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through relevant ■ third parties such as trade unions or other associations ■ . That is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use them in their own name, out of fear of possible consequences. **Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.***

- (51) Since the objectives of this Directive, namely the introduction of a special admission procedure ■, the adoption of conditions on entry and *stay* for the purpose of seasonal work by third-country nationals *and the definition of their rights as seasonal workers*, cannot be sufficiently achieved by *the* Member States but can rather be better achieved at Union level, the Union may adopt measures in accordance with the *principle of* subsidiarity ■ as set out in Article 5 of the Treaty on European Union (*TEU*), *taking account of immigration and employment policies at European and national level*. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (52) This Directive respects the fundamental rights and observes the principles recognised ■ by the Charter of Fundamental Rights of the European Union, *in particular, Articles 7, 15(3), 17, 27, 28, 31 and 33(2) thereof, in accordance with Article 6 TEU*.
- (53) *In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011¹, 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.*

¹ *OJ C 369, 17.12.2011, p. 14.*

- (54) 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 TEU and to the TFEU, 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.
- (55) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, 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 purpose of employment as seasonal workers and defines the rights of seasonal workers.
- 2.** *For stays not exceeding 90 days, this Directive shall apply without prejudice to the Schengen acquis, in particular the Visa Code, the Schengen Borders Code and Regulation (EC) No 539/2001.*

Article 2

Scope

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

This Directive shall not apply to third-country nationals who at the time of application reside in the territory of a Member State with the exception of cases referred to in Article 15.

2. ***When transposing this Directive the Member States shall, where appropriate in consultation with the social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. The Member States may modify that list, where appropriate in consultation with the social partners. The Member States shall inform the Commission of such modifications.***

3. This Directive shall not apply to third-country nationals who:
 - (a) are carrying out activities on behalf of undertakings established in another Member State in the framework of the provision of services within the meaning of Article 56 of the TFEU, including third-country nationals posted by undertakings established in a Member State in the framework of the provision of services in accordance with Directive 96/71/EC;

- (b) *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 the European Parliament and of the Council¹;*
- (c) *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 apply:

- (a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) of the TFEU;
- (b) ‘seasonal worker’ means a third-country national who retains *his or her principal place of residence* in a third country *and stays legally and* temporarily in the territory of a Member State *to carry out an* activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in *that* Member State;

¹ *Directive 2004/38/EC of the European Parliament and of the Council 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (JO L 158, 30.4.2004, p. 77).*

- (c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year by ***a recurring*** event or pattern ***of events linked to seasonal conditions*** during which ***required*** labour levels are ***significantly*** above those necessary for usually ongoing operations;
- (d) ‘seasonal worker permit’ means ***an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002¹ bearing a reference to seasonal work and*** entitling its holder to ***stay*** and work in the territory of a Member State ***for a stay exceeding 90 days*** under the terms of this Directive;
- (e) ***'short-stay visa' means an authorisation issued by a Member State as provided for in point (2)(a) of Article 2 of the Visa Code or issued in accordance with the national law of a Member State not applying the Schengen acquis in full;***
- (f) ***'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Implementing Convention or issued in accordance with the national law of a Member State not applying the Schengen acquis in full;***
- (g) ‘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 a seasonal worker permit***;

¹ ***Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (JO L 157, 15.6.2002, p. 1).***

- (h) *'authorisation for the purpose of seasonal work' means any of the authorisations referred to in Article 12 entitling their holder to stay and work on the territory of the Member State that issued the authorisation under this Directive;*
- (i) *'work permit' means any authorisation issued by a Member State in accordance with national law for the purpose of work in the territory of that Member State.*

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:
 - (a) Union law, including bilateral and multilateral agreements concluded between the Union or between the Union and its Member States on the one hand and one or more third countries on the other;
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for *third-country nationals* to whom it applies in respect of Articles *18, 19, 20, 23 and 25*.

CHAPTER II
CONDITIONS OF ADMISSION

Article 5

Criteria *and requirements* for admission *for employment as a seasonal worker for stays not exceeding 90 days*

1. Applications for admission to a Member State under the terms of this Directive *for a stay not exceeding 90 days* shall be accompanied by **■** :
 - (a) a *valid* work contract or, *if* provided for *by* national law, *administrative regulations, or practice*, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in that Member State *which* specifies:
 - i) the *place and type of the work*;
 - ii) *the duration of employment*;
 - iii) *the remuneration*;
 - iv) the working hours per week or month;
 - v) *the amount of any paid leave*;
 - vi) *where* applicable other relevant working conditions; *and*
 - vii) *if possible, the date of commencement of employment*;
 - (b) *evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State*;

(c) evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided in accordance with Article 20.

- 2. Member States shall require that the conditions referred to in point (a) of paragraph 1 comply with applicable law, collective agreements and/or practice.*
- 3. On the basis of the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will have no recourse to their social assistance systems.*
- 4. In cases where the work contract or binding job offer specifies that the third-country national will exercise a regulated profession, as defined in Directive 2005/36/EC of the European Parliament and of the Council¹, the Member State may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of that regulated profession.*
- 5. When examining an application for an authorisation referred to in Article 12(1), Member States not applying the Schengen acquis in full shall verify that the third-country national:*
 - a) does not present a risk of illegal immigration;*
 - b) intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.*

¹ *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).*

Article 6

Criteria and requirements for admission as a seasonal worker for stays exceeding 90 days

- 1. Applications for admission to a Member State under the terms of this Directive for a stay exceeding 90 days shall be accompanied by:*
 - (a) a valid work contract or, if provided for by national law, administrative regulations, or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in that Member State which specifies:*
 - i) the place and type of the work;*
 - ii) the duration of employment;*
 - iii) the remuneration;*
 - iv) the working hours per week or month;*
 - v) the amount of any paid leave;*
 - vi) where applicable, other relevant working conditions; and*
 - vii) if possible, the date of commencement of employment;*
 - (b) evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State;*
 - (c) evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, in accordance with Article 20.*

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2. *Member States shall require that the conditions referred to in point (a) of paragraph 1 comply with applicable law, collective agreements and/or practice.*
3. *On the basis of the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will have sufficient resources during his or her stay to maintain him/herself without having recourse to **their** social assistance **systems**.*
4. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted.
5. *When examining an application for an authorisation referred to in Article 12(2), Member States shall verify that the third-country national does not present a risk of illegal immigration and that he or she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.*
6. *In cases where the work contract or binding job offer specifies that the third-country national will exercise a regulated profession, as defined in Directive 2005/36/EC, the Member State may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of that regulated profession.*

7. *Member States shall require third-country nationals to be in possession of a valid travel document, as determined by national law. Member States shall require the period of validity of the travel document to cover at least the period of validity of the authorisation for the purpose of seasonal work.*

In addition, Member States may require:

- a) the period of validity to exceed the intended duration of stay by a maximum of three months;*
- b) the travel document to have been issued within the last ten years; and*
- c) the travel document to contain at least two blank pages.*

Article 7

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

Article 8

Grounds for rejection

1. Member States shall reject an application for *authorisation for the purpose of seasonal work where:*
- (a) Articles 5 or 6 are not complied with; or*
 - (b) the documents presented for the purpose of Articles 5 or 6 were fraudulently acquired, or falsified, or tampered with ;*

2. *Member States shall, if appropriate, reject an application for authorisation for the purpose of seasonal work where:*
- (a) the employer has been sanctioned in accordance with national law for undeclared work and/or illegal employment;*
 - (b) the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or*
 - (c) the employer has been sanctioned under Article 17.*
3. Member States may verify whether the vacancy *in question* could **■** be filled by *nationals of the Member State concerned or by other Union citizens*, or by third-country nationals lawfully residing in that Member State, *in which case they may reject the application. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.*
4. Member States may reject an application *for authorisation for the purpose of seasonal work where:*
- (a) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements;*
 - (b) within the 12 months immediately preceding the date of the application, the employer has abolished a full-time position in order to create the vacancy that the employer is trying to fill by use of this Directive; or*

(c) *the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.*

5. *Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.*
6. *Grounds for refusing the issuing of a short-stay visa are regulated in the relevant provisions of the Visa Code.*

Article 9

Withdrawal of the authorisation for the purpose of seasonal work

1. Member States shall withdraw *the authorisation for the purpose of seasonal work where*:
 - (a) *the documents presented for the purpose of Articles 5 or 6 were* fraudulently acquired, or ■ falsified, or tampered with ■ ; or
 - (b) the holder is staying for purposes other than those for which he or she was authorised to stay.

2. Member States *shall, if appropriate, withdraw the authorisation for the purpose of seasonal work* where:
- (a) *the employer has been sanctioned in accordance with national law for undeclared work and/or illegal employment;*
 - (b) *the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or*
 - (c) *the employer has been sanctioned under Article 17.*
3. Member States *may withdraw the authorisation for the purpose of seasonal work* where:
- (a) *Articles 5 or 6 are not or are no longer complied with;*
 - (b) *the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements;*
 - (c) *the employer has not fulfilled its obligations under the work contract; or*
 - (d) *within the 12 months immediately preceding the date of the application, the employer has abolished a full-time position in order to create the vacancy that the employer is trying to fill by use of this Directive.*

4. *Member States may withdraw the authorisation for the purpose of seasonal work if the third-country national applies for international protection under Directive 2011/95/EU of the European Parliament and of the Council¹ or for protection in accordance with national law, international obligations or practice of the Member State concerned.*
5. *Without prejudice to paragraph 1, any decision to withdraw the authorisation shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.*
6. *Grounds for annulment or revocation of a short-stay visa are regulated in the relevant provisions of the Visa Code.*

Article 10

Obligation of cooperation

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

¹ *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (JO L 337, 20.12.2011, p. 9).*

CHAPTER III

PROCEDURE AND AUTHORISATIONS FOR THE PURPOSE OF SEASONAL WORK

Article 11

Access to information

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

Article 12

Authorisations for the purpose of seasonal work

1. *For stays not exceeding 90 days, Member States shall issue third-country nationals who comply with Article 5 and do not fall within the grounds set out in Article 8 one of the following authorisations for the purpose of seasonal work, without prejudice to the rules on the issuing of short-stay visas as laid down in the Visa Code and in Council Regulation (EC) No 1683/95¹:*
 - (a) *a short-stay visa, indicating that it is issued for the purpose of seasonal work;*

¹ *Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (JO L 164, 14.7.1995, p. 1).*

- (b) a short-stay visa and a work permit indicating that they are issued for the purpose of seasonal work; or*
- (c) a work permit indicating that it is issued for the purpose of seasonal work, where the third-country national is exempted from the visa requirement in accordance with Annex II of Regulation (EC) No 539/2001 and the Member State concerned does not apply Article 4(3) of that Regulation to him or her.*

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

- 2. For stays exceeding 90 days, Member States shall issue third-country nationals who comply with Article 6 and do not fall within the grounds set out in Article 8, one of the following authorisations for the purpose of seasonal work:*

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

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

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

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

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

- 4. The seasonal worker permit referred to in points (b) and (c) of the first subparagraph of paragraph 2 shall be issued by the competent authorities of the Member States using the format laid down in 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.*

- 5. In the case of long-stay 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 in accordance with point 12 of the Annex to Regulation (EC) No 1683/95.*

6. *Member States may indicate additional information relating to the employment relationship of the seasonal worker in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a)16 of the Annex thereto.*
7. *Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued with a seasonal worker permit under point (c) of the first subparagraph of paragraph 2, the Member State concerned shall grant the third-country national every facility to obtain the requisite visa.*
8. *The issuing of a long-stay visa referred to in point (a) of the first subparagraph of paragraph 2 shall be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned.*

Article 13

Applications for a seasonal worker permit

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

Article 14

Duration of stay

1. *Member States shall determine a maximum period of stay for seasonal workers which shall be not less than five months and not more than nine months in any 12-month period. After the expiry of that period, the third-country national shall leave the territory of the Member State unless the Member State concerned has issued a residence permit under national or Union law for purposes other than seasonal work.*
2. *Member States may determine a maximum period of time within any 12-month period, during which an employer is allowed to hire seasonal workers. That period shall be not less than the maximum period of stay determined pursuant to paragraph 1.*

Article 15

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

1. *Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay, where seasonal workers extend their contract with the same employer.*

2. *Member States may decide, in accordance with their national law, to allow seasonal workers to extend their contract with the same employer and their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.*
3. *Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay to be employed with a different employer.*
4. *Member States may decide, in accordance with their national law, to allow seasonal workers to be employed by a different employer and to extend their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.*
5. *For the purposes of paragraphs 1 to 4, Member States shall accept the submission of an application when the seasonal worker admitted under this Directive is on the territory of the Member State concerned.*
6. *Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work when the vacancy in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in the Member State. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.*

7. *Member States shall refuse to extend the stay or renew the authorisation for the purpose of seasonal work where the maximum duration of stay as defined in Article 14(1) has been reached.*
8. *Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work if the third-country national applies for international protection under Directive 2011/95/EU or if the third-country national applies for protection in accordance with national law, international obligations or practice of the Member State concerned.*
9. *Article 9(2) and points (b), (c) and (d) of Article 9(3) shall not apply to a seasonal worker who applies to be employed by a different employer in accordance with paragraph 3 of this Article when those provisions apply to the previous employer.*
10. *Grounds for extension of a short-stay visa are regulated in the relevant provisions of the Visa Code.*
11. *Without prejudice to Article 8(1), any decision on an application for an extension or renewal shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.*

Article 16

Facilitation of re-entry

1. Member States shall ***facilitate re-entry of*** third-country nationals who were admitted to that Member State as seasonal workers ***at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays.***
2. ***The facilitation referred to in paragraph 1 may include one or more measures such as:***
 - (a) ***the grant of an exemption from the requirement to submit one or more of the documents referred to in Articles 5 or 6;***
 - (b) ***the issuing of several seasonal worker permits in a single administrative act;***
 - (c) ***an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa;***
 - (d) ***priority in examining applications for admission as a seasonal worker, including taking into account previous admissions when deciding on applications with regard to the exhaustion of volumes of admission.***

Article 17

Sanctions against employers

- 1. Member States shall provide for sanctions against employers who have not fulfilled their obligations under this Directive, including the exclusion of employers who are in serious breach of their obligations under this Directive from employing seasonal workers. Those sanctions shall be effective, proportionate and dissuasive.*
- 2. Member States shall ensure that, if the authorisation for the purpose of seasonal work is withdrawn pursuant to Article 9(2) and points (b), (c) and (d) of Article 9(3), the employer shall be liable to pay compensation to the seasonal worker in accordance with procedures under national law. Any liability shall cover any outstanding obligations which the employer would have to respect if the authorisation for the purpose of seasonal work had not been withdrawn.*
- 3. Where the employer is a subcontractor who has infringed this Directive and where the main contractor and any intermediate subcontractor have not undertaken due diligence obligations as defined by national law, the main contractor and any intermediate subcontractor may:*
 - (a) be subject to the sanctions referred to in paragraph 1;*
 - (b) in addition to or in place of the employer, be liable to pay any compensation due to the seasonal worker in accordance with paragraph 2;*

- (c) *in addition to or in place of the employer, be liable to pay any back payments due to the seasonal worker under national law.*

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

Article 18

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*. The competent authorities shall notify the decision to the applicant in writing, in accordance with the notification procedures under national law, *as soon as possible but not later than 90 days from the date on which the complete application was submitted*.

2. *In the case of an application for an extension of stay or for the renewal of the authorisation pursuant to Article 15, Member States shall take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employer, due to on-going administrative procedures.*

Where the validity of the authorisation for the purpose of seasonal work expires during the procedure for extension or renewal, in accordance with their national law, Member States shall allow the seasonal worker to stay on their territory until the competent authorities have taken a decision on the application, provided that the application was submitted within the period of validity of that authorisation and that the time period referred to in Article 14(1) has not expired.

Where the second subparagraph applies, Member States may, inter alia, decide to:

- (a) issue national temporary residence permits or equivalent authorisations until a decision is taken;*
- (b) allow the seasonal worker to work until that decision is taken.*

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

3. Where the information *or documentation* supplied in support of the application is *incomplete*, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. *The period referred to in paragraph 1 shall be suspended until the competent authorities have received the additional information required.*
4. *Reasons for a decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting an application for authorisation for the purpose of seasonal work or refusing an extension of stay or renewal of the authorisation for the purpose of seasonal work shall be given in writing to the applicant. Reasons for a decision withdrawing the authorisation for the purpose of seasonal work shall be given in writing to both the seasonal worker and, if provided for in national law, the employer.*
5. *Any decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting the application, refusing an extension of stay or renewal of an authorisation for the purpose of seasonal work or withdrawing an authorisation for the purpose of seasonal work shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.*
6. *Procedural safeguards concerning short-stay visas are regulated in the relevant provisions of the Visa Code.*

Article 19

Fees and costs

- 1. Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive. Fees for short-stay visas are regulated in the relevant provisions of the Schengen acquis. Where those fees are paid by the third-country national, Member States may provide that they are entitled to be reimbursed by the employer in accordance with national law.*
- 2. Member States may require employers of seasonal workers to pay for:*
 - (a) the cost of travel from the seasonal workers' place of origin to the place of work in the Member State concerned and the return journey;*
 - (b) the cost of sickness insurance referred to in point (b) of Article 5(1) and point (b) of Article 6(1).*

When paid by the employers, such costs shall not be recoverable from the seasonal workers.

Article 20
Accommodation

1. Member States shall require ■ evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living *according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.*
2. *Where accommodation is arranged by or through the employer:*
 - (a) *the seasonal worker may be required to pay a rent which shall not be excessive compared with his or her net remuneration and compared with the quality of the accommodation. The rent shall not be automatically deducted from the wage of the seasonal worker;*
 - (b) *the employer shall provide the seasonal worker with a rental contract or equivalent document in which the rental conditions of the accommodation are clearly stated;*
 - (c) *the employer shall ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.*

Article 21
Placement by public employment services

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

CHAPTER IV

RIGHTS

Article 22

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

During the period of validity of ***the authorisation referred to in Article 12***, the holder shall enjoy at least the following rights:

- (a) the right to enter and stay in the territory of the Member State that issued the ***authorisation***;
- (b) free access to the entire territory of the Member State that issued the ***authorisation*** in accordance with national law;
- (c) the right to exercise the concrete employment activity authorised under the ***authorisation*** in accordance with national law.

Article 23

Right to equal treatment

1. Seasonal workers shall be entitled to ***equal treatment with nationals of the host Member State at least with regard to:***

- (a) ***terms of employment, including the minimum working age, and*** working conditions, including pay and dismissal, ***working hours, leave and holidays***, as well as health and safety requirements at the workplace **■** ;

- (b) *the right to strike and take industrial action, in accordance with the host Member State's national law and practice, and freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the **rights and** benefits conferred by such organisations, including the right to negotiate and conclude collective agreements*, without prejudice to the national provisions on public policy and public security;
- (c) *back payments to be made by the employers, concerning any outstanding remuneration to the third-country national;*
- (d) branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004;
- (e) *access to goods and services and the supply of goods and services made available to the public, except housing, without prejudice to the freedom of contract in accordance with Union and national law;*
- (f) *advice services on seasonal work afforded by employment offices;*
- (g) *education and vocational training;*

- (h) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;*
- (i) tax benefits, in so far as the seasonal worker is deemed to be resident for tax purposes in the Member State concerned.*

Seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country ■ .

2. Member States may restrict equal treatment:

- (i) under point (d) of the first subparagraph of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Regulation (EU) No 1231/2010;*
- (ii) under point (g) of the first subparagraph of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans;*

(iii) under point (i) of the first subparagraph of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

3. The right to equal treatment provided for in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to ***extend or*** renew the ***authorisation for the purpose of seasonal work*** in accordance with *Articles 9 and 15*.

Article 24

Monitoring, assessment and inspections

1. *Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.*
2. *Member States shall ensure that services in charge of inspection of labour or competent authorities and, where provided for under national law for national workers, organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation.*

Article 25

Facilitation of complaints

1. ***Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or through a competent authority of the Member State when provided for by national law.***
2. Member States shall ensure that third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of a seasonal worker, with his or her approval, in any administrative or civil proceedings, ***excluding the procedures and decisions concerning short-stay visas***, provided for with the objective of implementing this Directive.
3. ***Member States shall ensure that seasonal workers have the same access as other workers in a similar position to measures protecting against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with this Directive.***

CHAPTER V
FINAL PROVISIONS

Article 26
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***. ***Those statistics shall be*** disaggregated by citizenship, [■] and ***as far as possible by the*** period of validity of the ***authorisation*** and ***the*** economic sector.
2. [■] The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be ...^{*}.
3. ***The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council¹.***

^{*} OJ: please insert the date: one year after the date referred to in Article 28(1).

¹ ***Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).***

Article 27

Reporting

Every three years, and for the first time no later than ...^{*}, 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 28

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...^{**}. They shall forthwith communicate the text of those measures to the Commission ■ .

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a 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.

^{*} OJ: please insert the date: 66 months from the date of entry into force of this Directive.

^{**} OJ: please insert the date: 30 months from the date of entry into force of this Directive.

Article 29

Entry into force

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

Article 30

Addressees

This Directive is addressed to the Member States, in accordance with the Treaties.

Done at ...,

For the European Parliament

For the Council

The President

The President