Seasonal employment: conditions of entry and stay of third-country nationals

2010/0210(COD) - 05/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 498 votes to 56 with 68 abstentions, a legislative resolution 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise agreement with Council. They amend the proposal as follows:

Subject-matter: the draft 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. It deals with two types of cases:

- **for stays not exceeding 90 days**: the Directive shall apply without prejudice to the Schengen acquis, in particular the Visa Code, the Schengen Borders Code and Regulation (EC) No 539 /2001. 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.** For Member States not applying the Schengen acquis in full, with the exception of the United Kingdom and Ireland, only the Schengen Borders Code applies;

- **stays exceeding 90 days:** for workers admitted for a longer period exceeding 90 days, the draft directive sets out **the criteria and requirements for admission and stay** as well as requirements on access to work in Member States.

Scope: the 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 shall not apply to third-country nationals who at the time of application reside in the territory of Member States with the exception of cases referred to in the draft directive, which include family members of EU citizens and third country nationals enjoying rights of free movement.

When transposing the Directive, Member States shall **list those sectors of employment which include activities that are dependent on the passing of the seasons.**

Information for applicants: Member States should do their best to ensure that information on conditions of entry and residence, including the rights and obligations and the procedural safeguards as laid down in the Directive and all documentary evidence needed for an application to reside and work in the territory of a Member State as a seasonal worker, is made available to applicants.

1) Conditions for admission for stays not exceeding three months: the report sets out the criteria and requirements for admission to employment as a seasonal worker for stays not exceeding three months. It lists the **supporting documents** needed, which include: (i) a valid work contract or, a binding job offer which specifies the place and type of the work, duration of employment, the remuneration and the working hours per week; (ii) evidence of having applied for sickness insurance; (iii) evidence that the seasonal worker will have **adequate accommodation**.

Document required for a stay of less than three months: for all stays not exceeding three months per 6-month period, 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 the Member States should issue a **work permit** to him or her as an authorisation for the purpose of seasonal work.

Based on the documentation provided, Member States shall require that **the seasonal worker will not have recourse to their social assistance systems.**

When examining an application for an authorisation, Member States not applying the Schengen acquis in full, shall verify whether the third-country national does not present a risk of illegal immigration.

2) Conditions for admission for stays exceeding three months: for these applicants, the documents required are the same as those documents that must be provided by applicants staying less than three months, but the former **must also have sufficient resources during his/her stay to maintain him /herself without having recourse to Member States' social assistance systems.**

Document required for a stay of more than three months: for stays exceeding three months, Member States shall issue third-country nationals one of the following authorisations for the purpose of seasonal work:

- a long-stay visa, indicating that it is issued for the purpose of seasonal work; or
- a seasonal worker permit; or
- a seasonal worker permit and a long-stay visa, if the long-stay visa is required under national law for entering the territory.

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 the Directive.

Volumes of admission: the draft 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**.

Grounds for refusal: the text lists the grounds upon which an application may be rejected, inter alia: (i) where the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment or where the employer's business is being or has been wound up under national insolvency laws; (ii) where the employer has been sanctioned in accordance with the rules applicable under the directive; (iii) where the principle of Union preference applies; (iv) where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, or if within the 12 months immediately preceding the date of the application, the employer has eliminated a full-time position in order to create the vacancy he/she is trying to fill by use of the Directive.

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. In particular, any decision on refusal, annulment or revocation of a visa and the reasons on which it is based **should be notified to the applicant.**

Similar provisions are made for **withdrawal of the authorisation** for the purpose of seasonal work. The authorisation for the purpose of seasonal work granted may also be withdrawn if the third-country national applies for international protection.

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.

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3) Procedure and authorisations for the purpose of seasonal work: technical provisions are added to strengthen the procedures for granting authorisations. The latter depend on whether the stay is for a period exceeding three months or not. Member States may determine whether the application is to be made by a third country national or by the employer (or both). It must be **made clear on the 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.

Applications for a seasonal worker permit: Member States shall designate the authorities competent to receive and decide on the application for and to issue a seasonal worker permit. The application for a seasonal worker permit shall be submitted in a **single application procedure**.

Duration of stay: Member States shall **determine a maximum period of stay for seasonal workers between five to nine months in any period of twelve months**. After 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 law or Union law for purposes other than seasonal work.

Provision is also made for **extension of stay or renewal of the authorisation** for the purposes of seasonal work provided that the maximum period referred to above is not exceeded, for example, if the seasonal workers extend their contract with the same employer and the basic rules for seasonal workers are observed.

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Facilitation of re-entry: provision is made to facilitate re-entry of third-country nationals who were admitted to the Member State as seasonal workers **at least once within the previous five years,** and who fully respected the conditions applicable to seasonal workers during each of their stays.

Sanctions against employers: the text contains new provisions for **sanctions against employers who have not fulfilled their obligations arising from the Directive.** Those sanctions shall be effective, proportionate and dissuasive.

The employer shall be liable to pay **compensation to the seasonal worker in accordance with procedures under national law.** Where the employer is a subcontractor, the main contractor and any intermediate subcontractor, where they have not undertaken due diligence obligations as defined by national law, may also be liable to sanctions.

Fees and costs: Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees, however, shall not be disproportionate or excessive.

Employers of seasonal workers may be required to pay for: (i) 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; (ii) the cost of sickness insurance.

Accommodation: seasonal workers should all benefit from accommodation that ensures an adequate standard of living, with the competent authority informed of any change of accommodation. Where that accommodation is arranged by or through the employer:

- **the rent should not be excessive** in relation to his/her net remuneration nor to the quality of that accommodation;
- the seasonal worker's rent should not be automatically deducted from his/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.

4) Equal treatment: provisions on the right to equal treatment have been strengthened to ensure that seasonal workers shall be entitled to equal treatment with nationals of the host Member State at least with regard to (inter alia) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, the right to strike, education and vocational training, recognition of diplomas, etc. Member States may **restrict equal treatment**, particular with regard to access to certain social assistance.

Monitoring, assessment and inspections: new provisions state that measures must be aimed at preventing possible abuses including monitoring, assessment and, where appropriate, inspection so that organisations representing workers' interest have access to the workplace and, with the agreement of the worker, to the accommodation.

Facilitation of complaints: there must be effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties, and measures protecting against dismissal or other adverse treatment by the employer as a reaction to a complaint.

Territorial provisions: 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.