Basic information

2010/0210(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Seasonal employment: conditions of entry and stay of third-country nationals **Subject** 4.15.04 Workforce, occupational mobility, job conversion, working conditions 7.10.04 External borders crossing and controls, visas 7.10.08 Migration policy	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	MORAES Claude (S&D)	27/09/2010
	Shadow rapporteur PAPANIKOLAOU Georgios (PPE) MULDER Jan (ALDE) SARGENTINI Judith (Verts/ALE) KIRKHOPE Timothy (ECR) ERNST Cornelia (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
EMPL Employment and Social Affairs (Associated committee)	CERCAS Alejandro (S&D)	09/09/2010
FEMM Women's Rights and Gender Equality	PAPADOPOULOU Antigoni (S&D)	02/09/2010

Committee for opinion on the legal basis	Rapporteur for opinion	Appointed
JURI Legal Affairs	MAŠTÁLKA Jiří (GUE/NGL)	04/07/2011

Council configuration	Meetings	Date

Council of the European Union	Justice and Home Affairs (JHA)	3096	2011-06-09
	Justice and Home Affairs (JHA)	3034	2010-10-07
	Employment, Social Policy, Health and Consumer Affairs	3053	2010-12-06
	Agriculture and Fisheries	3293	2014-02-17

European Commission	Commission DG	Commissioner
	Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
13/07/2010	Legislative proposal published	COM(2010)0379	Summary
07/09/2010	Committee referral announced in Parliament, 1st reading		
07/10/2010	Debate in Council		Summary
06/12/2010	Debate in Council		Summary
12/05/2011	Referral to associated committees announced in Parliament		
09/06/2011	Debate in Council		
14/11/2013	Vote in committee, 1st reading		
03/12/2013	Committee report tabled for plenary, 1st reading	A7-0428/2013	Summary
05/02/2014	Decision by Parliament, 1st reading	T7-0072/2014	Summary
05/02/2014	Results of vote in Parliament		
05/02/2014	Debate in Parliament		
17/02/2014	Act adopted by Council after Parliament's 1st reading		
26/02/2014	Final act signed		
26/02/2014	End of procedure in Parliament		
28/03/2014	Final act published in Official Journal		

Technical information

Procedure reference	2010/0210(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 079-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed

Committee dossier	LIBE/7/03494

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	FEMM	PE452.884	03/02/2011	
Committee draft report		PE464.960	08/06/2011	
Amendments tabled in committee		PE467.243	02/08/2011	
Specific opinion	JURI	PE473.853	23/11/2011	
Committee opinion	EMPL	PE464.974	01/12/2011	
Amendments tabled in committee		PE522.862	04/11/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0428/2013	03/12/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0072/2014	05/02/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00113/2013/LEX	26/02/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2010)0379	13/07/2010	Summary
Document attached to the procedure	SEC(2010)0887	13/07/2010	
Document attached to the procedure	SEC(2010)0888	13/07/2010	
Commission response to text adopted in plenary	SP(2014)446	20/05/2014	
Follow-up document	COM(2026)0261	08/05/2026	

National parliaments

Document type	Parliament/Chamber	Reference	Date	Summary
Contribution	DE_BUNDESRAT	COM(2010)0379	27/09/2010	
Contribution	IT_SENATE	COM(2010)0379	06/10/2010	
Contribution	ES_CONGRESS	COM(2010)0379	13/10/2010	

Contribution	UK_HOUSE-OF-COMMONS	COM(2010)0379	14/10/2010	
Contribution	LV_PARLIAMENT	COM(2010)0379	15/10/2010	
Contribution	PT_PARLIAMENT	COM(2010)0379	15/10/2010	
Contribution	LT_PARLIAMENT	COM(2010)0379	18/10/2010	
Contribution	UK_HOUSE-OF-LORDS	COM(2010)0379	27/10/2010	
Contribution	IT_CHAMBER	COM(2010)0379	01/12/2010	
Contribution	FI_PARLIAMENT	COM(2010)0379	16/12/2010	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0354/2010	31/03/2011	
EESC	Economic and Social Committee: opinion, report	CES0801/2011	04/05/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Directive 2014/0036
OJ L 094 28.03.2014, p. 0375 Summary

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

2010/0210(COD) - 03/12/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Claude MORAES (S&D, UK) 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.

The Committee on Employment and Social Affairs, exercising its prerogatives as an associated committee under Article 50 of Parliament's Rules of Procedure, also gave an opinion on the report.

The committee recommended that the Parliament's position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal. The key amendments are as follows:

Subject matter: the draft directive determines the conditions of entry **and stay** of third-country nationals for the purposes of employment as seasonal workers and defines the rights of seasonal workers.

For stays not exceeding three months, the provisions of the Directive shall apply without prejudice to the Schengen acquis. This means that, for stays not exceeding three months, 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 the present 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.**

Scope: the Directive shall apply to t**hird-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 obligation, the Member States should issue a **work permit.**

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 report 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; (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 (v) 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.

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.

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.

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.

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.

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 report 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.

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.

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.

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.

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.

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.

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.

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

2010/0210(COD) - 26/02/2014 - Final act

PURPOSE: to introduce a special admission procedure for entry and stay of third-country nationals for the purpose of seasonal work and define their rights as seasonal workers.

LEGISLATIVE ACT: Directive 2014/36/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

CONTENT: 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. Member States will keep the right to determine volumes of admission and reject applications if EU workers are available. The main points of the Directive are as follows;

Scope: the Directive applies 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 the Directive, to the territory of a Member State for the purpose of employment as seasonal workers. It does not apply to third-country nationals who at the time of application reside in the territory of a Member State, with certain exceptions detailed in the text.

For stays not exceeding 90 days: in the case of Member States applying the Schengen acquis in full, Regulation (EC) No 810/2009 (Visa Code), Regulation (EC) No 562/2006 (Schengen Borders Code), and Council Regulation (EC) No 539/200 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 only regulates 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 Directive defines criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding 90 days as far as employment as a seasonal worker is concerned.

Stays of longer than 90 days: for seasonal workers who are admitted for stays of longer than 90 days, this Directive defines **both the conditions for admission to and stay in the territory and the criteria and requirements for access to employment in Member States**.

Conditions for admission for stays not exceeding three months: the Directive 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.

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.

Grounds for refusal: the Directive 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.

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.

Duration of stay: 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 must 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.

Extension of stay: 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. Seasonal workers will have the right to extend their stay once to be employed with the same employer or with a different employer provided that they fulfil the entry conditions and no grounds for refusal apply. Member States may allow them to extend their stay more than once provided that the maximum duration of stay is respected.

Facilitation of re-entry: Member States must 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. That facilitation may include: (i) exemption from submitting some documents (ii) the issuing of several seasonal worker permits in a single administrative act; (iii) an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa; (iv) priority in examining applications for admission as a seasonal worker.

Equal treatment: seasonal workers shall be entitled to equal treatment with nationals of the host Member State in 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. This also applies to branches of social security such as sickness benefits, invalidity benefits and benefits in respect of accidents at work and occupational diseases.

Member States **may restrict equal treatment** on family benefits and unemployment benefits, education and vocational training, and tax benefits.

Accommodation: seasonal workers should all benefit from accommodation that ensures an adequate standard of living. The competent authority will have to be informed of any change of accommodation of the seasonal worker. Where the accommodation is arranged by or through the employer:

- the rent must 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 must not be automatically deducted from his or her wage;
- the employer must provide the seasonal worker with a rental contract or equivalent document stating the rental conditions for the accommodation, and
- the employer must ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.

Enforcement: to ensure the proper enforcement of the 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.

ENTRY INTO FORCE: 29.03.2014.

TRANSPOSITION: 30.09.2016.

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

2010/0210(COD) - 07/10/2010

Ministers held a first exchange of views on a Commission proposal for a directives on conditions of entry and residence of third-country nationals concerning seasonal employment.

Several ministers recalled the right of member states to determine the number of third-country nationals to be admitted to their territories. In this context, they pointed out that the impact on national labour markets should be taken into account. Several ministers also highlighted the need for greater flexibility, for example with reference to the proposed duration of stay or the time limits in which applicants must be given a decision. In the case of seasonal employment, a number of member states mentioned that a choice should be given on whether accepted third-country nationals would receive residence permits, as proposed by the Commission, or long-term visas.

Another issue highlighted by several ministers was the question whether the rights accorded to third-country nationals should be equivalent to those enjoyed by nationals of the host member states, in particular with regard to social security benefits. Other delegations questioned whether the proposal on seasonal workers was in line with the principle of subsidiarity.

The Commission underlined that the main goal of the proposal was that once member states decide they need legal immigrants in these two areas that equal treatment will be given to those accepted throughout the EU.

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The Belgian Presidency provided the Council with information (*see Council Doc.16929/10*) on the following three files which are being examined in the Justice and Home Affairs Council:

- the draft directive on a single application procedure for a single permitfor third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State;
- the draft directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment;
- the draft directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

The intra-corporate transfer and seasonal workers directives are currently being examined by the JHA Council. The Presidency gave information on the provisions of the directive which deal with important subjects for employment, working conditions, rights of workers or social protection, and emphasised the importance of the Employment and Social Affairs Council in discussions about immigration directives.

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

2010/0210(COD) - 13/07/2010 - Legislative proposal

PURPOSE: to introduce a special procedure for third-country nationals applying to reside in the EU for seasonal employment, and to define the rights of seasonal workers.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: EU economies face a structural need for seasonal work for which labour from within the EU is expected to become less and less available. As regards future skills shortages, traditional sectors will continue to play an important role and the structural need for low-skilled and low-qualified workers is likely to continue expanding. It should also be pointed out that there is a more permanent need for unskilled labour within the EU. It is expected to be increasingly difficult to fill these gaps with EU national workers, primarily owing to the fact that these workers consider seasonal work unattractive. Further, there is significant evidence that certain third-country seasonal workers face exploitation and sub-standard working conditions which may threaten their health and safety. Lastly, sectors of the economy that are characterised by a strong presence of seasonal workers - most notably agriculture, horticulture and tourism - are repeatedly identified as the sectors most prone to work undertaken by third-country nationals who are staying illegally.

The proposal is part of a comprehensive package of measures, proposed in the Policy Plan on Legal Migration of 2005 and further endorsed by the Stockholm Programme, adopted by the European Council in December 2009.

IMPACT ASSESSMENT : the following options were considered:

- **Option 1 - Status quo.** Current developments in Member States and at EU level would continue within the existing legal framework. Employers will be under certain obligations resulting from the 2009 Directive on employer sanctions as regards notifications to authorities and penalties in the case of illegal employment. The effect of this option would be limited.
- **Option 2 - Directive on entry and residence conditions of seasonal workers and rights**. Common rules would be established, including the definition of seasonal work, and admission criteria. This would help to establish a common legal framework applicable to all employers in the EU and to prevent exploitation. However, seasonal workers would still be faced with diverging and complex procedures for entry.
- **Option 3 - Directive laying down common admission procedures**. In addition to option 2, a single work and residence permit for third-country seasonal workers would be introduced, to be issued in a single procedure. Provisions would be made for facilitating re-entry of a seasonal worker in subsequent seasons. Hiring procedures would be more efficient, and a more predictable workforce would be available for EU employers.
- **Option 4 - Directive on measures to ensure effective return**. Measures would include limitation of the length of stay, and an explicit obligation to return at the end of the period. Overstaying of seasonal workers would be prevented to some extent. Effects on the functioning of the EU labour market would be marginal. Seasonal workers would still be faced with diverging and complex entry procedures.
- **Option 5 - Communication, coordination and cooperation among Member States**. No new legislation would be introduced, but complementary and supporting activities would be undertaken with a view to approximating Member States' practices. Effects would be limited, as the measures would not be binding; potential seasonal workers and their prospective employers would continue to face an array of different rules for admission and different rights would be granted to seasonal workers during their residence.

The **preferred option is a combination of options 2, 3 and 4**. Common admission standards with simplified entry procedures and the prospect of returning in a subsequent season (options 2 and 3) will provide for flexible admission to endow the EU labour market with the necessary resources. Elements from option 4 should help ensure the return of the seasonal worker and thus prevent overstaying.

LEGAL BASE: Article 79(2)(a) and (b) of the Treaty on the Functioning of the EU.

CONTENT: the proposal establishes a **fast-track procedure for the admission of third-country seasonal workers**, based on a common definition and common criteria, in particular the existence of a work contract or a binding job offer that specifies a salary equal to or above a minimum level. Seasonal workers will be issued with a residence permit allowing them to work for a specified maximum period per calendar year. Provision is also made for facilitating the re-entry of a seasonal worker in a subsequent season. In order to prevent exploitation and protect the safety and health of third-country seasonal workers, legal provisions applying to working conditions are clearly defined. Also, employers are required to provide evidence that the seasonal worker will have appropriate accommodation during his/her stay and that provision is made for facilitation of complaints. To prevent overstaying of third-country seasonal workers, a maximum duration of stay per calendar year is laid down as well as the explicit obligation to return after that period; there is no possibility of status change.

The main provisions are as follows:

Chapter I: General provisions

Purpose:the purpose of the proposal is to introduce a special procedure for the entry and residence of third-country nationals applying to reside in the EU for seasonal employment, and to define the rights of seasonal workers.

Scope: the provisions only apply to third-country nationals who reside outside the territory of the Member States. There is no provision for applications for employment as seasonal workers from within a Member State. The proposal does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC.

Definitions: the notion of seasonal work is distinguished from regular, permanent work in particular by higher workforce requirements linked to an event or pattern of events, such as the planting or harvesting period in agriculture, or the holiday period in tourism including events, festivals, biennales or long term exhibitions in culture. Member States may determine specific sectors of the economy that meet the criteria for seasonal work.

More favourable provisions: the proposal allows Member States to grant more favourable conditions only in relation to certain specific provisions that concern the procedural safeguards, the level of rights granted to seasonal workers, as well as provisions relating to accommodation and facilitation of complaints.

Chapter II: Admission criteria

Criteria for admission: the proposal sets out the criteria that a third-country national seasonal worker and his/her employer must fulfil. As the admission is demand-driven, a **work contract or a binding job offer** must be presented. They should specify a level of remuneration in order to allow the competent authorities to assess whether the proposed remuneration is comparable to that paid for the respective activity in the Member State concerned. This is vital in order to avoid an unfair advantage for the employer and exploitative working conditions for the seasonal worker. The work contract must also specify the working hours per week or month. This requirement should:

- ensure that employers only request third-country seasonal workers in case of real economic need (sufficient employment capacities);
- serve as a guarantee of a certain, fixed level of remuneration for the seasonal workers, and, when applicable, other relevant working conditions such as insurances;
- enable efficient control by the competent authorities before admission.

The application must also include evidence that the respective seasonal worker will benefit from appropriate accommodation.

Grounds for refusal: the proposal does not create a right to admission. These provisions lay down the mandatory and possible grounds for refusal as well as for withdrawal and non-renewal, including non-fulfilment of the admission criteria, the existence of quotas and the possibility for Member States to carry out a labour market test. The principle of EU preference, as expressed in the relevant provisions of the Acts of Accession of 2003 and 2005, constitutes EU primary law, and therefore the Directive must be applied in conformity with the Acts of Accession by those Member States that still make use of the transitional arrangements.

Chapter III: Procedure and permit

Access to information: Member States are required to ensure that the relevant information about conditions of entry and residence, including the rights granted to third-country seasonal workers, and about all the documentary evidence necessary for lodging the application are available to prospective third-country seasonal workers and their employers.

Applications: Member States have to determine whether applications are to be lodged by the third-country national or by his or her prospective employer. They are also required to **designate a competent authority** to receive the application and issue the permit. This designation is without prejudice to the role and responsibilities of other national authorities with regard to the examination of and decision on the application. Furthermore, the designation to receive and issue the permit should not prevent Member States from appointing other authorities with which the third-country national or his/her prospective employer can lodge the application (e.g. consular offices) and which have the authority to issue the permit.

The application to reside and work as a seasonal worker must be submitted in a **single application procedure**.

Seasonal worker permit: third-country nationals for whom a positive decision has been taken by the Member State concerned must receive a seasonal worker permit. The residence permit with the indication ‘seasonal worker’ must allow both the residence and the exercise of the specific seasonal work authorised, without an additional permit, in particular a work permit, being necessary. Accordingly, for periods of stay below three months, Member States must issue a visa that will also entitle the seasonal worker to exercise the specific employment activity for which he/she was admitted.

Duration of stay: the maximum period of stay is **set at six months in any calendar year**. Such strict limitation of the duration of stay should contribute to ensuring that third-country national workers admitted under the Directive are actually employed for work that is genuinely seasonal and not for regular work. Explicit provision is made that within the maximum duration of stay an extension of the contract or a change of employer for seasonal work is possible. This is important because seasonal workers who are tied to a single employer may face the risk of abuse. Also, the possibility of **extending the stay** within the specified period of time may reduce the risk of overstaying.

Facilitation of re-entry: this provision is intended to promote circular migration of third-country national seasonal workers, that is, their movement between a third country and the EU for temporary stay and work in the latter. This kind of migration will potentially benefit the country of origin, the EU host country and the seasonal worker him/herself. Accordingly, Member States have the choice of either issuing multi-seasonal permits or applying a facilitated procedure.

Multi-seasonal permits cover up to three seasons and are thus appropriate for sectors where the labour market needs remain stable over a period of time. A third-country national who did not comply with the obligations linked to a previous stay as a seasonal worker is to be excluded from admission as a seasonal worker for one or more years.

Sanctions: an employer who has not fulfilled obligations resulting from the work contract must be subjected to sanctions and excluded from the possibility to apply for seasonal workers for at least one year.

Procedure: a fast-track procedure (30 days) is provided for examining applications. Procedural guarantees include the possibility of a legal challenge against a decision rejecting an application as well as the requirement for the authorities to give reasons for such decision.

Accommodation: employers of seasonal workers must provide evidence that the seasonal worker will have accommodation ensuring an adequate standard of living. This covers cases where the employer is to provide accommodation and where accommodation is to be provided by a third party.

Chapter IV: Rights

Rights: a seasonal worker permit entitles its holder to enter and reside on the territory of the Member State which has issued the permit and to exercise the employment activity authorised by the permit. The text defines the working conditions, including pay, dismissal and health and safety requirements at the workplace applicable to seasonal workers in order to ensure legal certainty. It also grants rights to third-country seasonal workers by determining fields where equal treatment with own nationals should be ensured in the form of a minimum requirement without prejudice to the right of Member States to adopt or maintain provisions which are more favourable. Accordingly, equal treatment applies in respect of freedom of association and affiliation and membership of an organisation representing workers.

Equal treatment: equal treatment also applies to social security and covers the benefits defined in Regulation (EC) No 883/04 on the coordination of social security systems. Such provisions are intended to establish common rules within the EU; to recognise that third-country national seasonal workers legally working in a Member State contribute to the European economy through their tax payments; and to serve as a safeguard to reduce unfair competition between own nationals and third-country nationals that may result from possible exploitation of the latter.

Complaints: complaints mechanisms should be put in place, open not only to third-country seasonal workers, but also to designated third parties. Evidence suggests that seasonal workers are often either not aware of the existence of such mechanisms or they are hesitant to use them in their own name, as they are afraid of the consequences in terms of future employment possibilities.

Chapter V: Final provisions: this chapter regulates the obligations of Member States concerning sharing the relevant statistical data and the information resulting from transposition of the Directive. It also specifies the reporting obligations of the European Commission and stipulates the date on which the Directive enters into force.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.