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*Committee on Civil Liberties, Justice and Home Affairs*

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**2010/0210(COD)**

8.6.2011

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## **DRAFT REPORT**

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Claude Moraes

Rapporteur for the opinion (\*): Sergio Gaetano Cofferati, Committee on  
Employment and Social Affairs

(\*) Associated committee – Rule 50 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT 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**

**(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 Article 79(2)(a) and (b) 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 Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Austrian National Council, the Austrian Federal Council, the Czech Chamber of Deputies, the Czech Senate, the Netherlands Senate and the Netherlands House of Representatives, 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 2011<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 31 March 2011<sup>2</sup>,
  - having regard to Rule 55 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 (A7-0000/2011),
1. Adopts its position at first reading hereinafter set out;
  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.

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<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> Not yet published in the Official Journal.

## Amendment 1

### Proposal for a directive Recital 5

#### *Text proposed by the Commission*

(5) The Stockholm Programme, adopted by the European Council at its meetings of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the EU in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. It invites the European Commission and the European Council to continue implementing the Policy Plan on Legal Migration.

#### *Amendment*

(5) The Stockholm Programme, adopted by the European Council at its meetings of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the EU in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. ***It also highlights the importance of ensuring fair treatment of third-country nationals residing legally on the territory of the Member States and of optimising the link between migration and development.*** It invites the European Commission and the European Council to continue implementing the Policy Plan on Legal Migration.

Or. en

#### *Justification*

*The Stockholm Programme also contains important sections on the rights of third-country nationals and the link between migration and development, which are of great relevance for this Directive.*

## Amendment 2

### Proposal for a directive Recital 6

#### *Text proposed by the Commission*

(6) This Directive should contribute to the effective management of migration flows for the specific category of seasonal

#### *Amendment*

(6) This Directive should contribute to the effective management of migration flows for the specific category of seasonal

temporary migration by setting out fair and transparent rules for admission and stay, while at the same time providing for incentives and safeguards to prevent ***temporary stay from becoming permanent***. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the European Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals will contribute to avoiding such temporary stay turning into illegal stay.

temporary migration by setting out fair and transparent rules for admission and stay, while at the same time providing for incentives and safeguards to prevent ***overstaying***. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the European Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals will contribute to avoiding such temporary stay turning into illegal stay.

Or. en

### *Justification*

*Given that provision in the amendments below is made for third-country nationals to stay in the EU if they are entitled to, it is not accurate to use the phrase 'prevent temporary stay from becoming permanent'. Prevention of overstaying is therefore a more appropriate wording.*

### **Amendment 3**

#### **Proposal for a directive Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) Member States should give effect to the provisions of 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, disabilities, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>1</sup> and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>2</sup>.***

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<sup>1</sup> OJ L 180, 19.7.2000, p. 22.

<sup>2</sup> OJ L 303, 2.12.2000, p. 16.

Or. en

### *Justification*

*As with other Directives already adopted in the migration field, such as the Family Reunification Directive and the Long-Term Residence Directive, this Directive should contain a standard Recital on non-discrimination.*

## **Amendment 4**

### **Proposal for a directive Recital 10**

#### *Text proposed by the Commission*

(10) Activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture, during the planting or harvesting period, or tourism, during the holiday period.

#### *Amendment*

(10) Activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture **and horticulture**, during the planting or harvesting period, or tourism, during the holiday period.

Or. en

### *Justification*

*The horticulture sector is also dependent on the passing of the seasons and in certain Member States it is not covered by the term 'agriculture'. It should be clarified that it is within the scope of this Directive.*

## **Amendment 5**

### **Proposal for a directive Recital 11**

#### *Text proposed by the Commission*

(11) It should **only** be possible to apply for admission as a seasonal worker while the applicant is residing outside the territory of

#### *Amendment*

(11) It should be possible to apply for admission as a seasonal worker while the applicant is residing **either in or** outside



the Member States.

the territory of the Member States.

Or. en

*Justification*

*In order to ensure a comprehensive approach to seasonal work, this Directive should also apply to third-country nationals already residing in the EU who are not entitled to work under existing legislation.*

**Amendment 6**

**Proposal for a directive  
Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) Third-country nationals who are residing irregularly in the EU should have the possibility of applying for a seasonal worker permit for a transitional period following the transposition of this Directive.***

Or. en

*Justification*

*This Directive should not completely ignore the current situation in the seasonal work sector where many third-country nationals with an irregular status are employed in exploitative conditions. Therefore, third-country nationals in an irregular position should, for a transitional period, be able to apply for employment as seasonal workers under this Directive.*

**Amendment 7**

**Proposal for a directive  
Recital 12**

*Text proposed by the Commission*

*Amendment*

(12) The Directive should not affect, ***where granted***, the rights of third-country nationals already legally staying in a

(12) The Directive should not ***adversely*** affect the rights of third-country nationals already legally staying in a Member State

Member State to work.

to work.

Or. en

*Justification*

*This is a technical amendment aimed at better clarifying that this Directive should not pejoratively affect the rights of third-country nationals already legally staying in a Member State to work.*

**Amendment 8**

**Proposal for a directive**  
**Recital 13**

*Text proposed by the Commission*

(13) The Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the ***level of remuneration applicable to seasonal workers in the sector concerned.***

*Amendment*

(13) The Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the ***essential aspects of the contract or employment relationship.***

Or. en

*Justification*

*The authorities in charge should be able to ensure that all aspects of the contract or of the employment relationship fully respect the provisions laid down in this Directive, in particular concerning equal treatment with the citizens of the host Member State, as defined in Article 16.*

**Amendment 9**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) The duration of stay should be limited to a maximum period ***per calendar year*** which, together with the definition of seasonal work, should ensure that the work

*Amendment*

(16) The duration of stay should be limited to a maximum ***of six months within a 12-month*** period which, together with the definition of seasonal work, should ensure

is of genuinely seasonal nature. Provision should be made that within that maximum duration of stay, an extension of the contract or change of employer is possible. This should serve to reduce risks of abuses 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.

that the work is of genuinely seasonal nature. Provision should be made that within that maximum duration of stay, an extension of the contract or change of employer is possible. This should serve to reduce risks of abuses 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.

Or. en

#### *Justification*

*The maximum period should take place within 12 months rather than a calendar year in order to allow for the winter season which does not fall within a calendar year.*

#### **Amendment 10**

##### **Proposal for a directive Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) Member States should provide for effective, proportionate and dissuasive sanctions against employers in the event of breaches of their obligations under this Directive.***

Or. en

#### *Justification*

*As provided for in the Commission proposal, and in order to help ensure the proper application of the provisions of this Directive, employers who do not fulfil their obligations should be subject to sanctions. Given its importance, this merits a specific Recital.*

## Amendment 11

### Proposal for a directive Recital 18

#### *Text proposed by the Commission*

(18) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

#### *Amendment*

(18) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned. ***Any rejection decision should be duly reasoned and provide information on redress procedures.***

Or. en

#### *Justification*

*In accordance with the provisions contained in Article 13 paragraph 3, it should be made clear that reasons will be provided for rejected applications as well as notification of redress procedures.*

## Amendment 12

### Proposal for a directive Recital 19 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(19a) Third-country nationals who are in possession of a valid travel document and a seasonal worker permit issued under this Directive by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a***

*Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)<sup>1</sup> 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 borders<sup>2</sup> (Schengen Implementing Convention).*

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<sup>1</sup> OJ L 105, 13.4.2006, p. 1.

<sup>2</sup> OJ L 239, 22.9.2000, p. 19.

Or. en

#### *Justification*

*It should be clarified that third-country nationals will, under existing Union legislation, be permitted to travel to other Member States for a maximum of 3 months.*

#### **Amendment 13**

##### **Proposal for a directive Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

*(22a) 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 monitoring mechanisms are put in place and that effective and adequate inspections are carried out on their territory. With a view to increasing the effectiveness of those inspections, Member States should ensure that national legislation gives adequate powers and resources to competent authorities to carry out inspections; that the results of previous inspections are collected and processed for the effective implementation*

*of this Directive; and that sufficient staff are available with the skills and qualifications needed to carry out inspections effectively.*

Or. en

#### *Justification*

*An effective system of monitoring and inspections is needed in order to ensure that the rights of the seasonal workers and the provisions of this Directive will be fully respected throughout the entire duration of stay.*

### **Amendment 14**

#### **Proposal for a directive Recital 23**

##### *Text proposed by the Commission*

(23) To facilitate enforcement, ***relevant designated third parties such as trade unions or other associations should be able to lodge complaints in order to ensure effective application of the*** Directive. This is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use these in their own name, out of fear of possible consequences.

##### *Amendment*

(23) To facilitate enforcement of ***this*** Directive, ***there should be effective mechanisms through which seasonal workers may lodge complaints directly or through relevant third parties such as trade unions or other associations.*** This is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use these in their own name, out of fear of possible consequences. ***There should also be adequate judicial protection against victimisation of seasonal workers as a result of a complaint being made.***

Or. en

#### *Justification*

*Given the vulnerability of seasonal workers to exploitation it is essential that there are effective mechanisms in place for seasonal workers to complain themselves, or via third parties. Protection against victimisation for seasonal workers who complain is vital to make the complaints mechanism a realistic option and to protect seasonal workers in a vulnerable position.*

## Amendment 15

### Proposal for a directive Recital 24

#### *Text proposed by the Commission*

(24) Since the objectives, namely the introduction of a special admission procedure **and** the adoption of conditions on entry and residence for the purpose of seasonal employment by third-country nationals, cannot be sufficiently achieved by Member States and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the *subsidiarity* principle as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

#### *Amendment*

(24) Since the objectives, namely the introduction of a special admission procedure, the adoption of conditions on entry and residence for the purpose of seasonal employment by third-country nationals **and the definition of their rights as seasonal workers**, cannot be sufficiently achieved by *the* Member States and can therefore 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. 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.

Or. en

#### *Justification*

*In accordance with Article 1 in the proposal, a key object of this Directive is the definition of a common set of rights for seasonal workers. This should therefore be mentioned in this Recital.*

## Amendment 16

### Proposal for a directive Recital 25

#### *Text proposed by the Commission*

(25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

#### *Amendment*

(25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, **in accordance with**

*Justification*

*Reference to Article 6 TEU is important as it establishes that the Charter has the same legal value as the Treaties.*

**Amendment 17**

**Proposal for a directive  
Article 2 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. This Directive shall apply to:

*(a) third-country nationals who reside outside the territory of the Member States and apply to be admitted to the territory of a Member State for the purpose of employment as seasonal workers;*

*(b) third-country nationals who are legally staying in the territory of a Member State and who apply for a seasonal worker permit in that Member State;*

*(c) third-country nationals who have applied for international protection in a Member State under Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>1</sup> and whose application has not yet been the subject of a final decision.*



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<sup>1</sup> OJ L 304, 30.9.2004, p. 12.

Or. en

*Justification*

*In order to ensure a comprehensive approach to seasonal work, this Directive should also apply to third-country nationals already residing in the EU who are not entitled to work under existing legislation, including asylum seekers who may not have access to the labour market under Council Directive 2003/9/EC.*

**Amendment 18**

**Proposal for a directive**

**Article 2 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. For a transitional period of two years following its transposition by Member States, this Directive shall apply to third-country nationals present on the territory of a Member State who do not fulfil, or no longer fulfil, the conditions for stay or residence in that Member State and who apply for a seasonal worker permit in that Member State.***

Or. en

*Justification*

*This Directive should not ignore the current situation in the seasonal work sector where many third-country nationals with an irregular status are employed in exploitative conditions. Therefore, third-country nationals in an irregular position should for a transitional period be able to apply for employment as a seasonal worker under this Directive.*

## Amendment 19

### Proposal for a directive

#### Article 2 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***1b. This Directive shall not apply to third-country nationals:***

***(a) who are beneficiaries of international protection under Directive 2004/83/EC;***

***(b) who are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;***

***(c) who are family members of Union citizens who have exercised their right to free movement within the Union, in conformity with Directive 2004/38/EC of 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<sup>1</sup>;***

***(d) who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents<sup>2</sup>.***

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<sup>1</sup> OJ L 158, 30.4.2004, p. 77.

<sup>2</sup> OJ L 16, 23.1.2004, p. 44.

Or. en

#### *Justification*

*These categories of third-country nationals have more favourable access to the labour market under existing legislation than prospective seasonal workers would under this Directive and should therefore be excluded from its scope.*

## Amendment 20

### Proposal for a directive

#### Article 2 – paragraph 1 c (new)

*Text proposed by the Commission*

*Amendment*

***1c. This Directive shall apply to the agriculture, horticulture and tourism sectors. Member States may decide to extend its application to additional activities that are dependent on the passing of the seasons, on condition that the social partners give their agreement.***

Or. en

#### *Justification*

*Some activities in the agriculture, horticulture and tourism sectors are naturally seasonal, being tied to peaks in workforce requirements, depending on the passing of seasons (see examples in Recital 10). Having regard to the wide variety of situations in the Member States, some additional activities, beyond these sectors, may be brought within the scope of this Directive, but this should only happen with the agreement of the social partners.*

## Amendment 21

### Proposal for a directive

#### Article 3 – point b

*Text proposed by the Commission*

*Amendment*

(b) ‘seasonal worker’ means a third-country national who ***retains a legal domicile in a third country but*** resides temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in a Member State;

(b) ‘seasonal worker’ means a third-country national who resides temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, ***within the scope of Article 2(1c)***, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in a Member State;

Or. en

### *Justification*

*This is a technical amendment to make the text consistent with other changes regarding definitions and scope.*

## **Amendment 22**

### **Proposal for a directive**

#### **Article 3 – point c**

##### *Text proposed by the Commission*

(c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year by an event or pattern during which labour levels are required that are far above those necessary for usually ongoing operations;

##### *Amendment*

(c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year by an event or pattern ***of events*** during which labour levels are required that are ***regularly and predictably*** far above those necessary for usually ongoing operations;

Or. en

### *Justification*

*For an activity to be considered seasonal it should be strictly linked to a certain period of the year, where labour requirements are predictably and regularly higher than normal.*

## **Amendment 23**

### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point b a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(ba) the European Social Charter of 18 October 1961 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.***

Or. en

### *Justification*

*Member States should be able to apply provisions of international instruments that they are party to and that may be more favourable to seasonal workers.*

## Amendment 24

### Proposal for a directive Article 4 – paragraph 2

#### *Text proposed by the Commission*

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for **persons** to whom it applies in respect of Articles 13 to 17 of this Directive.

#### *Amendment*

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 13 to 17 of this Directive.

Or. en

#### *Justification*

*This is a technical change to clarify that any more favourable provisions should relate to third-country nationals specifically (prospective seasonal workers under Article 13, and seasonal workers under Articles 14-17).*

## Amendment 25

### Proposal for a directive Article 5 – paragraph 1 – point a

#### *Text proposed by the Commission*

(a) a valid work contract or, as provided for in national law, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State that specifies the **rate of pay and the working hours per week or month and, when applicable, other relevant working conditions**;

#### *Amendment*

(a) a valid work contract or, as provided for in national law, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State that specifies the **essential aspects of the contract or employment relationship as laid down in Article 2 of Council Directive 91/533/EC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship<sup>1</sup>, in accordance with the provisions laid down in Article 16 of this Directive**;

Or. en

*Justification*

*This shall allow authorities in charge to ensure that all aspects of the contract or of the employment relationship, as defined in Union legislation, fully respect the provisions laid down in this Directive, in particular concerning equal treatment with the citizens of the host Member State, as defined in Article 16.*

**Amendment 26**

**Proposal for a directive**

**Article 5 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;*

*deleted*

Or. en

*Justification*

*Third-country nationals should not be required to send their travel document to the Member State authorities for the duration of the procedure, it is sufficient that that they are in possession of such a document. Furthermore, in order to allow applications from irregular migrants residing in the EU this should only be a requirement for third-country national residing outside the EU.*

**Amendment 27**

**Proposal for a directive**

**Article 5 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

*(d) evidence of having accommodation as set out in Article 14.*

*(d) evidence of having accommodation, in accordance with the provisions laid down in Article 14.*

*Justification*

*This shall allow authorities in charge to ensure that the seasonal will benefit from adequate accommodation as required in Article 14.*

**Amendment 28**

**Proposal for a directive**

**Article 5 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Third-country nationals residing outside the EU shall be in possession of a valid travel document, as determined by national law.***

Or. en

*Justification*

*Third-country nationals should not be required to send their travel document to the Member State authorities for the duration of the procedure, it is sufficient that that they are in possession of such a document. Furthermore, in order to allow applications from irregular migrants residing in the EU this should only be a requirement for third-country national residing outside the EU.*

**Amendment 29**

**Proposal for a directive**

**Article 5 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States ***shall*** require that the seasonal worker ***will*** have sufficient resources ***during his/her stay*** to maintain him/herself ***without having recourse to the social assistance system of the*** Member State ***concerned***.

2. Member States ***may*** require that the seasonal worker have sufficient resources to maintain him/herself ***for periods of his/her stay in the*** Member State ***not covered by the work contract***.

Or. en

### *Justification*

*Given that seasonal workers should benefit from pay equivalent to that of EU citizens which will allow them to maintain themselves, there should be no extra requirement for them to have sufficient resources, except for periods before or after the work contract.*

## **Amendment 30**

### **Proposal for a directive Article 6 – paragraph 2**

#### *Text proposed by the Commission*

2. Member States may verify whether the vacancy concerned could not be filled by ***national or EU***, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market by virtue of EU or national law and reject the application.

#### *Amendment*

2. Member States may verify whether the vacancy concerned could not be filled by ***nationals of the Member State concerned, by other Union citizens***, or by third country nationals lawfully residing in the Member State and already forming part of its labour market by virtue of EU or national law and reject the application.

Or. en

### *Justification*

*This is a technical/linguistic amendment which clarifies the meaning of this provision.*

## **Amendment 31**

### **Proposal for a directive Article 6 – paragraph 3**

#### *Text proposed by the Commission*

3. Member States ***may*** reject an application if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

#### *Amendment*

3. Member States ***shall*** reject an application if the employer has, ***within one or more years prior to the application being made:***

***(a)*** been sanctioned in conformity with national law for undeclared work and/or illegal employment,

***(b)*** ***been sanctioned under Article 12(2),***  
***or***



***(c) failed to meet its legal obligations regarding working conditions or labour rights as provided for in national law.***

Or. en

*Justification*

*In order to protect seasonal workers and discourage illegal employment practices, employers who do not fulfil their obligations as regards illegal employment, the provisions of this Directive, or general labour legislation should be excluded from employing seasonal workers for a year. However, Member States may decide to extend this period. This is in accordance with Article 12a of this proposal (as amended) on sanctions against employers.*

**Amendment 32**

**Proposal for a directive**

**Article 7 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Member States may withdraw or refuse to renew the permit issued on the basis of this Directive in the following cases:

*Amendment*

2. Member States may withdraw or refuse to renew the permit issued on the basis of this Directive in ***any of*** the following cases:

Or. en

*Justification*

*Member States should be able to withdraw the permit in the following situations in order to protect seasonal workers and help prevent illegal employment practices. However, in line with the paragraph 2a (AM 37) this should only be done if it serves the interests of the seasonal worker.*

**Amendment 33**

**Proposal for a directive**

**Article 7 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) ***wherever*** the conditions laid down in Article 5 were not met or are no longer

*Amendment*

(a) the conditions laid down in Article 5 were not met or are no longer met;

met;

**or**

Or. en

*Justification*

*See justification for amendment 32.*

**Amendment 34**

**Proposal for a directive**

**Article 7 – paragraph 2 – point b**

*Text proposed by the Commission*

***(b) for reasons of public policy, public security or public health.***

*Amendment*

***(b) the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment;***

Or. en

*Justification*

*See justification for amendment 32.*

**Amendment 35**

**Proposal for a directive**

**Article 7 – paragraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the employer has been sanctioned under Article 12a;***

Or. en

*Justification*

*See justification for amendment 32.*

## **Amendment 36**

### **Proposal for a directive**

#### **Article 7 – paragraph 2 – point b b (new)**

*Text proposed by the Commission*

*Amendment*

***(bb) the employer has failed to meet its legal obligations regarding working conditions or labour rights as provided for in national law.***

Or. en

*Justification*

*See justification for amendment 32.*

## **Amendment 37**

### **Proposal for a directive**

#### **Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall only withdraw or refuse to renew the seasonal worker permit on the basis of paragraph 2 points (b), (ba) or (bb) if it serves the direct purpose of protecting the interests of the seasonal worker.***

Or. en

*Justification*

*In line with the amendment to Article 7 paragraph 2, Member States should be able to withdraw or refuse to renew the seasonal worker permit in certain situations. However it should be made clear that this can only be done if it serves the interests of the seasonal worker.*

## Amendment 38

### Proposal for a directive Article 8

#### *Text proposed by the Commission*

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

#### *Amendment*

Member States shall take the necessary measures to make available ***to prospective seasonal workers and employers*** information on conditions of entry and residence, including rights ***and procedural safeguards as laid down in this Directive*** and all documentary evidence needed for an application to reside and work in the territory of a Member State as a seasonal worker. ***That information shall be set out in a straightforward and comprehensible manner.***

Or. en

#### *Justification*

*Information to prospective seasonal workers and employers should be made available and should allow them to make an informed choice about applying to become a seasonal worker or hiring seasonal workers under this Directive.*

## Amendment 39

### Proposal for a directive Article 8 – paragraph 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***1a. When third-country nationals are granted a seasonal worker permit they shall be provided with information in writing about their rights under this Directive, including complaints procedures. That information shall be set out in a straightforward and comprehensible manner.***

Or. en

### *Justification*

*Providing information to seasonal workers is an important tool in helping to reduce their vulnerability to exploitation. A distinction should be made between the information provided to prospective seasonal workers (covered by the previous amendment), and that provided to third-country nationals granted a seasonal work permit. Upon receiving their permit, the latter should be given information in writing about their rights under this Directive.*

### **Amendment 40**

#### **Proposal for a directive Article 8 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Member States shall designate national and/or local contact points responsible for making information available to prospective seasonal workers and providing advice to seasonal workers where requested during their period of stay in that Member State.***

Or. en

### *Justification*

*Providing information and advice to seasonal workers is an important tool in helping to reduce their vulnerability to exploitation. Member States should therefore take the necessary practical measures to make this a reality, including by providing points of contact for both prospective seasonal workers and seasonal workers.*

### **Amendment 41**

#### **Proposal for a directive Article 9 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall determine whether an application is to be made by the third-country national or by the employer.

1. Member States shall determine whether an application is to be made by the third-country national or by ***the third-country national in conjunction with*** the employer.

Or. en

### *Justification*

*As a general rule, the third-country national should be involved in the application process in order to ensure that they are fully aware of the rights and obligations under the Directive. This should not prevent the employer facilitating this process.*

## **Amendment 42**

### **Proposal for a directive Article 9 – paragraph 4**

#### *Text proposed by the Commission*

4. The Member State concerned shall grant the third-country national whose application for admission has been accepted ***every facility to obtain*** the requisite visa.

#### *Amendment*

4. The Member State concerned shall grant the third-country national whose application for admission has been accepted the requisite visa, ***provided that all necessary conditions under national or Union legislation are met.***

Or. en

### *Justification*

*Third-country nationals who have been granted a seasonal worker permit should be given a visa, unless there are specific reasons preventing this under the relevant Union or national legislation.*

## **Amendment 43**

### **Proposal for a directive Article 10 – paragraph 1**

#### *Text proposed by the Commission*

1. ***For stays exceeding three months,*** seasonal workers who fulfil the admission criteria as set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with a seasonal worker permit.

#### *Amendment*

1. Seasonal workers who fulfil the admission criteria as set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with a seasonal worker permit.

Or. en

### *Justification*

*In order to prevent two categories of seasonal workers being created with different rights depending on their length of stay, all seasonal workers should be given a seasonal worker permit.*

#### **Amendment 44**

##### **Proposal for a directive**

##### **Article 11 – paragraph 1**

###### *Text proposed by the Commission*

1. Seasonal workers shall be allowed to reside for a maximum of six months in any *calendar year*, after which they shall return to a third country.

###### *Amendment*

1. Seasonal workers shall be allowed to reside for a maximum of six months in any ***period of 12 months***, after which they shall return to a third country, ***unless they are otherwise entitled to stay in the territory of a Member State.***

Or. en

### *Justification*

*The maximum period should take place within 12 months rather than a calendar year in order to allow for the winter season which does not fall within a calendar year. Additionally, provision should be made for seasonal workers who may be entitled to stay in the Member State under a different permit or visa, and are therefore not required to return to their country of origin.*

#### **Amendment 45**

##### **Proposal for a directive**

##### **Article 11 – paragraph 2**

###### *Text proposed by the Commission*

2. Within the period referred to under paragraph 1, and provided that the criteria of Article 5 are met, seasonal workers shall be allowed to extend their contract or to be employed as seasonal worker with a different employer.

###### *Amendment*

2. Within the ***six-month*** period referred to under paragraph 1, and provided that the criteria of Article 5 are met, seasonal workers shall be allowed to extend their contract or to be employed as ***a*** seasonal worker with a different employer. ***They shall be permitted to remain on the territory of the Member State concerned while looking for a position with a***

*different employer.*

Or. en

*Justification*

*It should be clarified which period is being referred to in this Article and that seasonal workers would not be required to return to a third-country while they look for a new position under the provisions of this Article.*

**Amendment 46**

**Proposal for a directive**

**Article 12 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) upon application, issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative act ('multi-seasonal worker permit'),

*Amendment*

(a) upon application, issue **a third-country national with** up to three seasonal worker permits covering up to three subsequent seasons within one administrative act ('multi-seasonal worker permit'), **without prejudice to the maximum duration of stay laid down in Article 11(1),**

Or. en

*Justification*

*This change clarifies that the reference in this Article to three subsequent seasons would not allow a seasonal worker to stay for 18 consecutive months given the maximum duration of stay of 6 months within a 12 month period.*

**Amendment 47**

**Proposal for a directive**

**Article 12 – paragraph 2 – point a**

*Text proposed by the Commission*

2. Member States shall provide that:

**(a)** a third-country national who has not complied with the obligations arising from the admission decision during a previous

*Amendment*

2. Member States shall provide that a third-country national who has not complied with the obligations arising from the



stay as a seasonal worker, and in particular with the obligation to return to a third country on the expiry of the permit, shall be excluded from admission as seasonal worker for one or more subsequent years;

admission decision during a previous stay as a seasonal worker, and in particular with the obligation to return to a third country on the expiry of the *seasonal worker* permit, shall be excluded from admission as **a** seasonal worker for one or more subsequent years. ***Any exclusion shall be proportionate to the circumstances of the case.***

Or. en

#### *Justification*

*Exclusion of seasonal workers should not be disproportionate. For example, a seasonal worker may have overstayed their permit by a day under extenuating circumstances, and so provision should be made for this to be taken into account in any exclusion decision.*

#### **Amendment 48**

##### **Proposal for a directive**

##### **Article 12 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) an employer who has not fulfilled the obligations arising out of the work contract shall be subject to effective, proportionate and dissuasive sanctions. Such employers shall be excluded from applications for seasonal workers for one or more subsequent years.***

***deleted***

Or. en

*(paragraph 2 b moved to Article 12a (new))*

#### *Justification*

*Article 12 concerns facilitation of re-entry for seasonal workers, not sanctions, and therefore it would be more appropriate to create a separate provision on sanctions against employers.*

## **Amendment 49**

### **Proposal for a directive**

#### **Article 12 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall determine the conditions under which seasonal workers may apply for a longer-term residence permit.***

Or. en

#### *Justification*

*Seasonal workers who have spent a number of seasons working in a Member State should have the possibility of applying for a longer term residence permit and thus acquiring a more permanent status.*

## **Amendment 50**

### **Proposal for a directive**

#### **Article 12 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 12a***

##### ***Sanctions against employers***

***1. An employer who has not fulfilled the obligations arising under this Directive shall be subject to effective, proportionate and dissuasive sanctions. Such employers shall be excluded from applications for seasonal workers for one or more subsequent years.***

***2. Member States shall ensure that, if the seasonal worker permit is withdrawn pursuant to point (b), (ba) or (bb) of Article 7(2), the seasonal worker shall be entitled to receive an adequate level of compensation from the employer, and that the necessary mechanisms are in place to facilitate this.***

*(Article 12 – paragraph 2 – point b moved to Article 12a)*

*Justification*

*Article 12 concerns facilitation of re-entry for seasonal workers, not sanctions, and therefore it would be more appropriate to create a separate provision on sanctions against employers. Furthermore, given the vulnerable position of seasonal workers they should receive compensation if their permit is withdrawn as a result of their employer not fulfilling its legal obligations.*

**Amendment 51**

**Proposal for a directive**

**Article 13 – paragraph 1**

*Text proposed by the Commission*

1. The competent authorities of the Member State shall adopt a decision on the application and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State, within **30 days** of the complete application being lodged.

*Amendment*

1. The competent authorities of the Member State shall adopt a decision on the application ***based on the provisions laid down in Articles 5 and 6*** and ***shall*** notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State, within ***60 days*** of the complete application being lodged.

*Justification*

*Member State authorities should have sufficient time to process the application and make the necessary checks. The time limit should therefore be increased to 60 days.*

**Amendment 52**

**Proposal for a directive**

**Article 13 – paragraph 2**

*Text proposed by the Commission*

2. Where the information supplied in support of the application is ***inadequate***,

*Amendment*

2. Where the information ***or documentation*** supplied in support of the

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.

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 authorities have received the additional information required.***

Or. en

#### *Justification*

*Given the delays that would result from an incomplete application, it would not be appropriate for the time limit in paragraph 1 to remain the same in such situations.*

### **Amendment 53**

#### **Proposal for a directive Article 14**

##### *Text proposed by the Commission*

Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from accommodation that ensures ***an adequate*** standard of living. ***If seasonal workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration.***

##### *Amendment*

***1.*** Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from ***adequate*** accommodation, ***pursuant to national legislation and practice***, that ensures ***a decent*** standard of living. ***As a minimum, such accommodation shall provide the inhabitants with adequate space, shall protect them from the elements and other threats to health, shall be safe and well maintained, and shall provide the facilities essential for health, security, comfort and nutrition, such as safe drinking water, systems for cooking, heating and lighting, sanitation and washing facilities, means of food storage and refuse disposal. The accommodation shall allow access to basic services.***

Or. en

### *Justification*

*The accommodation shall be adequate, and shall comply with the requirements of national legislation and practice as well as with some minimum provisions. These minimum provisions are in line with indicators defining adequate housing set by the UN Committee on Economic, Social and Cultural Rights.*

## **Amendment 54**

### **Proposal for a directive**

#### **Article 14 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. If seasonal workers are required to pay rent for such accommodation, its cost shall be fixed for the duration of their stay and shall not be excessive in relation to their net remuneration or to the quality of the accommodation.***

Or. en

*(Moved from Article 14 – paragraph 1)*

### *Justification*

*Charging high rent compared to the net pay of seasonal workers or to the quality of the accommodation is a means through which they can be exploited. This should therefore be prevented.*

## **Amendment 55**

### **Proposal for a directive**

#### **Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 14a***

##### ***Costs***

***Member States shall 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 visa fee and, if applicable, any service fees related to the visa;*  
*(c) the cost of health insurance referred to in point (c) of Article 5(1).*

Or. en

#### *Justification*

*Some costs that are directly linked to the seasonal employment should be paid by the employers. The payment by the employer of the costs of travel shall facilitate the return of the seasonal workers to the place of origin upon the expiration of their permit.*

### **Amendment 56**

#### **Proposal for a directive Article 15 – title**

##### *Text proposed by the Commission*

Rights on the basis of the seasonal worker permit/*visa*

##### *Amendment*

Rights on the basis of the seasonal worker permit

Or. en

#### *Justification*

*This change is necessary given the above amendment to Article 10 – paragraph 1 which would result in all seasonal workers being given a seasonal worker permit. The visa reference is therefore not necessary.*

### **Amendment 57**

#### **Proposal for a directive Article 16 – paragraph 2 – subparagraph 2**

##### *Text proposed by the Commission*

The right to equal treatment provided for in *paragraph 2* shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in

##### *Amendment*

The right to equal treatment provided for in *this Article* shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in

accordance with Article 7.

accordance with Article 7.

Or. en

*Justification*

*This is a technical change to coincide with an amendment of the EMPL Rapporteur on the rest of this Article which falls under the exclusive competence of the EMPL Committee.*

**Amendment 58**

**Proposal for a directive  
Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 16a**

***Monitoring and inspections***

***Member States shall ensure that appropriate monitoring mechanisms are put in place and effective and that adequate inspections are carried out on their territory to ensure that the provisions laid down in this Directive, in particular regarding rights, working conditions and accommodation, are fully respected throughout the duration of the seasonal workers' stay in the Member State concerned.***

Or. en

*Justification*

*An effective system of monitoring and inspections is needed in order to ensure that the rights of the seasonal workers and the provisions of this Directive will be fully respected.*

## **Amendment 59**

### **Proposal for a directive**

#### **Article 17 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

***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 a competent authority of the Member State when provided for by national legislation.***

Or. en

#### *Justification*

*Given the vulnerability of seasonal workers to exploitation it is essential that there are effective mechanisms in place for seasonal workers to complain themselves, or via third parties.*

## **Amendment 60**

### **Proposal for a directive**

#### **Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall adopt such measures as are necessary to protect seasonal workers 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.***

Or. en



### *Justification*

*Protection against victimisation for seasonal workers who complain is vital to make the complaints mechanism a realistic option and to protect seasonal workers in a vulnerable position.*

## **Amendment 61**

### **Proposal for a directive**

#### **Article 18 – paragraph 1**

##### *Text proposed by the Commission*

1. Member States shall communicate to the Commission statistics on the number of residence permits **and visas** issued for the first time or renewed and, as far as possible, on the number of residence permits **and visas** withdrawn for the purpose of seasonal employment to persons who are third-country nationals, disaggregated by citizenship, age and sex, length of validity of the permit and economic sector.

##### *Amendment*

1. Member States shall communicate to the Commission statistics on the number of residence permits issued for the first time or renewed and, as far as possible, on the number of residence permits withdrawn for the purpose of seasonal employment to persons who are third-country nationals, disaggregated by citizenship, age and sex, length of validity of the permit and economic sector.

Or. en

### *Justification*

*This change is necessary given the above amendment to Article 10 paragraph 1 which would result in all seasonal workers being given a seasonal worker permit. The references to visas are therefore not necessary.*

## **EXPLANATORY STATEMENT**

### **1. Introduction**

The 2005 Commission Communication on "A Policy Plan on Legal Migration" provided for a proposal for a Directive on the conditions of entry and residence of seasonal workers, considering that "seasonal workers are regularly needed in certain sectors, where many immigrants work illegally under precarious conditions". The Commission published its proposal in July 2010 in a package together with the proposal on intra-corporate transfers. The Rapporteur strongly believes that this Directive is needed to prevent the exploitation of seasonal workers, especially in the light of recent events (notably in Rosarno, Italy, but not confined to any particular Member State).

Furthermore, the need for seasonal workers from outside the EU is a common phenomenon in most Member States, and a framework at EU level for the management of this migration could provide real added value. In this respect it is also noted that providing legal routes for migration can play an important role in reducing irregular migration and the exploitation that often accompanies it. It is also vital that this Directive pays close attention to the need for equal treatment in the EU labour market, to ensure that pay and working conditions are not undermined. The Rapporteur therefore welcomes this proposal in general, while noting that some areas need to be significantly strengthened.

### **2. General overview of proposal**

This proposal establishes a fast-track procedure for the admission of third-country nationals employed as seasonal workers, based on a common definition and common criteria for seasonal workers. The proposal lays down the conditions under which seasonal workers would be granted a residence and work permit allowing stays of up to six months in a calendar year, and defines the rights of seasonal workers.

A number of provisions are intended to ensure stronger protection of seasonal workers, which the Rapporteur welcomes. These include the following:

- Admission is dependent on the existence of a work contract or a binding job offer that specifies the salary to be paid and other working conditions.
- Employers are required to provide evidence that the seasonal worker will have appropriate accommodation during their stay.
- Designated third parties, such as trade unions and NGOs, shall be able to complain on behalf of seasonal workers in order to ensure effective enforcement of the rules.

The proposal also provides for equal treatment with national workers with respect to certain rights (Article 16). The Rapporteur, while mindful that the majority of this Article falls under the exclusive competence of the Committee on Employment and Social Affairs, considers that these provisions are crucial and should be further reinforced to ensure equal treatment.

### 3. Key amendments

While the Rapporteur considers that the Commission proposal contains some important provisions, he feels it could be further strengthened with a number of changes and additions as contained in the draft report. These include:

#### Scope

The scope of the Commission proposal includes only third-country nationals residing outside the EU. However, in order to ensure a comprehensive approach to seasonal work, this Directive should also apply to third-country nationals already residing in the EU who are not entitled to work under existing legislation. Furthermore it should not ignore the current situation in the seasonal work sector where many third-country nationals with an irregular status are employed in exploitative conditions. Therefore, third-country nationals in an irregular position should, for a transitional period, be able to apply for employment as a seasonal worker under this Directive.

In terms of the sectoral scope of the Directive, some activities in the agriculture, horticulture and tourism sectors are naturally seasonal, being tied to peaks in workforce requirements, depending on the passing of seasons. These sectors should therefore be clearly stated as falling under the scope of this Directive. However, given the wide variety of situations in the Member States, some additional activities, beyond these sectors, may be brought within the scope of this Directive, but this should only happen with the agreement of the social partners.

#### Access to information

Providing information to seasonal workers is an important tool in helping to reduce their vulnerability to exploitation. Therefore, information to prospective seasonal workers and employers should be made available and should allow them to make an informed choice about applying to become a seasonal worker or hiring seasonal workers. Furthermore, when seasonal workers receive their permit, they should be given information in writing about their rights under this Directive. Finally, contact points should be established in order to inform and advise seasonal workers.

#### Seasonal worker permit

The Commission proposal provides for a visa to be issued in place of a seasonal worker permit for stays less than three months. However, it is not clear why this needs to be the case and more importantly whether the rights associated with the seasonal worker permit apply to those working on the basis of a visa. Therefore, in order to prevent two categories of seasonal workers being created with different rights depending on their length of stay, all seasonal workers should be given a seasonal worker permit.

#### Duration of stay

The Rapporteur supports the provision in the Commission proposal providing for a maximum duration of stay of six months. It is questionable whether longer periods of stay can be

accurately described as seasonal, and may lead to abuse of the system to the detriment of seasonal workers. Furthermore, the maximum period should take place within 12 months rather than a calendar year in order to allow for the winter season which does not fall within a calendar year. Additionally, provision should be made for seasonal workers who may be entitled to stay in the Member State under a different permit or visa, and are therefore not required to return to their country of origin.

### Sanctions against employers

The Rapporteur considers that a separate provision on sanctions against employers is required. Furthermore, given the vulnerable position of seasonal workers they should receive compensation if their permit is withdrawn as a result of their employer not fulfilling its legal obligations.

The Commission proposal also provides for the grounds for refusal of an application, or the withdrawal or non-renewal of a seasonal worker permit to include cases where the employer has been sanctioned for illegal employment. In the interests of protecting seasonal workers, this should be extended to include sanctions for violations of the provisions of this Directive, and violations of working conditions or labour rights. However, given the vulnerable position of seasonal workers, a permit should only be withdrawn under these circumstances if it serves their interests.

### Accommodation

The Rapporteur considers the provision requiring employers to provide evidence that seasonal workers will benefit from adequate accommodation to be a positive element on the Commission proposal. However, it should be strengthened by referring to the requirements of national legislation and practice as well as to some minimum standards as recommended by the UN Committee on Economic, Social and Cultural Rights. Furthermore, the rent should not be excessive in relation to the quality of the accommodation in addition to their pay and should not be raised during a seasonal workers' stay.

### Costs

Some costs that are directly linked to the seasonal employment should be paid by the employers, including the costs of travel, visa costs and health insurance for periods outside the work contract. The payment by the employer of the costs of travel will facilitate the return of the seasonal workers to their place of origin upon the expiration of their permit.

### Monitoring and Inspections

The proposal does not contain any provisions on monitoring or inspections, which the Rapporteur considers as essential to ensure that the rights of seasonal workers and the provisions of this Directive will be fully respected. The draft report therefore contains amendments to ensure that Member States put in place such mechanisms for monitoring and inspections.

### Facilitation of complaints

Given the vulnerability of seasonal workers to exploitation it is essential that there are effective mechanisms in place for them to complain themselves, or via third parties. The proposal provides that third parties may lodge complaints on behalf of seasonal workers. However, this needs to be strengthened to ensure that Member States put in place effective mechanisms through which seasonal workers or third parties can complain. Furthermore, protection against victimisation is vital to make this mechanism a realistic option for seasonal workers who need to complain and would consequently be placed in a vulnerable position vis-a-vis their employer.