



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Employment and Social Affairs*

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**2010/0210(COD)**

1.12.2011

## **OPINION**

of the Committee on Employment and Social Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

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))

Rapporteur: Sergio Gaetano Cofferati

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

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## SHORT JUSTIFICATION

The proposal for a directive concerns the conditions of entry and residence of third-country nationals for the purposes of seasonal employment and constitutes a major step in seeking to build a comprehensive EU common migration policy. It forms part of the package on legal migration announced by the Commission at the end of 2005, which provides for the adoption of five separate legislative measures aimed at fleshing out and developing EU migration policy in a coherent manner. The first measure, i.e. the Blue Card Directive (Directive 2009/50/EC), was adopted on 25 May 2009. The proposal for a Single Permit Directive was adopted at first reading by Parliament on 24 March 2011 and is now the subject of discussions between the Council and Parliament. This proposal for a directive was submitted at the same time as the proposal for an ICT directive (COM(2010)0378).

It will need to take account of and be consistent with existing migration legislation.

The directive's main aims are:

- to establish a common framework, based on clear, appropriate and transparent rules, for nationals of third countries entering and staying in Europe for the purposes of seasonal work (hereinafter 'seasonal workers');
- to provide for incentives and measures to ensure that seasonal workers do not remain illegally in the EU at the end of their authorised period of residence;
- to protect seasonal workers and avoid them having to face situations of exploitation and working and living conditions that are not decent.

As your rapporteur, I wish to stress that this report only deals with those parts of the proposal which fall within the remit of the Committee on Employment and Social Affairs, whether exclusive (Recitals 20, 21 and 22 and Articles 3(f) and 16, and, as regards the exclusions relating to the employment market and social security, Recital 9 and Article 2(2)) or shared (Recitals 7, 10, 12, 13, 14, 19 and 23 and Articles 3(b), 3(c), 4(2), 5(1)(a), 5(1)(d), 6(2), 14 and 17).

The main issue within our committee's remit in relation to this directive is the exploitation and degrading living and working conditions which seasonal workers are forced to endure.

It should be pointed out, in this context, that those seasonal workers most easily affected by exploitation are those illegally resident in the EU. A vital total in combating illegal immigration is the Directive on sanctions against employers (Directive 2009/52/EC).

However, the directive under discussion will make a significant contribution in this area by establishing a clear, common and transparent framework for the entry and residence of migrants in a Member State for the purposes of seasonal employment and thereby promoting the use of legal migration channels.

In seeking to protect seasonal workers, we should closely follow the position set out in Parliament's resolution of 26 September 2007 on the Policy Plan on Legal Migration, of which this proposal for a directive forms a part: 'recalls the need to avoid double standards of rights amongst different categories of workers and to safeguard particularly the rights of seasonal workers and paid trainees, who are more vulnerable to abuse'.

Achieving this objective is important not only for reasons of equity, social justice and respect for the dignity of the seasonal workers concerned, but also in recognition of the contribution they make through their work and the taxes and social security contributions they pay to the

social and economic development of the Member States and the European Union. The EU needs these workers for demographic and skills-related reasons, just as it needs migrant workers more generally, and they must be guaranteed fair and decent working conditions.

In order to protect the rights of seasonal workers, steps must be taken – in particular as regards working conditions – to ensure that the principle of equal treatment of third-country seasonal workers and national of the host Member State is fully respected. The full observance of this principle is also a prerequisite for avoiding social dumping and unfair competition.

Moreover, housing is a key aspect of the decent living conditions which seasonal workers should be able to enjoy: such workers should be guaranteed ‘adequate accommodation’, and this term needs to be defined more clearly. It is also important to ensure that seasonal workers are not exploited by being obliged to pay an excessively large proportion of their net income in rent.

Monitoring is also important. Steps must be taken to set up effective and thorough inspection and monitoring mechanisms and to develop an effective means of facilitating complaints. The authorities responsible for monitoring action taken under this directive should be provided with all the resources they require to carry out their duties as effectively as possible.

## **AMENDMENTS**

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

### **Amendment 1**

#### **Proposal for a directive Citation 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***- having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 15(3) and Articles 27, 28, 31, 33 thereof,***

### **Amendment 2**

#### **Proposal for a directive Citation 5 b (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to Convention No 97 on  
"Migration for Employment" of the  
International Labour Organisation (ILO),**

### **Amendment 3**

**Proposal for a directive  
Citation 5 c (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No  
143 on "Migrant Workers",**

### **Amendment 4**

**Proposal for a directive  
Citation 5 d (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No  
102 on "Social Security (Minimum  
Standards)",**

### **Amendment 5**

**Proposal for a directive  
Citation 5 e (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No  
118 on "Equality of treatment (Social  
Security)",**

### **Amendment 6**

**Proposal for a directive  
Citation 5 f (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No 111 on "Discrimination (Employment and Occupation)",**

**Amendment 7**

**Proposal for a directive  
Citation 5 g (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Recommendation No 86 on "Migration for Employment",**

**Amendment 8**

**Proposal for a directive  
Citation 5 h (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Recommendation No 151 on "Migrant workers",**

**Amendment 9**

**Proposal for a directive  
Citation 5 i (new)**

*Text proposed by the Commission*

*Amendment*

**- having regard to ILO Convention No 98 on "The Right to Organise and Collective Bargaining",**

**Amendment 10**

**Proposal for a directive  
Recital 7**

*Text proposed by the Commission*

*Amendment*

(7) This Directive should be applied

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without prejudice to the principle of EU preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession.

without prejudice to the principle of EU preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession.  
***In particular, preference should be given to workers from Member States for whom transitional arrangements as regards access to labour market still apply.***

## Amendment 11

### Proposal for a directive Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(7a) This Directive should set conditions and rights of third country national seasonal workers in full respect of the relevant ILO conventions.***

## Amendment 12

### Proposal for a directive Recital 9

*Text proposed by the Commission*

*Amendment*

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

(9) This Directive should not affect conditions of the provision of services in the framework of Article 56 of the TFEU, ***in*** particular the terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. ***Seasonal workers should not be posted by an undertaking established in a Member State to provide a service in the territory of another Member State.***

## Amendment 13

### 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 to be found in **the** agriculture **and horticulture sectors, for example** during the planting or harvesting **periods, and in the** tourism sector, **for example** during the holiday **periods**. **There should be the possibility for Member States to decide, with the involvement of the social partners and in consultation with them, to consider additional activities dependent on the passing of seasons as seasonal activities, for the purposes of this Directive.**

*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 14

### Proposal for a directive Recital 12

*Text proposed by the Commission*

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

*Amendment*

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

*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 15

### 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***.

#### *Justification*

*The Authorities in charge should be able 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 Art 16.*

## Amendment 16

### Proposal for a directive Recital 14

#### *Text proposed by the Commission*

(14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.

#### *Amendment*

(14) ***To ensure that the labour market is not adversely affected by the entry of third country national seasonal workers***, Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market ***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***.

## Amendment 17

### 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. Such sanctions should include, if appropriate, adequate compensation for seasonal workers. Member States could also subject those employers to additional sanctions such as exclusion from entitlement to public benefits, aid or subsidies, exclusion from participation in a public contract, recovery of public benefits, aid or subsidies, including Union funding managed by Member States, or temporary or permanent closure of the establishments that have been used to commit the infringement.*

## **Amendment 18**

### **Proposal for a directive**

#### **Recital 19**

*Text proposed by the Commission*

*Amendment*

(19) In order to ensure that seasonal workers have adequate accommodation during their stay, ***including at a reasonable cost***, provision should be made to require employers to provide ***the*** evidence of the accommodation they or third-parties ***provide***.

(19) In order to ensure that seasonal workers have adequate accommodation ***that ensures a decent standard of living*** during their stay, provision should be made to require employers to provide evidence of the accommodation they ***provide themselves*** or ***via*** third parties. ***The cost of this accommodation should not be excessive and should reflect the market rate of the area in question. The cost of the rent should not be automatically deducted from the seasonal worker's wage. To ensure transparency, seasonal workers should be given a rental contract in which the conditions and cost of the accommodation are clearly stated. These provisions should be without prejudice to the possibility for seasonal workers to freely choose their own accommodation. Any change of accommodation should be***

*reported to the competent authorities.*

## Amendment 19

### Proposal for a directive

#### Recital 20

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

(20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to *define clearly the working conditions applicable to such workers in order to ensure legal certainty by referring such conditions to generally binding instruments providing effective protection of the rights of third-country seasonal workers, such as law or universally applicable collective agreements.*

##### *Amendment*

(20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to *provide effective protection of the rights of third-country seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, following in particular the principles laid down in Articles 15, 21 and 34 of the Charter of Fundamental Rights of the European Union and abiding therefore by the principle of the same pay for the same work in the same workplace, by applying collective agreements and other arrangements on working conditions which have been concluded at all possible levels or for which there is statutory provision, in accordance with national law and practice, under the same terms as to nationals of the host Member State.*

## Amendment 20

### Proposal for a directive

#### Recital 20 a (new)

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

##### *Amendment*

*(20a) Member States should ratify without delay the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly of the*

## Amendment 21

### Proposal for a directive Recital 20 b (new)

*Text proposed by the Commission*

*Amendment*

***(20b) This Directive shall apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961.***

## Amendment 22

### Proposal for a directive Recital 21

*Text proposed by the Commission*

*Amendment*

***(21) In the absence of a system for declaring collective agreements of universal application, Member States may base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.***

***(21) In addition to the legislative, administrative and regulatory provisions applicable to workers who are nationals of the host Member State, arbitration decisions and collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice, should also apply to third-country national seasonal workers under the same terms as to nationals of the host Member State.***

## Amendment 23

### Proposal for a directive Recital 22

*Text proposed by the Commission*

*Amendment*

***(22) Third-country national seasonal workers should be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/04 on the coordination of social security systems. This Directive***

***(22) Adequate social security coverage for seasonal workers is a key element of this Directive and important for ensuring that their working and living conditions while staying in the Union are decent. Third-country national seasonal workers should***

should not confer more rights than those already provided in existing EU legislation in the field of social security for third-country nationals who have cross-border interests between Member States.

Furthermore, this Directive should not grant rights in relation to situations which lie outside the scope of that EU legislation such as, for example, to family members residing in a third country. This is without prejudice to the non discriminatory application by Member States of national legislation providing for de minimis rules on contributions to pension systems.

be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 on the coordination of social security systems. This Directive should not confer more rights than those already provided in existing EU legislation in the field of social security for third-country nationals who have cross-border interests between Member States. Furthermore, this Directive should not grant rights in relation to situations which lie outside the scope of that EU legislation such as, for example, to family members residing in a third country. This is without prejudice to the non discriminatory application by Member States of national legislation providing for de minimis rules on contributions to pension systems. ***Without prejudice to bilateral agreements providing for better social security coverage, Member States should establish mechanisms which ensure effective social security coverage during the stay and the mechanisms for exporting acquired rights where applicable. This may include special adjustments, for example in terms of the qualifying or the waiting period.***

## Amendment 24

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

*Text proposed by the Commission*

*Amendment*

***(22a) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, each Member State is responsible for laying down in its legislation the rules governing the granting of social security benefits, as well as the amount and duration of such benefits. However, when exercising that power, Member States should comply with Union law.***

## Amendment 25

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

*Text proposed by the Commission*

*Amendment*

***(22b) Member States should at least give equal treatment to those third-country nationals who are in employment or who, after a period of employment, are registered as unemployed. Any restrictions to the equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred in application of Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.***

## Amendment 26

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

*Text proposed by the Commission*

*Amendment*

***(22c) To ensure the proper enforcement of this Directive, and in particular the provisions regarding rights, working conditions and accommodation, Member States should ensure that appropriate mechanisms for the monitoring of employers, recruitment agencies or other intermediaries 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.*

#### *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 27**

##### **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, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through* relevant third parties such as trade unions or other associations. 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. *Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.*

#### **Amendment 28**

##### **Proposal for a directive Recital 23 a (new)**

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

###### *Amendment*

*(23a) Nationals of third countries who are authorised to work in the territories of the Member States should be entitled to working conditions equivalent to those of*

*citizens of the Union.*

## Amendment 29

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

*Text proposed by the Commission*

2. This Directive shall not apply to third-country nationals who are carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of service in accordance with Directive 96/71/EC.

*Amendment*

2. This Directive shall not apply to third-country nationals who are carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of service in accordance with Directive 96/71/EC.  
***Seasonal workers shall not be posted by an undertaking established in a Member State to provide a service in the territory of another Member State.***

*Justification*

## Amendment 30

### Proposal for a directive Article 2 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. This Directive shall apply to the agriculture, horticulture and tourism sectors. Member States may, with the involvement of the social partners and in consultation with them, decide to extend its application to additional activities that are dependent on the passing of the seasons.***

*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 31**

### **Proposal for a directive Article 3 – point b**

#### *Text proposed by the Commission*

(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;

#### *Amendment*

(b) ‘seasonal worker’ means a third-country national who resides temporarily, ***for no more than six months in a 12-month period,*** 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(2a),*** under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in a Member State;

#### *Justification*

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

## **Amendment 32**

### **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, ***within the scope of Article 2(2a),*** that is tied to a certain time of the year by an event or ***recurring pattern of events linked to seasonal conditions*** during which ***the required*** labour levels are ***regularly and predictably*** far above those necessary for usually ongoing operations;

### *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 33**

#### **Proposal for a directive Article 3 – point f**

*Text proposed by the Commission*

*Amendment*

**(f) ‘universally applicable collective agreement’ means a collective agreement which must be observed by all undertakings in the geographical area and in the profession or industry concerned. In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers’ and labour organisations at national level and which are applied throughout national territory.** **deleted**

### *Justification*

*All collective agreements should be applied on an equal footing also to third country seasonal workers working in the EU. Therefore there is no need to include any definition of a universally applicable collective agreement.*

### **Amendment 34**

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

*Text proposed by the Commission*

*Amendment*

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for **persons** to whom

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for **third-country**

it applies in respect of Articles 13 to 17 of this Directive.

***nationals*** to whom it applies in respect of Articles 13 to 17 of this Directive.

#### *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 35**

#### **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***;

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<sup>1</sup> OJ L 228, 18.10.1991, p. 32.

#### *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 Art 16.*

### **Amendment 36**

#### **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 ***that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, 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 Art 14.*

**Amendment 37**

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

*Text proposed by the Commission*

*Amendment*

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.

2. Member States may ***examine the situation of their labour market and verify, in a timely and transparent manner***, 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.

*Justification*

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

**Amendment 38**

**Proposal for a directive  
Article 6 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Private employment agencies or migration agencies shall not charge job-seekers or workers any fees in exchange***

*for organising seasonal work or migration  
for seasonal work.*

## **Amendment 39**

### **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. In the case of subcontracting, Member States shall ensure that the main contractor and any intermediate subcontractor may be liable for any infringement of the provisions of this Directive and be subject to effective, proportionate and dissuasive sanctions.***
- 3. 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.***

## **Amendment 40**

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

*Text proposed by the Commission*

*Amendment*

Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from

***1.*** 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.*

*adequate* accommodation, *pursuant to national legislation and practice*, that ensures *a decent* standard of living *for the duration of the employment contract*. As a *minimum*, such accommodation shall provide the conditions and facilities essential for health, security, comfort and nutrition as certified by the competent authorities. These provisions shall be without prejudice to the possibility for seasonal workers to freely choose their own accommodation.

*2. The seasonal worker shall be given a rental contract or equivalent document in which the conditions and cost of the accommodation are clearly stated for the duration of their stay. If the seasonal worker is required to pay rent for such accommodation, its cost shall not be excessive in relation to their net remuneration nor to the quality of the accommodation and it shall not be automatically deducted from their wage.*

*3. Any change of accommodation shall be reported to the competent authority. The new accommodation shall fulfil the conditions laid down in paragraphs 1 and 2.*

#### *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. 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 41**

##### **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 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. Member States may require employers of seasonal workers to pay for:*  
*(a) the visa fee and, if applicable, any service fees related to the visa;*  
*(b) the cost of health insurance referred to in point (c) of Article 5(1).*  
*When paid by the employers, such expenses shall not be recoverable from the seasonal worker.*

## *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 42**

### **Proposal for a directive Article 16**

#### *Text proposed by the Commission*

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

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

*In the absence of a system for declaring*

#### *Amendment*

*Seasonal workers shall be entitled to equal treatment with nationals of the host Member State as a minimum with regard to:*

*1. 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, as laid down by law, regulation or administrative provision, collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice and under the same terms as those applicable to nationals of the host Member State.*

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

**2. equal treatment with nationals of the host Member State as regards at least with regard to:**

(a) freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

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

(c) *payment of statutory pensions based on the worker's previous employment under the same conditions as nationals of the Member States concerned when they move to a third country;*

(d) access to goods and services and the supply of goods and services made available to the public, *except public*

2. freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the ***rights and inter alia the right to negotiate and conclude collective agreements and the right to strike and take industrial action, in accordance with the host Member State's national law and practices***, without prejudice to the national provisions on public policy and public security;

3. branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004. ***Each Member State remains responsible, in the absence of harmonisation at Union level, for laying down in its legislation, in compliance with Union law, the non-discriminatory rules governing the granting of social security benefits, as well as the amount and duration of such benefits;***

4. access to goods and services and the supply of goods and services made available to the public ***in accordance with***



*housing and counselling services afforded by employment services.*

*national law. This paragraph shall be without prejudice to freedom of contract in accordance with national and Union law;*

*5. education and vocational training;*

*6. recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures and with Union law;*

*7. tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned.*

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

#### **Amendment 43**

##### **Proposal for a directive Article 16 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. back payments to be made by the employers. In respect of infringements of Article 16, the employer shall pay:*

*(a) any outstanding remuneration to the third-country national;*

*(b) any outstanding taxes and social security contributions, including relevant administrative fines.*

## **Amendment 44**

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

*Text proposed by the Commission*

*Amendment*

#### **Article 16a**

##### ***Monitoring and inspections***

***1. Member States shall ensure that appropriate monitoring mechanisms in respect of employers, recruitment agencies or other intermediaries are put in place and that adequate and regular 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.***

***Member States shall ensure that organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation.***

***2. Member States shall ensure that at least 10 % of employers offering seasonal employment established on their territory are subject to inspections every year.***

***3. The selection of employers to be inspected shall be based on a risk assessment to be drawn up 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.***

##### ***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 45

### Proposal for a directive

#### Article 17 – subparagraph -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, recruitment agencies or other intermediaries, 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.***

*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 46

### Proposal for a directive

#### Article 17

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 47**

### **Proposal for a directive**

#### **Article 17 – subparagraph 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.***

*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.*

## PROCEDURE

<b>Title</b>	Conditions of entry and residence of third-country nationals for the purposes of seasonal employment			
<b>References</b>	COM(2010)0379 – C7-0180/2010 – 2010/0210(COD)			
<b>Committee responsible</b> Date announced in plenary	LIBE 7.9.2010			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 7.9.2010			
<b>Associated committee(s) - date announced in plenary</b>	12.5.2011			
<b>Rapporteur(s)</b> Date appointed	Sergio Gaetano Cofferati 9.9.2010			
<b>Discussed in committee</b>	16.6.2011	13.7.2011	5.10.2011	22.11.2011
<b>Date adopted</b>	23.11.2011			
<b>Result of final vote</b>	+: 39 -: 3 0: 1			
<b>Members present for the final vote</b>	Regina Bastos, Heinz K. Becker, Jean-Luc Bennahmias, Philippe Boulland, Milan Cabrnach, David Casa, Alejandro Cercas, Derek Roland Clark, Sergio Gaetano Cofferati, Marije Cornelissen, Karima Delli, Sari Essayah, Ilda Figueiredo, Thomas Händel, Marian Harkin, Liisa Jaakonsaari, Danuta Jazłowiecka, Jean Lambert, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Jutta Steinruck, Traian Ungureanu, Andrea Zanoni			
<b>Substitute(s) present for the final vote</b>	Georges Bach, Raffaele Baldassarre, Silvia Costa, Jürgen Creutzmann, Jelko Kacin, Ria Oomen-Ruijten, Evelyn Regner, Csaba Sógor, Emilie Turunen			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Leonardo Domenici, Dimitrios Droutsas, Sylvie Guillaume, Karin Kadenbach, Guido Milana			