Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

1 This Directive determines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and defines the rights of seasonal workers.

2 For stays not exceeding 90 days, this Directive shall apply without prejudice to the Schengen *acquis*, in particular the Visa Code, the Schengen Borders Code and Regulation (EC) No 539/2001.

Article 2

Scope

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

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

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

3 This Directive shall not apply to third-country nationals who:

a are carrying out activities on behalf of undertakings established in another Member State in the framework of the provision of services within the meaning of Article 56 TFEU, including third-country nationals posted by undertakings established in a Member State in the framework of the provision of services in accordance with Directive 96/71/EC;

b are family members of Union citizens who have exercised their right to free movement within the Union, in conformity with Directive 2004/38/EC of the European Parliament and of the Council[(1)];

c together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and the Member States or between the Union and third countries.

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Article 3

Definitions

For the purposes of this Directive the following definitions apply:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;

(b) 'seasonal worker' means a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State;

(c) 'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations;

(d) 'seasonal worker permit' means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002[(2)] bearing a reference to seasonal work and entitling its holder to stay and work in the territory of a Member State for a stay exceeding 90 days under the terms of this Directive;

(e) 'short-stay visa' means an authorisation issued by a Member State as provided for in point (2)(a) of Article 2 of the Visa Code or issued in accordance with the national law of a Member State not applying the Schengen *acquis* in full;

(f) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Implementing Convention or issued in accordance with the national law of a Member State not applying the Schengen *acquis* in full;

(g) 'single application procedure' means a procedure leading, on the basis of one application for the authorisation of a third-country national's stay and work in the territory of a Member State, to a decision on the application for a seasonal worker permit;

(h) 'authorisation for the purpose of seasonal work' means any of the authorisations referred to in Article 12 entitling their holder to stay and work on the territory of the Member State that issued the authorisation under this Directive;

(i) 'work permit' means any authorisation issued by a Member State in accordance with national law for the purpose of work in the territory of that Member State.

Article 4

More favourable provisions

1 This Directive shall apply without prejudice to more favourable provisions of:

a Union law, including bilateral and multilateral agreements concluded between the Union or between the Union and its Member States on the one hand and one or more third countries on the other;

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b bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

2 This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for third-country nationals to whom it applies in respect of Articles 18, 19, 20, 23 and 25.

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(**1**) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

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