

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 III

**PROCEDURE AND AUTHORISATIONS
FOR THE PURPOSE OF SEASONAL WORK**

Article 11

Access to information

1 Member States shall make easily accessible to applicants the information on all documentary evidence needed for an application and information on entry and stay, including the rights and obligations and the procedural safeguards of the seasonal worker.

2 When Member States issue third-country nationals with an authorisation for the purpose of seasonal work, they shall also provide them with information in writing about their rights and obligations under this Directive, including complaint procedures.

Article 12

Authorisations for the purpose of seasonal work

1 For stays not exceeding 90 days, Member States shall issue third-country nationals who comply with Article 5 and do not fall within the grounds set out in Article 8 one of the following authorisations for the purpose of seasonal work, without prejudice to the rules on the issuing of short-stay visas as laid down in the Visa Code and in Council Regulation (EC) No 1683/95⁽¹⁾:

- a a short-stay visa, indicating that it is issued for the purpose of seasonal work;
- b a short-stay visa and a work permit indicating that they are issued for the purpose of seasonal work; or
- c a work permit indicating that it is issued for the purpose of seasonal work, where the third-country national is exempted from the visa requirement in accordance with Annex II of Regulation (EC) No 539/2001 and the Member State concerned does not apply Article 4(3) of that Regulation to him or her.

When transposing this Directive, Member States shall provide for either the authorisations referred to in points (a) and (c) or the authorisations referred to in points (b) and (c).

2 For stays exceeding 90 days, Member States shall issue third-country nationals who comply with Article 6 and do not fall within the grounds set out in Article 8, one of the following authorisations for the purpose of seasonal work:

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

When transposing this Directive, Member States shall provide for only one of the authorisations referred to in points (a), (b) and (c).

3 Without prejudice to the Schengen *acquis*, Member States shall determine whether an application is to be submitted by the third-country national and/or by the employer.

The obligation on the Member States to determine whether the application is to be submitted by a third-country national and/or by the employer shall be without prejudice to any arrangements requiring both to be involved in the procedure.

4 The seasonal worker permit referred to in points (b) and (c) of the first subparagraph of paragraph 2 shall be issued by the competent authorities of the Member States using the format laid down in Regulation (EC) No 1030/2002. Member States shall enter a reference on the permit stating that it is issued for the purpose of seasonal work.

5 In the case of long-stay visas, Member States shall enter a reference stating that it is issued for the purpose of seasonal work under the heading 'remarks' on the visa sticker in accordance with point 12 of the Annex to Regulation (EC) No 1683/95.

6 Member States may indicate additional information relating to the employment relationship of the seasonal worker in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a)16 of the Annex thereto.

7 Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued with a seasonal worker permit under point (c) of the first subparagraph of paragraph 2, the Member State concerned shall grant the third-country national every facility to obtain the requisite visa.

8 The issuing of a long-stay visa referred to in point (a) of the first subparagraph of paragraph 2 shall be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned.

Article 13

Applications for a seasonal worker permit

1 Member States shall designate the authorities competent to receive and decide on applications for and to issue seasonal worker permits.

2 An application for a seasonal worker permit shall be submitted in a single application procedure.

Article 14

Duration of stay

1 Member States shall determine a maximum period of stay for seasonal workers which shall be not less than five months and not more than nine months in any 12-month period. After the expiry of that period, the third-country national shall leave the territory of the Member State unless the Member State concerned has issued a residence permit under national or Union law for purposes other than seasonal work.

2 Member States may determine a maximum period of time within any 12-month period, during which an employer is allowed to hire seasonal workers. That period shall be not less than the maximum period of stay determined pursuant to paragraph 1.

Article 15

Extension of stay or renewal of the authorisation for the purposes of seasonal work

1 Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay, where seasonal workers extend their contract with the same employer.

2 Member States may decide, in accordance with their national law, to allow seasonal workers to extend their contract with the same employer and their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.

3 Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay to be employed with a different employer.

4 Member States may decide, in accordance with their national law, to allow seasonal workers to be employed by a different employer and to extend their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.

5 For the purposes of paragraphs 1 to 4, Member States shall accept the submission of an application when the seasonal worker admitted under this Directive is on the territory of the Member State concerned.

6 Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work when the vacancy in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in the Member State. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

7 Member States shall refuse to extend the stay or renew the authorisation for the purpose of seasonal work where the maximum duration of stay as defined in Article 14(1) has been reached.

8 Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work if the third-country national applies for international protection under Directive 2011/95/EU or if the third-country national applies for protection in accordance with national law, international obligations or practice of the Member State concerned.

9 Article 9(2) and points (b), (c) and (d) of Article 9(3) shall not apply to a seasonal worker who applies to be employed by a different employer in accordance with paragraph 3 of this Article when those provisions apply to the previous employer.

10 Grounds for extension of a short-stay visa are regulated in the relevant provisions of the Visa Code.

11 Without prejudice to Article 8(1), any decision on an application for an extension or renewal shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.

Article 16

Facilitation of re-entry

1 Member States shall facilitate re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays.

- 2 The facilitation referred to in paragraph 1 may include one or more measures such as:
- a the grant of an exemption from the requirement to submit one or more of the documents referred to in Articles 5 or 6;
 - b the issuing of several seasonal worker permits in a single administrative act;
 - c an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa;
 - d priority in examining applications for admission as a seasonal worker, including taking into account previous admissions when deciding on applications with regard to the exhaustion of volumes of admission.

Article 17

Sanctions against employers

1 Member States shall provide for sanctions against employers who have not fulfilled their obligations under this Directive, including the exclusion of employers who are in serious breach of their obligations under this Directive from employing seasonal workers. Those sanctions shall be effective, proportionate and dissuasive.

2 Member States shall ensure that, if the authorisation for the purpose of seasonal work is withdrawn pursuant to Article 9(2) and points (b), (c) and (d) of Article 9(3), the employer shall be liable to pay compensation to the seasonal worker in accordance with procedures under national law. Any liability shall cover any outstanding obligations which the employer would have to respect if the authorisation for the purpose of seasonal work had not been withdrawn.

3 Where the employer is a subcontractor who has infringed this Directive and where the main contractor and any intermediate subcontractor have not undertaken due diligence obligations as defined by national law, the main contractor and any intermediate subcontractor may:

- a be subject to the sanctions referred to in paragraph 1;
- b in addition to or in place of the employer, be liable to pay any compensation due to the seasonal worker in accordance with paragraph 2;
- c in addition to or in place of the employer, be liable to pay any back payments due to the seasonal worker under national law.

Member States may provide for more stringent liability rules under national law.

Article 18

Procedural safeguards

1 The competent authorities of the Member State shall adopt a decision on the application for authorisation for the purpose of seasonal work. The competent authorities shall notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2 In the case of an application for an extension of stay or for the renewal of the authorisation pursuant to Article 15, Member States shall take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employer, due to on-going administrative procedures.

Where the validity of the authorisation for the purpose of seasonal work expires during the procedure for extension or renewal, in accordance with their national law, Member States shall allow the seasonal worker to stay on their territory until the competent authorities have taken a decision on the application, provided that the application was submitted within the period of validity of that authorisation and that the time period referred to in Article 14(1) has not expired.

Where the second subparagraph applies, Member States may, inter alia, decide to:

- a issue national temporary residence permits or equivalent authorisations until a decision is taken;
- b allow the seasonal worker to work until that decision is taken.

During the period of examination of the application for extension or renewal, the relevant provisions of this Directive shall apply.

3 Where the information or documentation supplied in support of the 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 competent authorities have received the additional information required.

4 Reasons for a decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting an application for authorisation for the purpose of seasonal work or refusing an extension of stay or renewal of the authorisation for the purpose of seasonal work shall be given in writing to the applicant. Reasons for a decision withdrawing the authorisation for the purpose of seasonal work shall be given in writing to both the seasonal worker and, if provided for in national law, the employer.

5 Any decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting the application, refusing an extension of stay or renewal of an authorisation for the purpose of seasonal work or withdrawing an authorisation for the purpose of seasonal work shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.

6 Procedural safeguards concerning short-stay visas are regulated in the relevant provisions of the Visa Code.

Article 19

Fees and costs

1 Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive. Fees for short-stay visas are regulated in the relevant provisions of the Schengen *acquis*. Where those fees are paid by the third-country national, Member States may provide that they are entitled to be reimbursed by the employer in accordance with national law.

- 2 Member States may 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 cost of sickness insurance referred to in point (b) of Article 5(1) and point (b) of Article 6(1).

When paid by the employers, such costs shall not be recoverable from the seasonal workers.

Article 20

Accommodation

1 Member States shall require evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.

- 2 Where accommodation is arranged by or through the employer:
- a the seasonal worker may be required to pay a rent which shall not be excessive compared with his or her net remuneration and compared with the quality of the accommodation. The rent shall not be automatically deducted from the wage of the seasonal worker;
 - b the employer shall provide the seasonal worker with a rental contract or equivalent document in which the rental conditions of the accommodation are clearly stated;
 - c the employer shall ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.

Article 21

Placement by public employment services

Member States may determine that the placement of seasonal workers shall only be carried out by public employment services.

- (1) Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas ([OJ L 164, 14.7.1995, p. 1](#)).