



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 February 2013

6312/13

**Interinstitutional File:
2010/0210 (COD)**

LIMITE

**MIGR 15
SOC 96
CODEC 308**

NOTE

from: Presidency
to: JHA Counsellors
on: 15 February 2013

No. Cion prop.: 12211/10 MIGR 67 SOC 462 DRS 27 CODEC 691

Subject: 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

Justice and Home Affairs Counsellors will find enclosed a comparative table on the Seasonal Workers Directive in view of the meeting on 15 February 2013.

ANNEX

Commission Proposal (doc. 12208/10)	EP text result of the orientation vote	Council text (as agreed in COREPER on 5 Dec 2012)	Comments
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		DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the conditions of entry and [...] stay of third-country nationals for the purposes of seasonal employment	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(a) and (b) thereof,		Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(a) and (b) thereof,	
Having regard to the proposal from the European Commission ¹ ,		Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national Parliaments,		After transmission of the draft legislative act to the national Parliaments,	
Having regard to the opinion of the		Having regard to the opinion of the	

¹ OJ C , , p. .

European Economic and Social Committee ² ,		European Economic and Social Committee,	
Having regard to the opinion of the Committee of the Regions ³ ,		Having regard to the opinion of the Committee of the Regions,	
	<i>Amendment 1</i>		
	<i>- 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,</i>		
Acting in accordance with the ordinary legislative procedure,		Acting in accordance with the ordinary legislative procedure,	
Whereas:		Whereas:	
(1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.		(1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.	
	<i>Amendment 2</i>		
	<i>(1a) The Treaty provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows</i>		

² OJ C , , p. .

³ OJ C , , p. .

	<i>and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence of third country nationals and on the definition of their rights.</i>		
(2) The Hague Programme, adopted by the European Council on 4 and 5 November 2004, recognised that legal migration will play an important role in advancing economic development, and asked the Commission to present a policy plan on legal migration, including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.		(2) The Hague Programme, adopted by the European Council on 4 and 5 November 2004, recognised that legal migration will play an important role in advancing economic development, and asked the Commission to present a policy plan on legal migration, including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.	
(3) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007, which include the development of well-managed legal immigration policies that fully respect national competences, in order to assist Member States in meeting existing and future labour needs. It also called for means to be explored to facilitate temporary migration.		(3) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007, which include the development of well-managed legal immigration policies that fully respect national competences, in order to assist Member States in meeting existing and future labour needs. It also called for means to be explored to facilitate temporary migration.	

<p>(4) The European Pact on Immigration and Asylum, adopted by the European Council on 15 and 16 October 2008, expresses the commitment of the European Union and its Member States to conduct a fair, effective and consistent policy for dealing with the challenges and opportunities of migration. The Pact forms the basis of a common immigration policy guided by a spirit of solidarity between Member States and cooperation with third countries and founded on proper management of migratory flows, in the interests not only of the host countries but also of the countries of origin and of the migrants themselves.</p>		<p>(4) The European Pact on Immigration and Asylum, adopted by the European Council on 15 and 16 October 2008, expresses the commitment of the European Union and its Member States to conduct a fair, effective and consistent policy for dealing with the challenges and opportunities of migration. The Pact forms the basis of a common immigration policy guided by a spirit of solidarity between Member States and cooperation with third countries and founded on proper management of migratory flows, in the interests not only of the host countries but also of the countries of origin and of the migrants themselves.</p>	
	<p><i>Amendment 3</i></p>		

<p>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 Migration⁴.</p>	<p>flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term.</p> <p><i>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.</i> It invites the European Commission and the European Council to continue implementing the Policy Plan on Legal Migration.</p>	<p>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.</p>	
	<i>Amendment 4</i>		
	<p><i>(5a) The Convention on the Protection of the Rights Of All Migrant Workers and Members of Their Families, of 18 December 1990, adopted by the General Assembly of the United Nations, is the most broadly based international legal framework for the protection of the rights of migrant workers and their families, and gives States guidance as to the approach to be adopted to ensure migrants' rights are respected when policies relating to</i></p>		

⁴ COM(2005) 669.

	<i>the migration of labour are drawn up and implemented.</i>		
	<i>Amendment 5</i>		
(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 ⁵ will contribute to avoiding such temporary stay turning into illegal stay.	(6) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration <i>and to ensuring decent working and living conditions for seasonal workers</i> , by setting out fair and transparent rules for admission and stay <i>and by defining the rights of seasonal workers in full respect of the relevant conventions of the International Labour Organisation (ILO)</i> , while at the same time providing for incentives and safeguards to prevent <i>overstaying and/or</i> 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 <i>of 18 June 2009</i> providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals ¹ will contribute to avoiding such temporary stay	(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.	

⁵ OJ L 168, 30.6.2009, p. 24.

	turning into illegal stay <i>and reducing the exploitation that such workers often suffer.</i>		
	<i>Amendment 6</i>		
	<i>(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 origin¹ and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation².</i>		
	<i>Amendment 7</i>		
	<i>(6b) This Directive should also take into account the obstacles which are generally encountered by female migrant seasonal workers, particularly women with</i>		

	<i>underage children who, in addition to the difficulties of adapting to a foreign country and an unfamiliar working environment, also encounter prejudice and stereotyping based on gender, race, colour and religion, as well as other forms of discrimination.</i>		
	<i>Amendment 8</i>		
(7) This Directive should be applied 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.	(7) This Directive should be applied 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. <i>In particular, preference should be given to workers from Member States for whom transitional arrangements as regards access to labour market still apply.</i>	(7) This Directive should be applied without prejudice to the principle of [...] Union preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. Therefore, nationals of the Member States concerned should be given preference over third-country nationals, during the transitional period specified in the relevant provisions of the Acts of Accession, with respect to access to the labour market.	<i>joint LIBE-EMPL competence</i>
	<i>Amendment 9</i>		
(8) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory for the	(8) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission, <i>including by setting quotas for certain sectors or regions</i> , of third-country	(8) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory for the	

purposes of seasonal work as specified in Article 79(5) of the Treaty on the Functioning of the European Union.	nationals coming from third countries to their territory for the purpose of seasonal work as specified in Article 79(5) of the Treaty on the Functioning of the European Union.	purposes of seasonal work as specified in [...] the Treaty .	
<p>(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 services⁶, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State.</p>		<p>(9) This Directive should not affect conditions of the provision of services in the framework of [...] the Treaty. 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. Nor should this Directive apply to workers posted by undertakings established in a third-country to provide a service in the territory of a Member State.</p>	<i>LIBE competent for exclusions linked to admission and civil rights, EMPL competent for exclusions linked to the labour market and social security</i>

⁶ OJ L 18, 21.1.1997, p. 1.

	<i>Amendment 10</i>		
(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.	(10) Activities dependent on the passing of the seasons are to be found in <i>the</i> agriculture <i>and horticulture sectors, for example</i> during the planting or harvesting <i>periods, and in the</i> tourism sector, <i>for example</i> during the holiday <i>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.</i>	(10) [...] Member States should be able to determine specific sectors of the economy and/or activities that meet the criteria for seasonal work as defined in this Directive such as agriculture, in particular during the planting or harvesting period, or tourism, in particular during the holiday period.	<i>joint LIBE-EMPL competence</i>
		(10a) For reasons of justified national policy considerations and when laid down in national law and in accordance with the principle of non-discrimination as set out in Article 10 of the Treaty, Member States are allowed to apply different treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive.	

	<i>Amendment 11</i>		
(11) It should only be possible to apply for admission as a seasonal worker while the applicant is residing outside the territory of the Member States.	(11) It should [...] be possible to apply for admission as a seasonal worker while the applicant is residing <i>either in or</i> outside the territory of the Member States.	(11) It should only be possible to apply for admission as a seasonal worker while the applicant is residing outside the territory of the Member States. However, this Directive should not prevent Member States from allowing employment, for the purpose of seasonal work and in accordance with national law, of third-country nationals already legally residing in the territory of the Member State concerned.	
	<i>Amendment 12</i>		
	<i>(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.</i>		
	<i>Amendment 13</i>		
	<i>(11b) Admission for the purposes set out in this Directive may be refused on duly justified grounds. In particular, admission could be refused if a Member State considers, based on an assessment of the facts, that the third-country</i>		

	<i>national concerned is a potential threat to public policy, public security or public health. The notion of public policy may cover a conviction for committing a serious crime as referred to in Article 2(2) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States¹.</i>		
	<i>Amendment 14</i>		
	<i>(11c) This Directive should be without prejudice to the application of Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals¹.</i>		
	<i>Amendment 15</i>		
(12) The Directive should not affect, where granted, the rights of third-country nationals already legally staying in a Member State to work.	(12) The Directive should not <i>adversely</i> affect the rights of third-country nationals already legally staying in a Member State to work.	(12) The Directive should not affect, where granted, the rights of third-country nationals already legally staying in a Member State to work.	<i>joint LIBE-EMPL competence</i>
		(12a) Criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for	

		<p>stays not exceeding three months are defined in this Directive as far as employment as a seasonal worker is concerned. When short-stay visas are issued for the purpose of seasonal work the relevant provisions of the Schengen <i>acquis</i> concerning the conditions of entry and stay in the territory of Member States as well as grounds for refusal, extension, annulment or revocation of those visas apply accordingly. In particular, any decision on refusal, annulment or revocation of a visa and the reasons on which it is based should be notified, in accordance with Article 32(2) and 34(6) of the Visa Code, to the applicant by means of the standard form set out in Annex VI of the Visa Code.</p>	
		<p>(12b) In the case of Member States applying the Schengen <i>acquis</i> in full both the Visa Code and the Schengen Borders Code apply. In the case of Member States not applying the Schengen <i>acquis</i> in full, with the exception of UK and Ireland, only the Schengen Borders Code applies. The provisions of the Schengen</p>	

		acquis referred to in the present Directive belong to that part of the Schengen <i>acquis</i> in which Ireland and the United Kingdom do not take part and therefore these provisions do not apply to them.	
	<i>Amendment 16</i>		
(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.	(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 <i>essential aspects of the contract or employment relationship.</i>	(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.	<i>joint LIBE-EMPL competence</i>
	<i>Amendment 17</i>		
(14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.	(14) <i>To ensure that the labour market is not adversely affected by the entry of third-country national seasonal workers,</i> Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market <i>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</i>	(14) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.	<i>joint LIBE-EMPL competence</i>

	<i>its labour market by virtue of EU or national law.</i>		
		(14a) Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to return to a third country on the expiry of an authorisation for the purpose of seasonal work.	
		(14b) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed for granting, withdrawal or extension/renewal of the authorisation for the purpose of seasonal work in order to prevent possible abuse and misuse of the procedure set out in this Directive.	
(15) Provision for a single procedure leading to one combined document encompassing both residence and work permit, should contribute to simplifying the rules currently applicable in Member States. This should not affect the right of Member States to		(15) Provision for a single procedure leading to one combined [...] permit encompassing both [...] stay and work permit, should contribute to simplifying the rules currently applicable in Member States. This should not affect the right of Member States to	

determine the national authorities and the way they should be involved in the single procedure, in accordance with national specificities of administrative organisation and practice.		determine the national authorities and the way they should be involved in the single procedure, in accordance with national specificities of administrative organisation and practice.	
		(15a) The designation of the competent authorities under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, with regard to the examination of, and the decision on, the application.	
		(15b) The Directive provides for a degree of flexibility for Member States regarding the authorisations to be issued for the admission (entry, stay and work) of seasonal workers. Member States are, therefore, free to decide whether to issue work permits in addition to short-stay visas and long-stay visas. Nevertheless, in order to ensure that the conditions of employment as provided by the Directive have been checked and are met it should be made clear on the authorisations that they were issued for the purpose of	

		seasonal work. In case only short-stay visas are issued, Member States should make use of the "remarks" heading of the visa sticker for this purpose.	
	<i>Amendment 18</i>		
(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 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.	(16) The duration of stay should be limited to a maximum period <i>of six months within a 12-month period</i> which, together with the definition of seasonal work, should ensure 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, <i>provided that the criteria of admission continue to be met</i> . 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. <i>Furthermore, extension allows higher earnings and remittances sent by third-country national seasonal workers which, in turn, can contribute to the development of their countries of origin. However, it should be ensured that abuses of the provisions and</i>	(16) Member States should be able to determine the maximum duration of stay for the purposes of seasonal employment within any period of twelve months referred to in this Directive.	

	<i>purpose of this Directive through an extension of contract or a change of employer are avoided.</i>		
		(16a) When deciding on the extension and renewal of the authorisation for the purpose of seasonal work Member States should be able to take into consideration the labour market situation as well as any quota set in general or for certain professions, economic sectors or regions.	
		(16b) The possibility to change employers, in accordance with the procedure defined by national law and/or practice, should be given in the specific cases referred to in the Directive where the employer does not fulfil its obligations and could be given in order to reduce the risk of abuse that seasonal workers employed by one single employer might face.	
		(16c) In cases where a seasonal worker has been admitted for a stay not exceeding three months and where the Member State decides to extend it beyond three months, the short-stay visa should be replaced either by a	

		long-stay visa or a seasonal worker permit provided that the seasonal worker complies with the provisions of Articles 5, 5b and 6.	
	<i>Amendment 19</i>		
(17) Circular migration of third-country national seasonal workers should be promoted. In order for seasonal workers to have employment prospects in the EU for periods beyond a single season and for EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment for several consecutive years should be provided, either through a multi-seasonal worker permit or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required.	(17) [...] In order for seasonal workers to have employment prospects in the EU for periods beyond a single season and for EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment for several consecutive years should be provided, either through a multi-seasonal worker permit or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required, <i>provided that the criteria for admission under this Directive are still met. Such arrangements should not affect, or circumvent, the requirement that the employment be of a seasonal nature.</i>	(17) [...] Taking into account certain aspects of circular migration as well as [...] employment prospects [...] of third-country seasonal workers beyond one single season and [...] interests of EU employers to be able to rely on a more stable and already trained workforce, the possibility of access to seasonal employment for several consecutive years [...] could be provided, either through [...] three seasonal worker permits covering up to three subsequent seasons issued in one administrative act or a facilitated procedure. This procedure should include preference over admissions of third-country nationals applying to be admitted as seasonal workers for the first time or reduced processing times, or less documentary evidence being required.	

	<i>Amendment 20</i>		
	<i>(17a) Member States should do their best to cooperate with third countries in seeking to ensure that 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, is made available to prospective seasonal workers and employers.</i>		
	<i>Amendment 21</i>		<p><u>EP-suggestion:</u></p> <p><i>Member States should provide for effective and proportionate 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,</i></p>

	<i>including Union funding managed by Member States, or temporary or permanent closure of the establishments that have been used to commit the infringement.</i>		<i><u>State in question.</u> 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 which have been used to commit the infringement.</i>
	<i>Amendment 22</i>		
(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.	(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. <i>Any rejection decision should be duly reasoned and provide information on redress procedures.</i>	(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.	

	<i>Amendment 23</i>		
	<p><i>(18a) In order to reduce the risk of abuses, Member States should be encouraged to introduce a licensing system for recruitment agencies mandated to place third-country nationals as seasonal workers. The costs for placing services should be proportionate and borne by the employers. Member States should call on employers to recruit seasonal workers through individual applications or licensed agencies.</i></p>		
		<p>(18a) In the case of short-stay visas the procedural safeguards are governed by the relevant provisions of the Schengen <i>acquis</i>.</p>	
	<i>Amendment 24</i>		
<p>(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.</p>	<p>(19) In order to ensure that seasonal workers have adequate accommodation <i>that ensures a decent standard of living</i> during their stay, provision should be made to require employers to provide evidence of the accommodation they <i>provide themselves</i> or <i>via</i> third parties. <i>The cost of this accommodation should not be excessive and should reflect the</i></p>	<p>(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 [...] applicants to provide the evidence of the accommodation they or third-parties provide.</p>	<i>joint LIBE-EMPL competence</i>

	<p><i>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.</i></p> <p><i>Any change of accommodation should be reported to the competent authorities.</i></p>		
	<i>Amendment 25</i>		
	<p><i>(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</i></p>		

	<p><i>Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)¹ 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 borders² (Schengen Implementing Convention).</i></p>		
	<p><i>Amendment 26</i></p>		
(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.	(20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to <i>provide</i> effective protection of the rights of third-country <i>national</i> seasonal workers, <i>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</i>	(20) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to [...] <i>provide effective protection of their rights. For the sake of legal certainty, therefore, the work contract or a binding job offer should specify clearly the working conditions which should be in conformity with applicable laws, collective agreements and/or practices of the given Member State.</i>	<i>exclusive EMPL competence</i>

	<i>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.</i>		
	<i>Amendment 27</i>		
	<i>(20a) This Directive shall apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961.</i>		
	<i>Amendment 28</i>		
(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	<i>(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</i>	<i>deleted</i>	<i>exclusive EMPL competence</i>

representative employers' and labour organisations at national level and which are applied throughout national territory.	<i>national seasonal workers under the same terms as to nationals of the host Member State.</i>		
	<i>Amendment 29</i>		
(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 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.	(22) <i>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.</i> 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 883/2004 on the coordination of social security systems ⁷ . 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	(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 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ⁷ . The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. This Directive should not confer more rights than those already provided in existing [...] Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. Due to the temporary nature of their stay in the territory of a Member State,	<i>exclusive EMPL competence</i>

⁷ OJ L 166, 30.4.2004, p. 1.

	<p>without prejudice to the non discriminatory application by Member States of national legislation providing for de minimis rules on contributions to pension systems. <i>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.</i></p>	<p>third-country nationals admitted for the purpose of seasonal employment under this Directive would not, in most cases, qualify for unemployment benefits. Member States are, therefore, given the possibility to restrict equal treatment in respect of unemployment benefits. This Directive does not provide for family reunification and accordingly does not confer rights on family members of a seasonal worker. Furthermore, this Directive [...] does not grant rights in relation to situations which lie outside the scope of EU legislation such as, for example, to family members residing in a third country. This should not, however, affect the right of survivors who derive rights from the seasonal worker to receive survivor's pensions when residing in a third country. This is without prejudice to the non-discriminatory application by Member States of national legislation providing for <i>de minimis</i> rules on contributions to pension systems.</p>	
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	<i>Amendment 30</i>		
	<p><i>(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.</i></p>	<p>(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, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.</p>	
	<i>Amendment 31</i>		
	<p><i>(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</i></p>		

	<i>987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality¹.</i>		
		(22b) Similarly to other Directives in the field of legal migration, the notion of goods and services in this Directive does not include study and maintenance grants and loans or other grants regarding education and vocational training.	
	<i>Amendment 32</i>		
	<i>(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</i>		

	<i>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.</i>		
	<i>Amendment 33</i>		
(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.	(23) To facilitate enforcement of <i>this Directive, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through</i> 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. <i>Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.</i>	(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.	<i>joint LIBE-EMPL competence</i>

	<i>Amendment 34</i>		
	<i>(23a) Producing statistics on seasonal employment in the Member States should also help to clarify the differences between countries and highlight the role and specific problems of women who do seasonal work.</i>		
	<i>Amendment 35</i>		
(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.	(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 <i>and the definition of their rights as seasonal workers</i> , 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 <i>of subsidiarity</i> as set out in Article 5 of the Treaty on European Union, <i>taking account of immigration and employment policies at European and national level</i> . In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is	(24) Since the objectives, namely the introduction of a special admission procedure and the adoption of conditions on entry and [...] stay 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.	

	necessary in order to achieve those objectives.		
	<i>Amendment 36</i>		
(25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.	(25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, <i>in accordance with Article 6 of the Treaty on European Union.</i>	(25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.	
		[(25a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.]	
(26) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and		(26) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and	

Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by it or subject to its application.		Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by it or subject to its application.	
(27) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,		(27) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,	
HAVE ADOPTED THIS DIRECTIVE:		HAVE ADOPTED THIS DIRECTIVE:	
CHAPTER I General provisions		CHAPTER I General provisions	
<i>Article 1</i> <i>Subject-matter</i>		<i>Article 1</i> <i>Subject-matter</i>	
	<i>Amendment 37</i>		
This Directive determines the conditions of entry and residence of third-country nationals for the	This Directive determines the conditions of entry and residence of third-country nationals for the	1. This Directive determines the conditions of entry and [...] stay of third-country nationals for the	(EP wants to define the sectors in this Directive)

purposes of employment as seasonal workers and defines the rights of seasonal workers.	purposes of employment as seasonal workers, <i>the type of work they may undertake in this capacity and the time they may remain in the Member State concerned for this purpose</i> , and defines the rights of seasonal workers.	purposes of employment as seasonal workers and defines the rights of seasonal workers.	
		<p>2. The provisions of this Directive shall apply without prejudice to the Schengen acquis, in particular Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas⁸, 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 borders⁹, and Council Regulation (EC) No 539/2001 of 15 March 2001 listing third countries whose nationals must be in possession of visas when crossing the external borders and those nationals exempt from that requirement¹⁰.</p>	<p>cf EP amendment 41, Article 2(1c) <i>EP can accept Council's text on content.</i></p> <p><i>EP inquires whether the provision could be moved to Article 2(1)(c) given that it relates to the scope of the Directive.</i></p> <p><i>Presidency would like to ask the Member States' view on that suggestion.</i></p>

⁸ OJ L 243, 15.9.2009, p. 1.

⁹ OJ L 105, 13.4.2006, p. 1.

¹⁰ OJ L 81, 21.3.2001, p. 1.

<i>Article 2 Scope</i>		<i>Article 2 Scope</i>	
	<i>Amendment 38</i>		
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.	<p>1. This Directive shall apply to:</p> <p><i>(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;</i></p>	<p>1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and apply to be admitted or who have been admitted, under the terms of this Directive, to the territory of a Member State for the purpose of employment as seasonal workers.</p>	<i>EP can accept Council's text</i>
	<p><i>(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.</i></p>		<p><i>EP is primarily thinking of students in this context. This is an important point to EP.</i></p> <p><i>Presidency finds that this provision broadens the scope considerably and is not in line with the scheme proposed in the Directive but seeks the views of MS on the matter.</i></p>
	<i>Amendment 39</i>		
	<p><i>1a. This Directive shall not apply to third-country nationals:</i></p>		
	<p><i>(a) who are beneficiaries of international protection under Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and</i></p>		

	<i>status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹;</i>		
	<i>(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;</i>		
	<i>(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 States²;</i>		cf paragraph 2 point c in Council text
	<i>(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 residents³.</i>		

	<i>Amendment 40</i>		
	<p><i>1b. 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.</i></p>		<p>cf Recital 10 in the Council text where examples of the sectors where seasonal work occurs are given.</p> <p><i>EP insists on defining the specific sectors in this Directive stating that agriculture and tourism are the main relevant sectors in all the MS. The importance of involving the social partners in the process of deciding the extend the scope.</i></p> <p><i>Bearing in mind that Council has insisted on MS being able to define the sectors on the basis of the criteria set out in the Directive Presidency seeks the views of MS on the EP amendment.</i></p>
	<i>Amendment 41</i>		
	<p><i>1c. This Directive shall not affect the application of the common visa policy.</i></p>		<p>cf Article 1 paragraph 2 in Council text.</p> <p><i>Presidency seeks the views of MS on the wording of the EP amendment and on whether it should be placed in Article 1 or 2.</i></p>

	<i>Amendment 42</i>		
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.	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. <i>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.</i>	2. This Directive shall not apply to third-country nationals [...]: a) who are posted in the framework of the provision of services, irrespective of whether the undertaking is established in a Member State or in a non-Member State, as long as they are posted.	<i>LIBE competent for exclusions linked to admission and civil rights, EMPL competent for exclusions linked to the labour market and social security</i> <i>EP is concerned about a possible conflict with Directive 96/71/EC and considers its wording simpler and clearer.</i> <i>Presidency seeks the views of MS on the EP amendment. Presidency would also like to point out that the wording in this Directive should be aligned with the wording of a similar Article in the ICT Directive.</i>
		b) who are working for and being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking.	<i>EP is of the opinion that temporary work agencies are covered by its wording in paragraph a).</i>

		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 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.	cf EP amendment 39 <i>EP and Council agree.</i>
		d) who, 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;	<i>EP will consider Council text.</i>
<i>Article 3 Definitions</i>		<i>Article 3 Definitions</i>	
For the purposes of this Directive, the following definitions shall apply:		For the purposes of this Directive, the following definitions shall apply:	
(a) ‘third-country national’ means any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;		(a) ‘third-country national’ means any person who is not a citizen of the European Union within the meaning of Article 20 (1) of the Treaty on the Functioning of the European Union;	

	<i>Amendment 43</i>		
(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, <i>for no more than six months in a 12-month period</i> , for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, <i>within the scope of Article 2(1b)</i> , 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 retains [...] his/her principal place of residence in a third country [...] and stays legally and temporarily for the purposes of employment in the territory of a Member State [...] to carry out an activity dependent on the passing of the seasons, as determined by national law and/or practice , under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in [...] that Member State.	<i>joint LIBE-EMPL competence</i> <i>EP sees no need to regulate where the legal domicile is and asked how a TCN is expected to prove where his/her principal place of residence is.</i>
	<i>Amendment 44</i>		
(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;	(c) ‘activity dependent on the passing of the seasons’ means an activity, <i>within the scope of Article 2(1b)</i> , that is tied to a certain time of the year by an event or <i>recurring pattern of events linked to seasonal conditions</i> during which <i>the required</i> labour levels are <i>regularly and predictably</i> far above those necessary for usually ongoing operations;	(c) ‘activity dependent on the passing of the seasons’ means an activity that is tied to a certain time of the year [...] during which required labour levels are [...] above those necessary for usually ongoing operations or during which specific operations need to be carried out ;	<i>joint LIBE-EMPL competence</i> <i>EP asked for clarification regarding specific operations that need to be carried out during a certain time of the year.</i>

	<i>Amendment 45</i>		
(d) 'seasonal worker permit' means the authorisation bearing the words 'seasonal worker' entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;	(d) 'seasonal worker permit' means the authorisation bearing the words 'seasonal worker' entitling its holder to (...) work in the territory of a Member State under the terms of this Directive <i>for a period of up to six months in any 12 month period;</i>	(d) 'seasonal worker permit' means [...] an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals bearing [...] a reference to seasonal work and entitling its holder to [...] stay and work in the territory of a Member State under the terms of this Directive;	
		(e) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention or issued in accordance with the national law of Member States not implementing the Schengen <i>acquis in full;</i>	
	<i>Amendment 46</i>		
(e) 'single application procedure' means a procedure leading, on the basis of one application for the authorisation of a third-country national's residence and work in the territory of a Member State, to a decision on the application;	<i>deleted</i>	(f) '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 the seasonal worker permit;	

	<i>Amendment 47</i>		
(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.	<i>deleted</i>	<i>deleted</i>	<i>exclusive EMPL competence</i>
		(g) ‘regulated profession’ means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.	<i>EP asked further clarification as to the kind of regulated professions that could fall under the definition of seasonal work.</i>

		<p>(h) "authorisation for the purpose of seasonal work" means either a short-stay visa and a work permit, if a work permit is required under national law, a long-stay visa and a work permit, if a work permit is required under national law, or a seasonal worker permit. In the case of those third-country nationals listed in Annex II of Regulation 539/2001, Member States either apply Article 4(3) of Regulation 539/2001 or issue a work permit or both.</p>	
		<p>(i) 'work permit' means any authorisation issued by a Member State in accordance with national law primarily for the purpose of work in the territory of a Member State.</p>	
<i>Article 4 More favourable provisions</i>		<i>Article 4 More favourable provisions</i>	
1. This Directive shall apply without prejudice to more favourable provisions of:		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		(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;		more third countries on the other;	
(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.		(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.	
	<i>Amendment 48</i>		
	<i>(ba) the European Social Charter of 18 October 1961 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.</i>		<u>To be discussed at political level.</u>
	<i>Amendment 49</i>		
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.	2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for <i>third-country nationals</i> to whom it applies in respect of Articles 13 to 17 of this Directive.	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, [...] 14, 16 and 17 of this Directive.	<i>joint LIBE-EMPL competence</i> <i>Technical group suggests to combine Council and EP positions for the provision to read as follows:</i> 2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for <i>third country nationals</i> to whom it applies in respect of Articles 13, 14, [...] 16 and 17 of this Directive.

	<i>Amendment 50</i>		
CHAPTER II Conditions of admission	CHAPTER II CONDITIONS <i>FOR A SEASONAL WORKER PERMIT</i>	CHAPTER II Conditions of admission	
	<i>Amendment 51</i>		
<i>Article 5 Criteria for admission</i>	<i>Article 5 Criteria for a seasonal worker permit</i>	<i>Article 5 Criteria and requirements for admission to employment as a seasonal worker for stays not exceeding three months</i>	
	<i>Amendment 52</i>		
1. Applications for admission to a Member State under the terms of this Directive shall be accompanied by the following documents:	1. Applications for <i>a seasonal worker permit</i> under the terms of this Directive shall be accompanied by the following documents:	1. [...] Without prejudice to Article 9, a third-country national who applies to be admitted under the terms of this Directive or the employer shall:	<i>EP can accept Council's text, subject to the outcome of discussions on Article 9 at political level on who can apply for a seasonal worker permit.</i>
	<i>Amendment 53</i>		
(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;	(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 <i>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</i>	(a) present a valid work contract or, [...] if provided for [...] by national law or administrative regulations or practice , a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State [...] which specifies the [...] remuneration and the working hours per week or month and, [...]	<i>joint LIBE-EMPL competence</i> <i>Presidency seeks the views of MS on the EP amendment.</i>

	<i>employer's obligation to inform employees of the conditions applicable to the contract or employment relationship¹, in accordance with the provisions laid down in Article 16 of this Directive;</i>	where applicable, other relevant working conditions.	
(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;		<i>deleted (Only in Article 5b)</i>	
(c) evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work contract;		(b) provide evidence [...] that the third-country national has or is entitled to have by virtue of the application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work [...] carried out in the Member State concerned.	<i>EP argues that having applied for sickness insurance would only amount to sufficient evidence "if provided for by national law". Accordingly, Member States retain discretion as to whether an application for insurance would fulfil this criterion or not.</i> <i>Presidency would like to ask Member States' position on Cion/EP text and Council text suggestion.</i>
	Amendment 54		
(d) evidence of having accommodation as set out in Article 14.	(d) evidence <i>that the seasonal worker will have adequate accommodation or that adequate</i>	(c) provide evidence [...] that the third-country national has accommodation as set out in Article	<i>joint LIBE-EMPL competence</i>

	accommodation <i>will be provided, in accordance with the provisions laid down</i> in Article 14.	14.	
	<i>Amendment 55</i>		
	<i>(da) a signed commitment by the seasonal worker that he/she will return to his/her country of origin or a third-country after the end of the work contract, unless they are otherwise entitled to stay in the Member State.</i>		
	<i>Amendment 56</i>		
	<i>1a. Third-country nationals residing outside the EU shall be in possession of a valid travel document, as determined by national law.</i>		
		1a. Member States shall require that the conditions listed in paragraph 1(a) are in conformity with applicable laws, collective agreements and/or practices.	
	<i>Amendment 57</i>		
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 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, based on the	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.	<i>EP considers that the documentation provided by the applicant, notably the work contract and evidence of accommodation, amount to proof of sufficient resources during the period of stay. Such clarification in</i>

	<i>documentation provided pursuant to paragraph 1.</i>		<i>this provision would avoid additional procedures to verify sufficient resources.</i> <i>Presidency would like to ask Member States' view on EP suggestion.</i>
		3. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law.	<i>EP seeks further clarification as to the specific professions that the Council is thinking of.</i>
		4. When examining an application for authorisation for the purpose of seasonal work, Member States not applying the Schengen <i>acquis</i> in full, shall verify whether the third-country national does not present a risk of illegal immigration and that he/she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.	

	<i>Amendment 58</i>		
3. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.	<i>deleted</i>	<i>deleted</i>	
		<p style="text-align: center;"><i>Article 5b</i></p> <p style="text-align: center;"><i>Criteria and requirements for admission as a seasonal worker for stays exceeding three months</i></p>	
		<p>1. [...] Without prejudice to Article 9, a third-country national who applies to be admitted under the terms of this Directive or the employer shall:</p>	
		<p>(a) present a valid work contract or, [...] if provided for by national law or administrative regulations or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State [...] which specifies the [...] remuneration and the working hours per week or month and, [...] where applicable, other relevant working conditions.</p>	
		<p>(b) provide evidence [...] that the third-country national has or is entitled to have by virtue of the</p>	

		application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work [...] carried out in the Member State concerned.	
		(c) provide evidence that the third-country national has accommodation as set out in Article 14.	
		1a. Member States shall require that the conditions listed in paragraph 1(a) are in conformity with applicable laws, collective agreements and/or practices.	
		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.	
		3. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.	<p><u><i>EP could agree to Council's text and on maintaining the provision in Article 5.</i></u></p> <p><u><i>EP will consider whether it will suggest to include a reference to the</i></u></p>

			<u>European Arrest Warrant (cf. Article 6(4a) of the EP text) in a recital.</u>
		4. When examining an application for authorisation for the purpose of seasonal work Member States shall verify whether the third-country national does not present a risk of illegal immigration and that he/she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.	
		5. Member States shall require the seasonal worker and/or the employer to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law.	
		6. Third-country nationals shall be in possession of a valid travel document determined by national law. Member States shall require the period of validity of the travel document to cover at least [...] the validity of the seasonal worker	<i>Cf Art 5(1)(e) of the ICT Directive: "MS may require the period of validity of the travel document to cover at least the initial duration of the residence permit".</i>

		<p>permit or the long-stay visa. Member States may also require the period of validity to exceed the intended duration of stay by a maximum of 6 months.</p>	<p><i>EP and Presidency agreed that the final text of the provision will depend on agreement regarding the maximum duration of stay.</i></p> <p><i>Presidency requests clarification from delegations why MS should be allowed to require that validity of travel document exceeds intended duration of stay with 6 months.</i></p>
		<p>Article 5a Volumes of admission</p>	
		<p>This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory for the purpose of seasonal work. On this basis and for the purposes of this Directive, an application for authorisation for the purpose of seasonal work may be considered inadmissible.</p>	cf Commission text Article 6(4)
<p>Article 6 Grounds for refusal</p>		<p>Article 6 Grounds for refusal</p>	
	<p>Amendment 59</p>		
1. Member States shall reject an application for admission to a Member State for the purposes of this Directive whenever the conditions set out in Article 5 are	1. Member States shall reject an application for a seasonal worker permit whenever the conditions set out in Article 5 are not met or whenever the documents presented	1. Member States shall reject an application for [...] authorisation for the [...] purpose of seasonal work whenever the conditions set out in Article 5 or 5b are not met or	

not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.	have been fraudulently acquired, or falsified, or tampered with.	whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.	
	<i>Amendment 60</i>		
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 <i>examine the situation of their labour market and verify, in a timely and transparent manner</i> , whether the vacancy concerned could not be filled by <i>nationals of the Member State concerned, by other Union citizens</i> , 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 verify whether the vacancy [...] in question could [...] be filled by [...] nationals of the Member State concerned or by other EU citizens , or by third-country nationals lawfully residing in the Member State [...], in which case they may reject the application. This paragraph shall apply without prejudice to the principle of Union preference as expressed in the relevant provisions of the Act of Accession of 2005.	<p><i>joint LIBE-EMPL competence</i></p> <p><i>EP can agree to the first part of Council's text, subject to a minor change in wording:</i></p> <p>2. Member States may verify whether 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 [...], in which case they may reject the application."</p> <p><i>EP suggested to use: "... in the relevant provisions of <u>the relevant Acts of Accession</u>" to make the reference more general and cover also future acts of accession.</i></p> <p><i>Presidency would like to ask Member States' view on that suggestion.</i></p>

		2a. Member States may reject an application for authorisation for the purpose of seasonal work on the ground [...] set out in Article 5a.	cf Commission text in Article 6(4) <i>EP requested a clarification as to why this is both a ground for inadmissibility and refusal in the Council text.</i>
	<i>Amendment 61</i>		
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.	3. Member States <i>shall</i> reject an application if the employer has:	3. Member States may reject an application for authorisation for the purpose of seasonal work if the employer [...]:	
	(a) been sanctioned in conformity with national law for undeclared work and/or illegal employment,	(a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place; or	
	<i>(b) been sanctioned under Article 12a, or</i>		
	<i>(c) failed to meet its legal obligations regarding taxation, social security, working conditions, labour rights or social rights as provided for in national law.</i>	(b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment, including remuneration, according to applicable laws, collective agreements and/or practices are not met; or	<i>EP and Presidency agreed that the first part of the provision ("failed to meet" / "does not meet") will be determined following agreement on the introduction of Article 6(3) ("shall" / "may").</i> <i>cf also art. 16.</i> <i>EP will suggest a new text.</i>

		(c) has eliminated the positions he is trying to fill, within the 12 months immediately preceding the date of the application, in order to employ third-country nationals through the new application.	<i>EP asked for a clarification as to how this would work in practice pointing out that the posts of seasonal workers are by definition eliminated at the end of a season. EP also wanted to know how it can be proven that posts have been eliminated in order to employ third-country nationals.</i>
	<i>Amendment 62</i>		
4. Member States may reject an application on the grounds of volumes of admission of third-country nationals.	4. Member States may reject an application on the grounds of volumes of admission of third-country nationals. <i>It should be avoided that the number of third country nationals who applies for seasonal work, should be greater than that of the nationals of the Member State who are looking to find a job as a seasonal worker.</i>		cf Council text in Articles 6(2) and 6(2a). <i>Presidency finds that the EP amendment essentially constitutes a labour market test that falls under national competence and should not be regulated in the Directive.</i>
	<i>Amendment 63</i>		
	<i>4a. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be granted a seasonal worker permit. The notion of public policy may cover a conviction for committing a serious crime as referred to in Article 2(2) of the Council Framework Decision</i>		<i>EP can accept Council's position to move the provision to Article 5. EP will consider moving the reference to the European Arrest Warrant for a list of serious crimes to a recital.</i>

	2002/584/JHA.		
		<p>4. Member States may reject an application [...] for authorisation for the purpose of seasonal work if the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.</p>	<p><i>cf Cion text in Article 12(2)(a) and EP text in Article 12(2) where a similar provision is included under facilitation of re-entry. Council, however, changed this into a general ground for rejection.</i></p> <p><i>EP Amendment 83 includes a proportionality test which it considers important.</i></p>
	<i>Amendment 64</i>		
Article 7 <i>Withdrawal or non-renewal of the permit</i>	Article 7 <i>Withdrawal or non-renewal of the seasonal worker permit</i>	Article 7 <i>Withdrawal or non-extension/non-renewal of the authorisation for the purpose of seasonal work</i>	
	<i>Amendment 65</i>		
1. Member States shall withdraw or refuse to renew the permit issued on the basis of this Directive in the following cases:	1. Member States shall withdraw or refuse to renew the seasonal worker permit issued on the basis of this Directive in the following cases:		cf paragraph 2 in Council text
(a) when it has been fraudulently acquired, or has been falsified, or tampered with; or			
(b) where the holder is residing for purposes other than those for which he/she was authorised to reside.			

	<i>Amendment 66</i>		
2. Member States may withdraw or refuse to renew the permit issued on the basis of this Directive in the following cases:	2. Member States may withdraw or refuse to renew the <i>seasonal worker</i> permit issued on the basis of this Directive in <i>any of</i> the following cases:	1. Member States may withdraw or refuse to extend or renew [...] the authorisation for the purpose of seasonal work granted on the basis of this Directive [...] whenever the provisions of Articles 5 or 5b were not or are no longer [...] complied with.	
(a) wherever the conditions laid down in Article 5 were not met or are no longer met;	(a) the conditions laid down in Article 5 were not met or are no longer met;		
		2. Member States shall withdraw or refuse to extend or renew [...] the authorisation for the purpose of seasonal work granted on the basis of this Directive [...] if the documents presented for the purpose of Article 5, 5b or 6 had been fraudulently acquired, or [...] falsified, or tampered with or where the holder is residing for purposes other than those for which he/she was authorised to reside.	cf Commission text in Article 7(1) <i>EP will consider Council text asking whether reference is made to documents instead of the permit as is the case in the original Cion text due to including references to Articles 5, 5b and 6.</i>
(b) for reasons of public policy, public security or public health.	(b) for reasons of public policy, public security or public health;	deleted	
		3. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the	

		basis of this Directive if the employer:	
	<i>(ba) if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment;</i>	(a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place, or	<i>EP suggested to use "has been declared bankrupt" instead.</i>
	<i>(bb) if the employer has been sanctioned under Article 12a;</i>		
	<i>(bc) if the employer has failed to meet its legal obligations regarding taxation, social security, working conditions, labour rights or social rights as provided for in national law,</i>	(b) does not meet the legal obligations regarding social security, taxation and/or if the terms of employment, including remuneration, according to applicable laws, collective agreements and/or practices are not met, or	<i>Depends on final wording Article 6(3)(b) of Council's text.</i>
		(c) has not fulfilled the obligations based on the work contract, or	cf Commission text in Article 12(2)(b) (on facilitation of re-entry)
		(d) has eliminated the positions he is trying to fill, within the 12 months immediately preceding the date of the application, in order to employ third-country nationals through the new application.	<i>The same comments as for Article 6(3)(c).</i>

	<i>Any exclusion shall be proportionate to the circumstances of the case.</i>		
	<i>2a. Member States shall only withdraw or refuse to renew the seasonal worker permit on the basis of paragraph 2 points (ba), (bb) or (bc) if it serves the direct purpose of protecting the interests of the seasonal worker.</i>		
		3a. Article 7(3) does not apply to a seasonal worker who has a valid contract or a binding job offer for seasonal work in the Member State concerned and can, therefore, be employed by a different employer in accordance with Articles 5, 5b and 6, on the basis of a procedure defined by national law and/or practice.	<i>cf Article 7(2a) in EP text and EP amendment 79. By way of a compromise, EP suggested a combination of the EP's and Council's approaches.</i>
		4. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the third-country national has not complied with the obligations arising from the authorisation for the purpose of seasonal work during a previous stay as a seasonal worker.	<p><i>cf Commission text in Article 12(2)(a) (on facilitation of re-entry)</i></p> <p><i>EP could not understand why this provision is included in this Article arguing that it should be sufficient as a ground for refusal.</i></p> <p><i>EP: "... if the third-country national had not complied with..."</i></p>

		5. Member States may refuse to extend 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 EU citizens, or by third-country nationals lawfully residing in the Member State, or when the relevant quota set has been filled.	<i>EP could not support the reference to quotas as it renders the situation uncertain for the seasonal worker.</i>
		6. Member States shall refuse to extend or renew the authorisation for the purpose of seasonal work where the maximum duration of stay as defined in Article 11(1) has been reached.	
		7. Member States may withdraw or refuse to extend or renew the authorisation for the purpose of seasonal work granted on the basis of this Directive if the third-country national applies for international protection under Council Directive 2011/95/EU of 13 December 2011 or if the third-country national applies for protection in accordance with national law, international obligations or practice of the Member State concerned.	

		8. Without prejudice to Article 11(2a), Member States may withdraw an authorisation for the purpose of seasonal work following the termination of a work contract.	<i>EP did not see the need for this paragraph since the same idea is covered by paragraph 1 through a reference to Article 5.</i>
		<i>Article 7a</i> <i>Obligation of cooperation</i>	
		Member States shall require the employer to provide all relevant information needed for granting, withdrawing, extending or renewing the authorisation for the purpose of seasonal work.	<i>EP enquired about the purpose of this Article.</i> <i>Cf recital 14b in Council text explaining that the aim is to prevent abuse and be able to impose sanctions.</i>
		<i>Article 7b</i> <i>Sanctions</i>	
		1. Member States shall provide for sanctions against employers who have not fulfilled the obligations based on this Directive. Those sanctions shall be effective, proportionate and dissuasive.	cf Commission text in Article 12(2)(b) (on facilitation of re-entry) cf EP amendment 85 on Article 12a
		2. Sanctions in accordance with paragraph 1 may include the exclusion of employers who have not fulfilled the obligations based on this directive from	

		applications for seasonal workers for up to 3 years.	
		3. An application for authorisation for the purpose of seasonal work may be considered inadmissible if the employer has been excluded from applications for seasonal workers on the grounds set out in paragraph 2.	
	<i>Amendment 67</i>		
CHAPTER III Procedure and permit	CHAPTER III <i>PROCEDURE</i>	CHAPTER III Procedure and [...] authorisations for the purpose of seasonal work	
<i>Article 8 Access to information</i>		<i>Article 8 Access to information</i>	
	<i>Amendment 68</i>		
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.	1. Member States shall take the necessary measures to make available <i>to prospective seasonal workers and employers</i> information on conditions of entry and residence, including rights <i>and procedural safeguards as laid down in this Directive</i> and all documentary evidence needed for an application to reside and work in the territory of a Member State as a seasonal worker. <i>This information shall be made available to the public and set out in a</i>	Member States shall take the necessary measures to make available information on conditions of entry and [...] stay, including rights and all documentary evidence needed for an application [...] for authorisation for the purpose of seasonal work.	<i>Presidency suggests to align the text with Article 9 of ICT Directive which reads: "MS shall make available information on..."</i> <i>Presidency seeks the views of MS on the amendment.</i>

	<i>straightforward and comprehensible manner.</i>		
	<i>2. When third-country nationals are granted a seasonal worker permit they shall be provided with information in writing about their rights and obligations under this Directive, including complaints procedures. This information shall be provided in a straightforward and comprehensible manner, in a language that the third-country national understands, or may reasonably be presumed to understand.</i>		<i>Presidency seeks the views of MS on the amendment.</i>
	<i>3. 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 prior to, or during, their period of stay in that Member State.</i>		<i>Presidency seeks the views of MS on the amendment.</i>
	<i>Amendment 69</i>		
<i>Article 9 Applications for admission</i>	<i>Article 9 Applications</i>	<i>Article 9 Applications for [...] authorisations for the purpose of seasonal work</i>	

	<i>Amendment 70</i>		
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 <i>the third-country national in conjunction with</i> the employer. <i>Member States shall allow the application to be introduced from a third country or on the territory of a Member State.</i>	1. Member States shall determine whether an application for a seasonal worker permit is to be made by the third-country national and/or by the employer.	<i>Council allows applications to be introduced from a third country only (Article 2(1)). Presidency seeks the view of MS on the EP amendment.</i>
	<i>Amendment 71</i>		
	<i>1a. Member States shall provide that recruitment agencies or other intermediaries shall not charge prospective seasonal workers any fees in exchange for organising seasonal work.</i>		<i>Presidency seeks the view of MS on the EP amendment.</i>
	<i>Amendment 72</i>		
2. Member States shall designate the authority competent to receive the application and to issue the seasonal worker permit.	2. Member States shall designate the authority competent to receive the application and to issue the seasonal worker permit <i>and the residence permit or the long-stay visa, if applicable.</i>	2. Member States shall designate the [...] authorities competent to receive and decide on the application for and to issue [...] an authorisation for the purpose of seasonal work.	
	<i>Amendment 73</i>		
	<i>2a. Member States may determine that the placement of seasonal workers from third countries must be carried out by a government</i>		<i>cf Council text in Article 14a EP and Council agree on the substance and that "from third countries" can be deleted.</i>

	<i>agency.</i>		<i>Further discussion needed where to place this provision. .</i>
	<i>Amendment 74</i>		
3. The application to reside and work in the territory of a Member State as a seasonal worker shall be submitted in a single application procedure.	<i>deleted</i>	3. The application [...] for a seasonal worker permit shall be submitted in a single application procedure.	
	<i>Amendment 75</i>		
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.	<i>deleted</i>	4. If required for initial entry , the Member State concerned shall [...] facilitate the obtaining of a long-stay visa by the third-country national whose application for a seasonal worker permit has been accepted.	
<i>Article 10 Seasonal worker permit</i>		<i>Article 10 [...] Authorisations for the purpose of seasonal work</i>	<i>EP found the Council's scheme overly complex and lacking in harmonisation.</i>
	<i>Amendment 76</i>		
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.	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.	1. For stays exceeding three months, [...] Member States shall grant applicants who comply with the provisions of Article 5b and do not fall under the grounds set out in Article 6 a long-stay visa or a seasonal worker permit.	

		2. Member States may grant applicants who comply with the provisions of Articles 5 or 5b and do not fall under the grounds set out in Article 6, a work permit authorising a third-country national to work as a seasonal worker in connection with the issuance of a short-stay visa or a long-stay visa for the purpose of seasonal work.	
		2a. Member States shall grant a work permit, in the case of stays not exceeding three months, to those applicants who comply with the provisions of Article 5 and do not fall under the grounds set out in Article 6, where the third-country national is exempted from the visa obligation in accordance with Annex II of Regulation 539/2001 and to whom Member States do not apply Article 4 (3) of Regulation 539/2001.	
	<i>Amendment 77</i>		
2. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in	<i>deleted</i>	3. The seasonal worker permit shall be issued by the competent authorities of the Member States using the format as laid down in	

Council Regulation (EC) No 1030/2002 ¹¹ . In accordance with point (a) 6.4 of the Annex to that Regulation, Member States shall enter ‘seasonal worker’ under the heading ‘type of permit’.		Council 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.	
		4. In accordance with Article 18 of the Schengen Convention and with point 12 of the Annex to Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for 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 issued for long stays.	(Recital 15b makes reference to remarks to be entered on a short-stay visa.)
		5. Member States may indicate additional information related to the employment relationship of the seasonal worker (such as the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and in point (a)16 of the Annex	

¹¹ OJ L 157, 15.6.2002, p. 1.

		thereto.	
3. Member States shall not issue any additional documents to the holder of the seasonal worker permit as proof of the access given to the labour market.		deleted	<i>Could MS agree to re-introduce the paragraph? (It has been kept in the ICT Directive).</i>
<i>Article 11 Duration of stay</i>		<i>Article 11 Duration of stay</i>	
	Amendment 78		
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.	1. Seasonal workers shall be allowed to reside for a maximum of six months in any <i>period of 12 months</i> , after which they shall <i>proceed or return to a third country unless they are otherwise entitled to stay in the territory of a Member State.</i>	1. Seasonal workers shall be allowed to [...] stay for a maximum of [...] <i>five to nine months in any period of twelve months</i> , after which they shall return to a third country <i>unless the Member State concerned has granted a residence permit under national law or Union law for purposes other than seasonal work.</i>	<i>EP has introduced a possibility for seasonal workers to go to another third country after their stay. Could MS accept that suggestion by EP?</i> <i>EP finds 6 months a good compromise for a maximum period of seasonal work. Presidency asks MS to consider that option.</i>
		1a. Member States may determine a maximum aggregate period of time during which an employer is allowed to hire seasonal workers in any period of twelve months. This period should not be shorter than the maximum period determined by a Member State in accordance with paragraph 1.	<i>Presidency suggests to improve the wording in the following way: "This period <u>shall</u> not be shorter than...".</i> <i>EP will consider the Council's text.</i>

	<i>Amendment 79</i>		
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.	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 <i>a</i> seasonal worker with a different employer. <i>They shall be permitted to remain on the territory of the Member State concerned while looking for a position with a different employer during the period of validity of their Schengen visa, long-stay visa or residence permit if a complaint was lodged by the seasonal worker against the first employer.</i>	2. Within the maximum period [...] determined by Member States in accordance with paragraph 1, and provided that the [...] provisions of [...] Articles 5 and 5b are [...] complied with and the grounds set out in Article 6 are not met , seasonal workers [...] may be allowed to extend their contract [...] and apply for an extension of their stay, on the basis of a procedure defined by national law and/or practice.	<i>EP insists on a shall-clause as it is very important for protecting seasonal workers from abuse . In certain circumstances they should also be allowed to remain on the territory of a MS to look for a new employer. EP pointed out that the exception provided for in the Council text in Article 7(3a) would not give a seasonal worker any time to search for a new employer.</i> <u>EP-suggestion:</u> 2. Within the maximum period referred to in paragraph 1 and provided that the provisions of Articles 5 [and 5b] are complied with and the grounds set out in Article 6 are not met, seasonal workers shall be allowed to extend their contract and apply for an extension of their stay. <i>Presidency seeks the views of MS on the EP position.</i>
		2a. Within the maximum period [...] determined by Member States in accordance with	<i>EP insists on a shall-clause in order to protect seasonal workers from abuse.</i>

		<p>paragraph 1, and provided that the [...] provisions of Articles 5 and 5b are complied with and the grounds set out in Article 6 are not met, seasonal workers [...] may be allowed to [...] be employed with a different employer on the basis of a procedure defined by national law and/or practice and, if necessary, apply for an extension of their stay.</p>	<p><u>EP suggestion:</u></p> <p>2a. Within the maximum period referred to in paragraph 1 and provided that the provisions of Articles 5 [and 5b] are complied with and the grounds set out in Article 6 are not met, seasonal workers shall be allowed to be employed with a different employer, <i>including upon the expiry of their contract, and to apply, if necessary, for an extension of their stay.</i></p>
		<p>3. For the purposes of paragraphs 2 and 2a, Member States shall accept the submission of an application by a seasonal worker admitted under the terms of this Directive staying on the territory of the Member State concerned.</p>	
	<i>Amendment 80</i>		
	<i>Article 11a Stays of up to three months</i>		
	<p><i>1. Applications for a seasonal worker permit for a duration of up to three months shall be accompanied by an application for a Schengen visa, if required.</i></p>		

	<p><i>2. If the seasonal worker is admitted for a stay of up to three months and the extension referred to in Article 11(2) would result in the overall duration of the stay exceeding three months, the competent authorities shall issue a residence permit or a long-stay visa covering the duration of the extended stay.</i></p>	<p>4. For the purposes of paragraphs 2 and 2a, and if the seasonal worker has been admitted for stays not exceeding 3 months and the extension would result in the overall duration of the stay exceeding 3 months, the competent authorities may extend the initial staying period in which case they shall issue a long-stay visa or a seasonal worker permit covering the duration of the extended stay, on the basis of a procedure defined by national law and/or practice.</p>	<p><i>EP did not understand the use of "may extend the initial staying period" in light of the fact that paragraphs 2 and 2a already are may-provisions.</i></p>
	<p><i>Amendment 81</i></p>		
	<p><i>Article 11b</i></p> <p><i>Stays of more than three months</i></p>		
	<p><i>1. Seasonal workers who are issued a seasonal worker permit of more than three months shall be issued a residence permit or a long-stay visa of the same duration.</i></p>		
	<p><i>2. The residence permit shall be issued by the competent authorities of the Member States using the format as laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence</i></p>		

	<i>permits for third-country nationals¹. In accordance with point (a) 6.4 of the Annex to that Regulation, Member States shall enter 'seasonal worker' under the heading 'type of permit'.</i>		
	<i>3. The long-stay visa shall be issued in the uniform format for visas as set out in Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas² with the heading specifying the type of visa with the letter "D".</i>		
	<i>4. Member States shall withdraw or refuse to renew the residence permit or the long-stay visa when they withdraw or refuse to renew the seasonal worker permit.</i>		
<i>Article 12 Facilitation of re-entry</i>		<i>Article 12 Facilitation of re-entry</i>	
	Amendment 82		
1. Member States shall either:	1. Member States shall, <i>provided that the conditions laid down in Article 5(1) continue to apply</i> , either:	1. Member States [...] may	<i>EP considers it important that MS provide for some sort of facilitated re-entry. Presidency seeks the views of MS on this issue.</i>
(a) upon application, issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative	(a) upon application, issue a third-country national with up to three seasonal worker permits covering up to three subsequent seasons	(a) upon application, issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative	

act ('multi-seasonal worker permit')	within one administrative act ('multi-seasonal worker permit'), <i>without prejudice to the maximum duration of stay laid down in Article 11(1); where the application is lodged by a seasonal worker, the employer shall inform the competent authorities that he or she wishes to employ the worker concerned under a multi-seasonal employment contract;</i>	act [...],	
or		and/or	
(b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.	(b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.	(b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.	
	<i>Amendment 83</i>		
2. Member States shall provide that:	2. Member States shall provide that a third-country national who has not complied with the obligations arising from the <i>decision to issue a seasonal worker permit</i> during a previous stay as a seasonal worker, and in particular with the obligation to return <i>or proceed</i> to a third country on the expiry of their <i>seasonal worker</i> permit, <i>or who has been convicted of a serious offence under the law of the</i>	<i>deleted</i>	<p><i>EP attaches great importance to the issue of proportionality. At the same time, the Council text in Articles 6(4) and 7(4) is a may-clause. Furthermore, the Council text is drafted as a general ground for refusal/withdrawal.</i></p> <p><i>Presidency seeks the views of MS on the matter.</i></p>

	<i>Member State, may</i> be excluded from admission as <i>a seasonal worker</i> for one or more subsequent years. <i>Any exclusion shall be proportionate to the circumstances of the case.</i>		
(a) a third-country national who has not complied with the obligations arising from the 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 permit, shall be excluded from admission as seasonal worker for one or more subsequent years;	<i>moved into the first paragraph</i>	cf Council text in Articles 6(4) and 7(4).	
(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.	<i>deleted (moved to new Article 12a)</i>	cf Council text in Article 7(3)(c) and Article 7b.	
	<i>Amendment 84</i>		
	<i>2a. Member States shall determine the conditions under which seasonal workers may apply for a longer-term residence permit.</i>		<i>EP amendment obliges MS to provide for special conditions for seasonal workers that would enable them to apply for longer term residence permits. (Seasonal Workers are excluded from the</i>

			<i>scope of the Directive on long-term residents). Presidency seeks the views of MS on the matter.</i>
	<i>Amendment 85</i>		
	<i>Article 12a</i> <i>Sanctions against employers</i>		
	<i>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.</i>		<p>cf Council text in Article 7b</p> <p><i>Council provides for a may-clause for exclusion from applications for seasonal workers and for a period of up to 3 years.</i></p> <p><u><i>EP-suggestion (related to recital (17b)</i></u></p> <p><i>1. Member States shall provide for sanctions against employers who have not fulfilled their obligations arising from this Directive. Those sanctions shall be effective, proportionate and dissuasive.</i></p> <p><i>2. The sanctions provided for in paragraph 1 shall include the exclusion of employers, who have been, or who are, in serious breach of their obligations arising from this Directive, from employing</i></p>

			<p><i>seasonal workers for a period of one or more subsequent years.</i></p> <p><i>Presidency seeks the views of MS on the EP suggestion for this paragraph.</i></p>
	<p>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.</p>		<p><u><i>EP-suggestion:</i></u></p> <p>3. 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.</p> <p><i>Presidency seeks the views of MS on the EP suggestion for this paragraph suggesting that it might be appropriate to state "... that the main contractor <u>and/or as appropriate</u> any intermediate subcontractor..".</i></p>
	<p>3. Member States shall ensure that, if the seasonal worker permit is withdrawn pursuant to point (ba), (bb) or (bc) of Article 7(2), the seasonal worker shall be entitled to receive an adequate level of compensation from the</p>		<p><u><i>EP-suggestion:</i></u></p> <p>4. Member States shall ensure that, if the seasonal workers permit is withdrawn pursuant to points (ba), (bb) or (bc) of Article 7(2), the seasonal worker shall be entitled to receive an adequate</p>

	<i>employer, and that the necessary mechanisms are in place to facilitate this.</i>		<i>level of compensation from the employer.</i>
<i>Article 13 Procedural safeguards</i>		<i>Article 13 Procedural safeguards</i>	<i>Presidency seeks the views of MS on the EP suggestion for this paragraph.</i>
	<i>Amendment 86</i>		
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.	1. The competent authorities of the Member State shall adopt a decision on the application <i>for a seasonal worker permit based on the provisions laid down in Articles 5 and 6</i> and <i>shall</i> 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. <i>The decision on an application submitted in accordance with Article 11(2) shall be taken within 15 days of the complete application being lodged.</i>	1. The competent authorities of the Member State shall adopt a decision on the application for authorisation for the purpose of seasonal work and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State, [...] as soon as possible but not later than 90 days from the date on which the complete application was lodged.	<i>EP insists on a shorter deadline than 90 days. In addition, it suggested an even shorter deadline in the case of deciding on the extension of a stay.</i>
	<i>Amendment 87</i>		
	<i>National law of the relevant Member State shall determine any consequence of a decision not</i>		<i>Presidency suggests that this paragraph be included in the Council text as well as it is a</i>

	<i>having been taken by the end of the period provided for in the first subparagraph.</i>		<i>standard one in the directives in the field of migration.</i>
	<i>Amendment 88</i>		
2. Where the information supplied in support of the application is inadequate, 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.	2. Where the information <i>or documentation</i> supplied in support of the application is <i>incomplete</i> , 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. <i>The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information required.</i>	2. Where the information supplied in support of the application <i>for authorisation for the purpose of seasonal work</i> is inadequate, 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.	<i>Presidency suggests to include the sentence on suspension asking whether this could help MS to agree to shorten the deadline provided for in paragraph 1.</i> <i>Presidency suggests to use "incomplete" instead of "inadequate" as it finds it more precise in this context. Could MS accept that point?</i>
	<i>Amendment 89</i>		
3. Any decision rejecting an application, or any decision not to renew or to withdraw the permit, shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.	3. Any decision rejecting an application, or any decision not to renew or to withdraw the <i>seasonal worker</i> permit, shall be notified in writing to the applicant <i>and, where relevant, to the employer in accordance with the notification procedures under the relevant national law</i> and shall be open to a legal challenge in the Member State concerned in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures	3. <i>Without prejudice to the procedure which may be required for the issuance of a visa referred to in Article 9(4)</i> , any decision rejecting an application <i>for authorisation for the purpose of seasonal work</i> or any decision not to extend/renew or to withdraw the [...] <i>authorisation for the purpose of seasonal work</i> shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned in accordance with national law. The	<i>EP can agree to adapt the text from Article 12(3-4) ICT Directive, whilst retaining Council's "without prejudice" clause on Article 9(4).</i> <i>EP will suggest a compromise text.</i>

	available and the time limit for taking action.	notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.	
		4. Procedures and decisions concerning short-stay visas are regulated in the relevant provisions of the Schengen <i>acquis</i>.	
		<i>Article 13a</i> <i>Fees</i>	
		Member States may require applicants to pay fees for handling applications in accordance with this Directive. The level of such fees shall be proportionate and may be based on the services actually provided for the processing of applications and the issuance of authorisations for the purpose of seasonal work. Fees for short-stay visas are regulated in the relevant provisions of the Schengen <i>acquis</i>.	<p><i>Cf EP amendment 91.</i></p> <p><i><u>EP-suggestion:</u></i></p> <p><i>Member States may require employers to pay fees for the handling of applications in accordance with this Directive. The level of such fees shall be proportionate and shall be based on the services actually provided for the processing of applications and the issuance of [authorisations for the purpose of seasonal work]. Fees for short-stay visas are regulated in the relevant provisions of the Schengen <i>acquis</i>.</i></p>

			<i>Presidency seeks the views of MS on this matter.</i>
<i>Article 14 Accommodation</i>		<i>Article 14 Accommodation</i>	<i>joint LIBE-EMPL competence</i>
	<i>Amendment 90</i>		
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.	<p>1. Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from <i>adequate accommodation, pursuant to national legislation and practice</i>, that ensures <i>a decent standard of living for the duration of the employment contract</i>. As a <i>minimum, such accommodation shall provide the conditions and facilities essential for health, security, comfort and nutrition as certified by the competent authorities</i>. These provisions shall be without prejudice to the possibility for seasonal workers to freely choose their own accommodation.</p>	Member States shall require the [...] applicant to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national legislation and/or practice . If [...] the accommodation is provided by the employer and the seasonal [...] worker is required to pay rent for such accommodation, its [...] costs shall not be excessive in relation to their remuneration.	<u><i>EP-suggestion:</i></u> <p>1. Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from <i>adequate accommodation - pursuant to national legislation and practice - which ensures a decent standard of living for the duration of the employment contract</i>. As a <i>minimum, such accommodation shall provide the conditions and facilities essential for health, security, comfort and nutrition [...]. These provisions shall be without prejudice to the possibility for seasonal workers to freely choose their own accommodation</i>.</p>

	<p>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.</p>		<p><u>EP-suggestion:</u></p> <p>2. Where a seasonal worker is required to pay rent for such accommodation, its cost shall not be excessive in relation to <u>his/her net</u> remuneration nor to the quality of the accommodation in question. <u>The rent shall not be automatically deducted from the seasonal worker's wage.</u></p>
	<p>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.</p>		<p>4. Any change of accommodation shall be reported to the competent authority. The new accommodation shall fulfil the conditions laid down in paragraphs 1, 2 and, where appropriate, 3.</p> <p>3. If the accommodation is arranged by or through the employer, that employer shall provide the seasonal worker with a rental contract or equivalent document in which the rental conditions and cost of the accommodation for the duration of that seasonal worker's stay are clearly stated .</p>

	<i>Amendment 91</i>		
	<i>Article 14a Costs</i>		cf Council text in Article 13a
	<i>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.</i>		<i>Presidency seeks the views of MS on the EP amendment.</i>
	<i>Member States may require employers of seasonal workers to pay for:</i>		
	<i>(a) the visa fee and, if applicable, any service fees related to the visa; and</i>		
	<i>(b) the cost of health insurance referred to in point (c) of Article 5(1).</i>		
	<i>When paid by the employers, such expenses shall not be recoverable from the seasonal worker.</i>		
		<i>Article 14a Placement by public employment services</i>	
		Member States may determine that the placement of seasonal workers from third countries	cf EP text in amendment 73 <i>EP can agree to the following text:</i> Member States may determine that

		shall only be carried out by public employment services.	the placement of seasonal workers [...] shall only be carried out by public employment services. <i>EP has placed the paragraph in Article 9 "Applications". Could MS agree with that?</i>
CHAPTER IV Rights		CHAPTER IV Rights	
	<i>Amendment 92</i>		
<i>Article 15 Rights on the basis of the seasonal worker permit/visa</i>	Article 15 Rights on the basis of the seasonal worker permit [...]	<i>Article 15 Rights on the basis of the seasonal worker permit or the long-stay visa</i>	
During the period of validity of a seasonal worker permit, the holder shall enjoy at least the following rights:	During the period of validity of the seasonal worker permit, the holder shall enjoy at least the right to exercise the concrete employment activity authorised under the permit in accordance with national law.	During the period of validity of a seasonal worker permit or a long-stay visa, issued for the purpose of seasonal employment the holder shall enjoy at least the following rights:	
(a) the right to enter and stay in the territory of the Member State issuing the permit;	<i>deleted (moved to Article 15a)</i>	(a) the right to enter and stay in the territory of the Member State issuing the seasonal worker permit or the long-stay visa, provided that the holder meets all the admission requirements in accordance with national law;	<i>EP enquired about the reasons for including a specific reference to admission requirements in accordance with national law. Once the permit or a visa has been issued all the admission requirements under this Directive will have deemed to be met and this should suffice.</i>
(b) free access to the entire territory	<i>deleted (moved to Article 15a)</i>	(b) free access to the entire territory	

of the Member State issuing the permit within the limits provided for by national law;		of the Member State issuing the seasonal worker permit or the long-stay visa within the limits provided for by national law;	
(c) the right to exercise the concrete employment activity authorised under the permit in accordance with national law.	<i>moved to the first paragraph</i>	(c) the right to exercise the concrete employment activity authorised under the seasonal worker permit as well as under the long-stay visa and the work permit, if required, in accordance with national law.	
	Amendment 93		
	Article 15a Rights on the basis of the residence permit or the long-stay visa		cf Commission and Council text in Article 15
	<i>During the period of validity of the residence permit, the holder shall enjoy at least the following rights:</i>		
	<i>(a) the right to enter and stay in the territory of the Member State issuing the permit; and</i>		
	<i>(b) free access to the entire territory of the Member State issuing the permit within the limits provided for by national law.</i>		

<i>Article 16 Rights</i>		<i>Article 16 Right to equal treatment</i>	<i>exclusive EMPL competence</i>
<i>Amendment 94</i>			
Whatever the law applicable to the employment relationship, seasonal workers shall be entitled to:	Seasonal workers shall be entitled to <i>equal treatment with nationals of the host Member State as a minimum with regard to:</i>	1. Seasonal workers admitted under this directive shall enjoy equal treatment with nationals of the Member State concerned with regard 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.	1. <i>terms of employment, including the minimum working age, and</i> working conditions, including pay and dismissal, <i>working hours, leave and holidays</i> , as well as health and safety requirements at the workplace, as laid down by law, regulation or administrative provision, collective agreements <i>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.</i>	(a) working conditions, including pay and dismissal as well as health and safety requirements at the workplace; [...]	<i>EP will consider Council's text but suggested to use "terms and conditions of employment".</i>
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	<i>deleted</i>	<i>deleted</i>	

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:	<i>deleted</i>		
(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;	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 <i>rights and</i> benefits conferred by such organisations, <i>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</i> , without prejudice to the national provisions on public policy and public security;	(b) 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;	<i>Presidency seeks the views of MS on EP amendment.</i>
	3. back payments to be made by the employers. In respect of infringements of this Article, the employer shall pay:		<i>Presidency seeks the views of MS on EP amendment.</i>

	<i>(a) any outstanding remuneration to the third-country national; and</i>		
	<i>(b) any outstanding taxes and social security contributions, including relevant administrative fines;</i>		
(b) provisions in national laws regarding the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04;	4. 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;	(c) provisions in national laws regarding the branches of social security as defined in Article 3 of Council Regulation (EC) No 883/04;	<i>EP will consider keeping the text in its amendment in Recital 22a only. However, the word "non-discriminatory" should be inserted in the recital.</i>
(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;	deleted	(d) payment of statutory pensions based on the worker's previous employment and acquired in accordance with the legislation referred to 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 [...] moving to a third country;	cf last paragraph (after paragraph 8) of EP text

(d) access to goods and services and the supply of goods and services made available to the public, except public housing and counselling services afforded by employment services.	5. access to goods and services and the supply of goods and services made available to the public <i>in accordance with national law. This paragraph shall be without prejudice to freedom of contract in accordance with national and Union law;</i>	(e) access to goods and services and the supply of goods and services made available to the public, except [...] procedures for obtaining housing as provided for by national law, without prejudice to the freedom of contract in accordance with Union and national law, and [...] services afforded by employment [...] offices.	<i>EP could not support the exclusion of public housing and employment services, especially since it provides for a possibility for seasonal workers to look for a new job.</i>
	6. education and vocational training;		<i>EP would like to provide for a possibility for seasonal workers to attend evening courses, language and computer courses etc.</i>
	7. recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures and with Union law; and		<i>EP gave examples such as certificates for jobs in the tourism sector, for chefs, language certificates, etc. Furthermore, if the Council requires documentation attesting that the third-country national fulfils the conditions for the exercise of regulated professions, then equal treatment for the recognition of qualifications should also be provided for.</i>
	8. tax benefits, in so far as the seasonal worker is deemed to be resident for tax purposes in the Member State concerned.		<i>Presidency seeks the views of MS on EP amendment.</i>

	<i>Third-country national seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive, in relation to old-age, employment injury, invalidity and death, statutory pensions based on the seasonal worker's 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.</i>		<i>EP suggested to move the reference to survivor's pensions from Recital 22 to the Article.</i> <i>Presidency seeks the views of MS on EP amendment.</i>
		2. Member States may decide that equal treatment under point (c) of paragraph 1 shall not apply as regards family benefits and unemployment benefits, without prejudice to Council Regulation (EC) No 1231/2010.	<i>EP is of the opinion that although most seasonal workers would not qualify for these benefits but if they do, they should have the right to get them. Seasonal workers might have family members who are already on the territory of a MS and they should have access to relevant benefits.</i>
	<i>Amendment 95</i>		
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	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	3. The right to equal treatment provided for in paragraph [...] 1 shall be without prejudice to the right of the Member State to	

refuse to renew the permit in accordance with Article 7.	refuse to renew the permit in accordance with Article 7.	withdraw or to refuse to extend or renew the [...] authorisation for the purpose of seasonal work in accordance with Article 7.	
	<i>Amendment 96</i>		
	<i>Article 16a Monitoring and inspections</i>		
	<p><i>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.</i></p>		
	<p><i>Member States shall ensure that organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation.</i></p>		

	<i>2. Member States shall ensure that at least 10% of employers offering seasonal employment established on their territory are subject to inspections every year.</i>		
	<i>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.</i>		
<i>Article 17 Facilitation of complaints</i>		<i>Article 17 Facilitation of complaints</i>	<i>joint LIBE-EMPL competence</i>
	<i>Amendment 97</i>		
	<i>1. 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.</i>		

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.	2. 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 <i>and after providing clear and comprehensible information</i>, 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, in any administrative or civil proceedings, excluding the procedures and decisions concerning short-stay visas , provided for with the objective of implementing this Directive.	
	<i>3. 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.</i>		
CHAPTER V Final provisions		CHAPTER V Final provisions	
<i>Article 18 Statistics</i>		<i>Article 18 Statistics</i>	
	<i>Amendment 98</i>		
1. Member States shall	1. Member States shall	1. Member States shall,	<i>EP can agree to Council's text,</i>

<p>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.</p>	<p>communicate to the Commission statistics on the number of <i>seasonal worker</i> permits issued for the first time or renewed and, as far as possible, on the number of <i>seasonal worker</i> permits withdrawn to persons who are third-country nationals, disaggregated by citizenship, age and sex, length of validity of the <i>seasonal worker</i> permit and economic sector.</p>	<p>communicate to the Commission statistics on the number of [...] authorisations for the purpose of seasonal work issued for the first time and, as far as possible, on the number of [...] third-country nationals whose authorisation for the purpose of seasonal work has been [...] extended/renewed [...] or withdrawn. These statistics should be disaggregated by citizenship, [...] the length of validity of the [...] authorisation and, as far as possible, by the economic sector.</p>	<p><i>subject to general agreement on the terms "seasonal worker permit" / "authorisation for the purposes of seasonal work" throughout the Directive.</i></p> <p>1. Member States shall, communicate to the Commission statistics on the number of [...] authorisations for the purpose of seasonal work issued for the first time and, as far as possible, on the number of [...] third-country nationals whose [authorisation for the purpose of seasonal work] has been [...] extended/renewed [...] or withdrawn. These statistics shall be disaggregated by citizenship, [...] the length of validity of the [...] authorisation and, as far as possible, by the economic sector.</p>
<p>2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council¹².</p>		<p>2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be <i>[the year following the point of time referred to in Article 20(1)]</i>.</p>	

¹² OJ L 199, 31.7.2007, p. 23.

3. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be [the year following the point of time referred to in Article 20(1)].		3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council¹³.	
<i>Article 19 Reporting</i>		<i>Article 19 Reporting</i>	
	<i>Amendment 99</i>		
Every three years, and for the first time no later than [<i>three years after the date of transposition of this Directive</i>], the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.	Every two years, and for the first time no later than [two years after the date of transposition of this Directive], the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.	Every three years, and for the first time no later than [<i>three years after the date of transposition of this Directive</i>], the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.	
<i>Article 20 Transposition</i>		<i>Article 20 Transposition</i>	
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by		1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by	

¹³ OJ L 199, 31.7.2007, p. 23.

<p>(24 months from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p>		<p>([...] three years from the date of publication in the Official Journal of the European Union) at the latest. They shall forthwith communicate to the Commission the text of those provisions [...].</p>	
<p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>		<p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	
<p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>		<p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	
<p><i>Article 21 Entry into force</i></p>		<p><i>Article 21 Entry into force</i></p>	
<p>This Directive shall enter into force on the day following its publication in the <i>Official Journal of the European Union</i>.</p>		<p>This Directive shall enter into force on the day following its publication in the <i>Official Journal of the European Union</i>.</p>	

<i>Article 22 Addressees</i>		<i>Article 22 Addressees</i>	
This Directive is addressed to the Member States, in accordance with the Treaty on the Functioning of the European Union.		This Directive is addressed to the Member States, in accordance with the Treaty on the Functioning of the European Union.	
Done at Brussels, [...]		Done at Brussels, [...]	
<i>For the European Parliament The President</i>		<i>For the European Parliament The President</i>	
<i>For the Council The President</i>		<i>For the Council The President</i>	