

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

DIRECTIVE 2014/36/EU OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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on the conditions of entry and stay of third-country nationals
for the purpose of employment as seasonal workers

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 points
(a) and (b) of Article 79(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) The TFEU provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals staying legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and stay of third-country nationals and on the definition of their rights.
- (3) The Hague Programme, adopted by the European Council on 4 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.
- (4) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007. Those steps 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.

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- (5) The European Pact on Immigration and Asylum, adopted by the European Council on 16 October 2008, expresses the commitment of the 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.
- (6) The Stockholm Programme, adopted by the European Council on 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. It also highlights the importance of ensuring fair treatment of third-country nationals staying legally on the territory of the Member States and of optimising the link between migration and development. It invites the Commission and the European Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's communication of 21 December 2005.
- (7) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration and to ensuring decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the Council⁽⁴⁾ will contribute to avoiding such temporary stay turning into unauthorised stay.
- (8) Member States should give effect to 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, disability, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC⁽⁵⁾ and Council Directive 2000/78/EC⁽⁶⁾.
- (9) This Directive should be without prejudice to the principle of preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of the relevant Acts of Accession.
- (10) 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 the TFEU.
- (11) This Directive should not affect the conditions of the provision of services in the framework of Article 56 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⁽⁷⁾, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State.

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- (12) This Directive should cover direct working relationships between seasonal workers and employers. However, where a Member State's national law allows admission of third-country nationals as seasonal workers through employment or temporary work agencies established on its territory and which have a direct contract with the seasonal worker, such agencies should not be excluded from the scope of this Directive.
- (13) When transposing this Directive, Member States should, where appropriate in consultation with social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. Activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture and horticulture, in particular during the planting or harvesting period, or tourism, in particular during the holiday period.
- (14) If so provided under national law and in accordance with the principle of non-discrimination as set out in Article 10 TFEU, Member States are allowed to apply more favourable treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive.
- (15) It should only be possible to apply for admission as a seasonal worker while the third-country national is residing outside the territory of the Member States.
- (16) It should be possible to refuse admission for the purposes of this Directive on duly justified grounds. In particular, it should be possible to refuse admission if a Member State considers, on the basis of an assessment of the facts, that the third-country national concerned is a potential threat to public policy, public security or public health.
- (17) This Directive should be without prejudice to the application of Directive 2008/115/EC of the European Parliament and of the Council⁽⁸⁾.
- (18) This Directive should not adversely affect the rights that have been granted to third-country nationals who are already legally staying in a Member State for the purpose of work.
- (19) In the case of Member States applying the Schengen *acquis* in full, Regulation (EC) No 810/2009 of the European Parliament and of the Council⁽⁹⁾ (Visa Code), Regulation (EC) No 562/2006 of the European Parliament and of the Council⁽¹⁰⁾ (Schengen Borders Code), and Council Regulation (EC) No 539/2001⁽¹¹⁾ apply in their entirety. Accordingly, for stays not exceeding 90 days, the conditions for admission of seasonal workers to the territory of the Member States applying the Schengen *acquis* in full are regulated by those instruments, while this Directive should only regulate the criteria and requirements for access to employment. In the case of Member States not applying the Schengen *acquis* in full, with the exception of the United Kingdom and Ireland, only the Schengen Borders Code applies. The provisions of the Schengen *acquis* referred to in this Directive belong to that part of the Schengen *acquis* in which Ireland and the United Kingdom do not take part and therefore those provisions do not apply to them.
- (20) Criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding 90 days should be defined in

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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 *acquis* 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 Articles 32(2) and 34(6) of the Visa Code, to the applicant by means of the standard form set out in Annex VI to the Visa Code.

- (21) For seasonal workers who are admitted for stays of longer than 90 days, this Directive should define both the conditions for admission to and stay in the territory and the criteria and requirements for access to employment in the Member States.
- (22) This Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the essential aspects of the contract or employment relationship.
- (23) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.
- (24) 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 leave the territory of the Member State concerned on the expiry of an authorisation for the purpose of seasonal work.
- (25) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed in order to prevent possible abuse and misuse of the procedure set out in this Directive.
- (26) Provision for a single procedure leading to one combined permit, encompassing both stay and work, should contribute to simplifying the rules currently applicable in Member States. That should not affect the right of Member States to designate the competent authorities and the way in which they should be involved in the single procedure, in accordance with national specificities of administrative organisation and practice.
- (27) 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, in accordance with national law and/or practice, with regard to the examination of, and the decision on, the application.
- (28) This Directive should provide for a degree of flexibility for Member States regarding the authorisations to be issued for the admission (entry, stay and work) of seasonal workers. The issuing of a long-stay visa in accordance with point (a) of Article 12(2) should be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned. Nevertheless, in order to ensure that the conditions of employment as provided for by this Directive have been checked and are met, it should be made clear on those authorisations that they were issued for the purpose of seasonal work. Where only short-stay visas are issued, Member States should make use of the 'remarks' heading of the visa sticker for that purpose.

- (29) For all stays not exceeding 90 days, Member States should choose to issue either a short-stay visa or a short-stay visa accompanied by a work permit in cases where the third-country national requires a visa in accordance with Regulation (EC) No 539/2001. Where the third-country national is not subject to the visa requirement and where the Member State did not apply Article 4(3) of that Regulation, the Member States should issue a work permit to him or her as an authorisation for the purpose of seasonal work. For all stays exceeding 90 days, Member States should choose to issue one of the following authorisations: a long-stay visa; a seasonal worker permit; or a seasonal worker permit accompanied by a long-stay visa, if the long-stay visa is required under national law for entering the territory. Nothing in this Directive should preclude Member States from delivering a work permit directly to the employer.
- (30) Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued a seasonal worker permit, the Member State concerned should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.
- (31) The maximum duration of stay should be fixed by Member States and limited to a period of between five and nine months which, together with the definition of seasonal work, should ensure that the work is of genuinely seasonal nature. Provision should be made to the effect that within that maximum duration of stay, an extension of the contract or change of employer is possible, provided that the admission criteria continue to be met. That should serve to reduce the risk of abuse 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. The possibility for the seasonal worker to be employed by a different employer under the conditions laid down in this Directive should not entail the possibility for the seasonal worker to seek employment on the territory of the Member States while being unemployed.
- (32) When deciding on the extension of stay or the renewal of the authorisation for the purpose of seasonal work, Member States should be able to take into consideration the labour market situation.
- (33) In cases where a seasonal worker has been admitted for a stay not exceeding 90 days and where the Member State has decided to extend the stay beyond 90 days, the short-stay visa should be replaced either by a long-stay visa or by a seasonal worker permit.
- (34) Taking into account certain aspects of circular migration as well as the employment prospects of third-country seasonal workers beyond a single season and the interests of Union employers in being able to rely on a more stable and already trained workforce, the possibility of facilitated admission procedures should be provided for in respect of bona fide third-country nationals who have been admitted as seasonal workers in a Member State at least once within the previous five years, and who have always respected all criteria and conditions provided under this Directive for entry and stay in the Member State concerned. Such procedures should not affect, or circumvent, the requirement that the employment be of a seasonal nature.

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- (35) Member States should do their best to ensure that information on conditions of entry and stay, including the rights and obligations and the procedural safeguards as laid down in this Directive and all documentary evidence needed for an application to stay and work in the territory of a Member State as a seasonal worker, is made available to applicants.
- (36) Member States should provide for effective, proportionate and dissuasive sanctions against employers in the event of breaches of their obligations under this Directive. Those sanctions could consist of measures as provided for in Article 7 of Directive 2009/52/EC and should include, if appropriate, liability of the employer to pay compensation to seasonal workers. The necessary mechanisms should be in place to enable seasonal workers to obtain the compensation to which they are entitled even if they are no longer on the territory of the Member State in question.
- (37) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. That procedure 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.
- (38) In the case of short-stay visas, the procedural safeguards are governed by the relevant provisions of the Schengen *acquis*.
- (39) The competent authorities of the Member States should decide on applications for an authorisation for the purpose of seasonal work as soon as possible after they are submitted. In relation to applications for an extension or renewal, where submitted within the period of validity of the authorisation, Member States should take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employers, due to on-going administrative procedures. Applicants should submit their application for extension or renewal as soon as possible. In any event, the seasonal worker should be allowed to stay on the territory of the Member State concerned, and where appropriate to continue working, until a final decision on the application for an extension or renewal has been taken by the competent authorities.
- (40) Given the nature of seasonal work, Member States should be encouraged not to charge a fee for the handling of applications. In the event that a Member State nevertheless decides to charge a fee, such a fee should not be disproportionate or excessive.
- (41) Seasonal workers should all benefit from accommodation that ensures an adequate standard of living. The competent authority should be informed of any change of accommodation. Where the accommodation is arranged by or through the employer the rent should not be excessive compared with the net remuneration of the seasonal worker and compared with the quality of that accommodation, the seasonal worker's rent should not be automatically deducted from his or her wage, the employer should provide the seasonal worker with a rental contract or equivalent document stating the rental conditions for the accommodation, and the employer should ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.

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- (42) Third-country nationals who are in possession of a valid travel document and an authorisation for the purpose of seasonal work issued under this Directive by a Member State applying the Schengen *acquis* in full are 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 90 days in any 180-day period in accordance with the Schengen Borders Code and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders⁽¹²⁾ (Schengen Implementing Convention).
- (43) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to provide effective protection of the rights of third-country national seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, abiding by the concept 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 any level 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.
- (44) This Directive should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and, where relevant, the European Convention on the Legal Status of Migrant Workers of 24 November 1977.
- (45) In addition to the legislative, administrative and regulatory provisions applicable to workers who are nationals of the host Member State, arbitration decisions and collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice, should also apply to third-country national seasonal workers under the same terms as to nationals of the host Member State.
- (46) 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 of the European Parliament and of the Council⁽¹³⁾. This Directive does not harmonise the social security legislation of Member States and does not cover social assistance. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its 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 the stay of seasonal workers and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council⁽¹⁴⁾, Member States should be able to exclude family benefits and unemployment benefits from equal treatment between seasonal workers and their own nationals and should be able to limit the application of equal treatment in relation to education and vocational training, as well as tax benefits.
- This Directive does not provide for family reunification. Furthermore, this Directive does not grant rights in relation to situations which lie outside the scope of Union law

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such as, for example, situations where family members reside in a third country. That 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 should be without prejudice to the non-discriminatory application by Member States of national law providing for *de minimis* rules on contributions to pension systems. Mechanisms should be in place in order to ensure effective social security coverage during the stay and the exporting of acquired rights of the seasonal workers, where applicable.

- (47) 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.
- (48) Any restrictions on 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.
- (49) 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 are in place for the monitoring of employers and that, where appropriate, effective and adequate inspections are carried out on their respective territories. The selection of employers to be inspected should be based primarily on a risk assessment to be carried out 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.
- (50) To facilitate enforcement of this Directive, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through relevant third parties such as trade unions or other associations. That is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use them in their own name, out of fear of possible consequences. Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.
- (51) Since the objectives of this Directive, namely the introduction of a special admission procedure, the adoption of conditions on entry and stay for the purpose of seasonal work by third-country nationals and the definition of their rights as seasonal workers, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU), taking account of immigration and employment policies at European and national level. 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.
- (52) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular, Articles 7, 15(3), 17, 27, 28, 31 and 33(2) thereof, in accordance with Article 6 TEU.

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- (53) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011⁽¹⁵⁾, 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.
- (54) 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 TEU and to the TFEU, 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.
- (55) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, 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:

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- (1) [OJ C 218, 23.7.2011, p. 97.](#)
- (2) [OJ C 166, 7.6.2011, p. 59.](#)
- (3) Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and decision of the Council of 17 February 2014.
- (4) Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals ([OJ L 168, 30.6.2009, p. 24.](#))
- (5) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ([OJ L 180, 19.7.2000, p. 22.](#))
- (6) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([OJ L 303, 2.12.2000, p. 16.](#))
- (7) 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 ([OJ L 18, 21.1.1997, p. 1.](#))
- (8) Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ([OJ L 348, 24.12.2008, p. 98.](#))
- (9) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)([OJ L 243, 15.9.2009, p. 1.](#))
- (10) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ([OJ L 105, 13.4.2006, p. 1.](#))
- (11) 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 requirement ([OJ L 81, 21.3.2001, p. 1.](#))
- (12) [OJ L 239, 22.9.2000, p. 19.](#)
- (13) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ([OJ L 166, 30.4.2004, p. 1.](#))
- (14) Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality ([OJ L 344, 29.12.2010, p. 1.](#))
- (15) [OJ C 369, 17.12.2011, p. 14.](#)