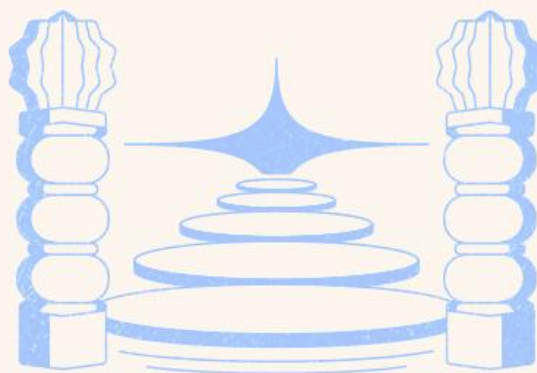




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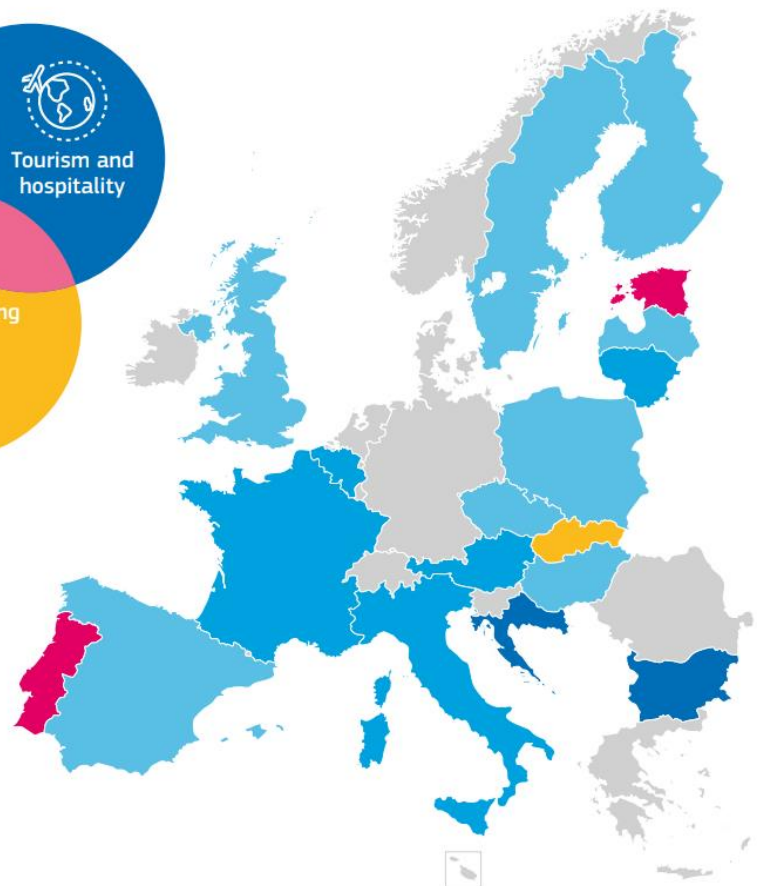
**Directive 2014/36/EU** of the  
EP and of the Council of 26  
February 2014 on the  
**conditions of entry and  
stay of third-country  
nationals for the purpose  
of employment as seasonal  
workers**

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Map source European Migration Network (2020). [Attracting and protecting the rights of seasonal workers in the EU and the UK](#)

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# Overview

- It aims to set out **fair and transparent** rules for admission and stay of non-EU citizens wishing to work in a MS for short periods as **seasonal workers** → to fill labour market needs.
- It establishes:
  - Procedure and Authorisation
  - Procedural safeguards
  - Rights
  - Sanctions
  - Monitoring, assessment and inspections

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# Definitions

## Article 3

**Third-country national** ➡ person who is not a citizen of the EU within the meaning of Article 20(1) TFEU ➡ SCOPE of Directive 2014/36

**Seasonal worker** ➡ TCN who retains his or her principal place of **residence in a 3<sup>rd</sup> country** and **stays legally and temporarily in a MS** to carry out an **activity dependent on the passing of the seasons.**

↓  
tied to a **certain time of the year** by a **recurring event** or pattern of events linked to seasonal conditions + required labour levels are significantly high ➡ SCOPE of Directive 2014/36

**short-stay visa** ➡ **authorisation** issued by a MS as provided for in Article 2(2)(a) of the **Visa Code** or in accordance with **national law** (MS not applying Schengen *acquis* in full: IE and DK).

**long-stay visa** ➡ **authorisation** issued by a MS as provided for in Article 18 of the **Schengen Implementing Convention** or issued in accordance with **national law** (MS not applying Schengen *acquis* in full: IE and DK).

**Single application procedure** ➡ **procedure** leading to a decision on the application for a **seasonal worker permit.**

↓  
**authorisation** issued using the format in Regulation No 1030/2002 for uniform format for residence permits for non-EU nationals as "Seasonal Worker" **entitling its holder to stay and work in a MS for a stay exceeding 90 days.**

**Authorisation for the purpose of seasonal work** ➡ as on Directive 2014/36 entitling their **holder to stay and work** on the MS that issued it.

**work permit** ➡ **authorisation** issued by a MS as in **national law** for the purpose of **work.**

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# EU Legal Framework

- Background
  - TFEU: common immigration policy
  - Hague Programme (European Council, 2004)
  - European Pact on Immigration and Asylum (European Council, 2008)
  - Stockholm Programme (European Council, 2009) ➡ Policy Plan on Legal Migration
- **MS applying Schengen acquis in full: Visa Code** (Regulation EC 810/2009), **Schengen Borders Code** (Regulation EC 562/2006 replaced by Regulation (EU) 2016/399) and **Council Regulation** listing 3<sup>rd</sup> countries whose nationals must be in possession of visa (currently in force Regulation (EU) 2018/1806)
- **Non-discrimination and equal treatment:** Council Directive 2000/43/EC implementing the **principle of equal treatment** between persons **irrespective of racial or ethnic origin** and Council Directive 2000/78/EC establishing a general framework for **equal treatment in employment and occupation**
- Directive 2009/52/EC for minimum standards on **sanctions and measures** against employers of illegally staying third-country nationals



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# Applications

- **TCN** who are
  - residing outside EU (except extension/renewal)
  - pursuing employment as seasonal workers
- **Employers** are under the obligation to cooperate with Competent Authorities (CA).
- Directive 2014/36 **does not apply** to 3<sup>rd</sup>-country nationals
  - residing in a MS
  - carrying out activities in the framework of provision of services
  - EU-citizens' family members having exercised their right of free movement within the Union
- MS **SHALL decide** the **application to be submitted** by employer and/or by 3<sup>rd</sup>-country national.
- MS **MAY determine** if placement of seasonal workers is only to be carried out by public employment services.
- MS **MAY apply** more favourable treatment to nationals of a certain 3<sup>rd</sup>-country (bilateral/multilateral agreements).
- MS to determine **volumes of admission** of TCN entering its territory for the purpose of seasonal work.

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# Access to information

Article 11

- MS **SHALL make** easily **accessible** to applicants the information regarding:
  - Documentary evidence needed for the application.
  - Entry and stay.
  - Rights and obligations.
  - Procedural safeguards.
- MS **SHALL provide** seasonal workers information in writing about their rights and obligations, including **complaint procedures**.





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# Conditions of Admission

Articles 5 &12

## Stays <90 days

- **Requirements (SHALL CLAUSE):**
  - valid work contract or binding job offer
  - If regulated profession: further documentation may be required
  - sickness insurance
  - evidence of adequate accommodation
  - MS **SHALL verify** he or she
    - does not present risk of illegal immigration.
    - intends to leave the territory.
    - does not pose a potential threat to public policy, public security or public health.
- **MS SHALL choose when transposing** (a and c or b and c):
  - a. short-stay visa issued for the purpose of seasonal work
  - b. short-stay visa and a work permit issued for the purpose of seasonal work
  - c. work permit issued for the purpose of seasonal work (if TCN is exempted from visa requirement)





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# Conditions of Admission

Articles 6 &12

## Stays >90 days

- **Requirements (SHALL CLAUSE):**
  - valid work contract or binding job offer
  - if regulated profession: further documentation may be required
  - sickness insurance
  - evidence of adequate accommodation
  - evidence of sufficient resources during his or her stay
  - to be in possession of a valid travel document to cover at least the period of authorisation
    - MS **SHALL verify** he or she
  - does not present risk of illegal immigration.
  - intends to leave the territory.
  - does not pose a potential threat to public policy, public security or public health.
- **MS SHALL choose one when transposing:**
  - a. long-stay visa issued for the purpose of seasonal work
  - b. seasonal worker permit
  - c. seasonal worker permit and a long-stay visa (if long-stay visa is required under national law)

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# Grounds for Rejection Withdrawal

## Article 8

- MS **SHALL reject** where:
  - Articles 5 & 6 are not complied with.
  - Documents presented are fraudulently acquired, falsified or tampered.
- MS **SHALL reject** the application where:
  - Employer was sanctioned for undeclared work and/or illegal employment.
  - Business has been wound up under national insolvency.
  - Employer was sanctioned under this Directive.
- MS **MAY verify** whether the vacancy could be filled by nationals or by other EU citizens.
- MS **MAY reject** application when:
  - Employer failed to meet its legal obligations (Social Security, taxation, etc).
  - 12 months prior to the application, a vacancy was created after the abolition of a full-time position.
  - TCN did not comply the obligations arising from previous admission as seasonal worker.

Grounds for rejection of short-stay visas are regulated in Visa Code.

## Article 9

- MS **SHALL withdraw** where:
  - Documents presented were fraudulently acquired, falsified or tampered.
  - Holder is staying for purpose other than authorised for.
- MS **SHALL withdraw\*** where:
  - Employer was sanctioned for undeclared work and/or illegal employment.
  - Business has been wound up under national insolvency.
  - Employer was sanctioned under this Directive.
- MS **MAY withdraw** where:
  - Articles 5 & 6 are not complied with.
  - \*Employer failed to meet its legal obligations (Social Security, taxation, etc).
  - \*Employer hasn't fulfilled its contract obligations.
  - \*12 months prior to the application, a vacancy was created after the abolition of a full-time position.
- MS **MAY withdraw** where TCN applies for international protection or protection in accordance with national laws or international obligations.

Grounds for rejection of short-stay visas are regulated in Visa Code.



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# Extension of the stay and renewal of the authorisation

## Article 15

Within the maximum duration of the stay

- MS **SHALL allow** seasonal workers one extension of their stay with the same employer.
- MS **MAY decide** to allow to extend the contract with the same employer and the stay more than once.
- MS **SHALL allow seasonal** workers one extension of their stay to be employed with a different employer.
- MS **MAY decide** to allow to be employed by a different employer and to extend their stay more than once.

MS **SHALL accept** the submission of an application when the seasonal worker is in the MS.

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

**Grounds for refusal** of the extension of the stay or renewal of the authorisation:

- MS **MAY refuse** the application when the vacancy could be filled by nationals of the MS, Union citizen's or TCN lawfully residing in the MS.
- MS **SHALL refuse** the application when the maximum duration has been reached.
- MS **MAY refuse** the application if TCN applies for international protection under international obligations, EU or national legislation.

Grounds for withdrawal as in **Article 9 (2)\* and 3(b &c)\*** **SHALL not** apply to seasonal worker who applies to be employed by a different employer, as those provisions apply to the previous employer.

Any decision on the application **SHALL take account** of the specific circumstances of the case, respecting the interests of the seasonal worker and the principle of proportionality.

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## Facilitation of Re-entry

Article 16

MS **SHALL facilitate** re-entry of those who were admitted by that MS at least once within previous 5 years and fully respected the conditions applicable to them.

Facilitation **MAY include** one or more measures such as:

- The **grant of an exemption** from the requirement to submit one or more documents in the application.
- The **issuing of several** seasonal worker permits in a single administrative act.
- An **accelerated** procedure leading to a decision on an application.
- **Priority** in examining applications for admission as a seasonal worker.



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## Duration of Stay

### Article 14

- MS **SHALL determine** a maximum period of stay which shall not be less than 5 months and max. of 9 months in a 12 month-period.
- MS **MAY determine** a maximum period within any 12 month-period which an employer is allowed to hire seasonal workers.

## Fees and Costs

### Article 19

- MS **MAY require** the payment of fees for the handling of applications which **SHALL not be** disproportionate or excessive.
- Fees for short-stay visas are regulated in relevant provisions of Schengen *acquis*.
- If fees are paid by TCN, MS **MAY provide** that they are entitled to be reimbursed by the employer.
- MS **MAY require** employers to pay for:
  - Cost of travel of the seasonal worker.
  - Cost of sickness insurance.

Such costs **SHALL not be** recoverable from the seasonal worker.

## Sanctions against employers

### Article 17

- MS **SHALL provide** sanctions against employers who have not fulfilled their obligations under this Directive.
- Sanctions **SHALL be** effective, proportionate and dissuasive.
- MS **SHALL ensure** that if the authorisation is withdrawn following a breach by the Employer, he or she is **liable to pay any compensation** to the seasonal worker.
- Where the employer is a **subcontractor**, the main contractor or intermediate contractor **MAY**, in addition to or in place of the employer:
  - Be subject to sanctions.
  - Be liable to pay any compensation due to the seasonal worker.
  - Be liable to pay back payments due to seasonal worker.
- MS **MAY provide** for more stringent liability rules under national law.



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# Procedural safeguards

## Article 18

- CA **SHALL adopt and notify** a written decision **as soon as possible no later 90 days** from the submission of the complete application.
- In the case of extension or renewal MS **SHALL take all reasonable steps** to avoid the interruption the employment relationship.
  - If validity of authorisation expires during before the decision is taken by CA, **MS SHALL allow** the seasonal worker to stay on their territory, provided that the application was made within the period of validity.
  - MS **MAY**, inter alia, **decide to**
    - Issue a national temporary residence.
    - Allow seasonal worker to work until the decision is taken.
- Where the application is incomplete, CA **SHALL notify** the applicant so he or she may provide additional information, including the deadline to provide it.
- The reasons leading to declare an application inadmissible or to reject it **SHALL be given** in written to the seasonal worker and, if provided in national law, the employer.
- CA's decision **SHALL be open to legal challenge**.
- the notification **SHALL specify** the court or administrative authority with which an appeal may be lodged and the time-limit to lodge it.

Short-stay visa procedural safeguards are regulated in Visa Code.



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# Accommodation

Article 20

- MS **SHALL require** evidence that the seasonal worker will benefit from adequate accommodation for the duration of the stay.
- CA **SHALL be informed** of any change of accommodation.
- Where accommodation is arranged by/through the employer:
  - Seasonal worker **MAY be required** to pay a rent which **SHALL not** be excessive. Rent **SHALL not** be automatically deducted from his/her salary.
  - Employer **SHALL provide** the seasonal worker with a rental contract or equivalent document.
  - Employer **SHALL ensure** that the accommodation meets the general health and safety standards.





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# Seasonal Workers' Rights

Article 22

The holder of the authorisation SHALL enjoy at least the following rights on the basis of the **authorisation**:

- The right to enter and stay in the territory of the MS.
- Free access to the entire territory of the MS.
- The right to exercise the concrete employment under the authorisation was issued.



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# Seasonal Workers' Rights

Article 23

Seasonal Worker **SHALL be entitled to equal treatment** with nationals of the MS, at least with regard to:

- Employment: minimum working age, working conditions (pay, dismissal, working hours, leave, holidays), health and safety requirements at the workplace.
- Right to strike and take industrial action in accordance with national laws, freedom of association, affiliation and membership of an organization representing workers, etc.
- Back payments to be made by the employers.
- Branches of social security as in article 3 of Regulation (EC) No 883/2004, on the coordination of social security systems.
- Services made available to the public (except housing, without prejudice to the freedom of contract).
- Advice services on seasonal work afforded by employment offices.
- Education and vocational training.
- Recognition of diplomas, certificates and other professional qualifications.
- Tax benefits (if he or she is considered a resident for tax purposes)

Seasonal Workers moving to a 3<sup>rd</sup> country, or his or her survivors residing in a 3<sup>rd</sup> country, **SHALL receive statutory pensions**, under the same conditions and rates as nationals moving to 3<sup>rd</sup> countries.

MS **MAY restrict** family and unemployment benefits, education and vocational training (limiting to those directly linked to the employment activity) and some tax benefits.

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## Monitoring, assessment and inspections

Article 24

- MS **SHALL provide** for measures **to prevent possible abuses** and **to sanction infringements**.



Measures **SHALL include** in accordance with national law and administrative practice:

- Monitoring
- Assessment
- Inspection
- MS **SHALL ensure** that services in charge of inspection of labour, Competent Authorities, and where appropriate, organizations representing worker's interest, **have access to workplace and to the accommodation** (with the agreement of the worker).

## Facilitation of Complaints

Article 25

- MS **SHALL ensure** that there are **effective mechanisms** through which seasonal workers may **lodge complaints against their employers** directly or through third parties which have a legitimate interest.
- MS **SHALL ensure** that **third parties** which have (in accordance with national law) a legitimate interest **may engage either on behalf of or in support of a seasonal worker** in any administrative or civil proceedings.
- MS **SHALL ensure** that seasonal workers have the **same access** as other workers in a similar position to **measures protecting against dismissal or other adverse treatment** by the employer as a reaction to a complaint or to any legal proceedings.



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# Case

1 - Marco, from Argentina and currently residing in Italy with a long-stay visa from 2021, has a job offer for a position in the IT sector in Spain. The employment relationship is expected to last at least 12 months. Is the application within the scope of the Directive 2014/36?

2 - Mariam, from Egypt and residing in El Cairo, has submitted the application for a seasonal worker's permit. She has a contract to work in the hospitality sector in Dubrovnik (Croatia) for a period under of 9 months. Is the application within the scope of the Directive 2014/36?



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1 – No, as he is currently residing in a MS. Applications are to be made by TCN residing outside EU territory, wishing to work in the EU.

The scope of Directive 2014/36 is an economic sector where the activity is dependant of the passing of the seasons.

Regarding the expected duration of the employment relationship, 12 months exceeds the maximum duration stated in article 14 of this Directive. Although Member States may determine maximum period of stay, it shall be less than 9 months in a 12-month period.

2 –Yes, as she is not national of the EU according to article 20 of the Treaty on the Functioning of the EU.

She is also residing, at the moment of the application, outside EU territory.

She has a contract or binding job offer to perform a job subject to the passing of the seasons. CA should verify if the specific position is:

- Enlisted as subject to be covered by a seasonal worker in accordance with national law.
- A regulated profession, where additional information may be required.



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# Directive 2014/36 in a nutshell

- **Who?** Third-country national residing outside EU + employer in MS.
- **What for?** Flexible entry system based on demand in activities dependent on the passing of seasons.
- **What?** Admission (entry, stay & work) + Procedural safeguards + Rights.
- **Where?** Seasonal economic sectors listed by MS.
- **How?** Depends on duration of the stay <90 days or >90 days .
- **How long?** Maximum duration determined by MS but not less than 5 months and max 9 months at 12-month period.



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# Links for further information

- Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers - [Eurlex link](#).
- You may find national transposition of the Directive [here](#).
- [Visa Code](#), [Schengen Borders Code](#) and [Council Regulation](#) list of 3<sup>rd</sup>-country nationals that require visa.
- DG HOME [information website](#) on Seasonal Workers.
- [Eurostat database](#).
- General information: [EU Immigration Portal](#) and [EURES Portal](#).
- European Migration Network: [Attracting and protecting seasonal workers from third countries in the EU](#)





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# Thanks for your attention!

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