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on: 30 May 2012

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 conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

Delegations will find attached a text that received the support of the majority of delegations at the meeting of Permanent Representatives Committee on 30 May and that will thus serve as a mandate for the Presidency to start discussions with the European Parliament on the above proposal. The remaining concerns of delegations are set out in the footnotes.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on conditions of entry and residence of third-country nationals in the framework
of an intra-corporate transfer ¹**

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 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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ **AT, CZ, DE, ES, PL, SI:** general scrutiny reservations on the proposal. **SI:** Parliamentary scrutiny reservation on the proposal. **DE, SE:** linguistic reservations on the proposal.

² OJ C , , p. .

³ OJ C , , p. .

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.
- (2) 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 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, and standards on the issue by Member States of long-stay visas and residence permits, as well as the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.
- (3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth⁴ sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists or graduate trainees to enter the Union in the framework of an intra-corporate transfer should be seen in this broader context.
- (4) The Stockholm Programme, adopted by the European Council at its meeting of 10 and 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 longer term. It thus invites the Commission and the Council to continue to implement the 2005 Policy Plan on Legal Migration⁵.

⁴ COM(2010) 2020.

⁵ COM(2005) 669.

- (5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational corporations, in recent years movements of managerial and technical employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.
- (6) These intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host companies, thus advancing the knowledge-based economy in Europe while fostering investment flows across the Union. Well-managed transfers from third countries also have the potential to facilitate transfers from Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best. ⁶
- (7) The set of rules established by this Directive is also beneficial to the migrants' countries of origin as this temporary migration fosters transfers of skills, knowledge, technology and know-how.
- (8) 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. According to that principle, the Member States should, during any period when national measures or those resulting from bilateral agreements are applied, give preference to workers who are nationals of the Member States over workers who are nationals of third-countries as regards access to their labour market.

⁶ **DE** suggested to insert a new Recital 6a in order to clarify the definition of intra-corporate transfer: "*Intra-corporate transfer comprises a secondment within the same group of undertakings between entities linked directly to one another, that means between parent undertaking and subsidiary, as well as linked indirectly, that means between subsidiaries each linked to the same parent undertaking.*"

- (8a) This Directive should be without prejudice to the right of Member States to issue residence permits other than an intra-corporate transferee permit for any purpose of employment if a third-country national does not meet the conditions to be admitted as an intra-corporate transferee under the terms and conditions of this Directive or does not fall under the scope of this Directive.
- (9) This Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria. These set of rules should be applied without prejudice to Member States having the right to decide upon the technical formalities relating to the application.
- (9a) This Directive and the permits that are issued on its basis should not affect or prevent the application of Member States' labour law provisions having - in accordance with Union law - as their objective the control of compliance with the working conditions as set out in Article 14(1).
- (9b) The possibility for a Member State to impose, on the basis of national law (in conformity with Union law), sanctions against an ICT's employer established in a third country in the case of non-compliance with the terms and conditions of employment within the meaning of Article 14(1) of this Directive should remain unaffected.⁷
- (10) For the purpose of this Directive, intra-corporate transferees encompass managers, specialists and graduate trainees with a higher education qualification. Their definition builds on specific commitments of the Union under the General Agreement on Trade in Services⁸ (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and facilitates the application of those commitments.

⁷ **AT:** scrutiny reservation. **Cion** could not see how this would work in practice.

⁸ WTO Doc. S/L/286 and S/C/W/273 Suppl. 1 of 18 December 2006.

However, the scope of the intra-corporate transfers covered by this Directive is broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement. The criterion set out in the definition of specialists is in line with the definition of professional qualifications in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.⁹

- (10a) For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference may be made to ISCED (International Standard Classification of Education) 2011 level 6.¹⁰
- (11) Intra-corporate transferees should benefit from the same working conditions as posted workers whose employer is established on the territory of the European Union, as defined by 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 services¹¹. That requirement is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.¹²

⁹ **DE** suggested the following amendment at the end of the Recital "... However, the scope of the intra-corporate transfers covered by this Directive is broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement. [...] *The definitions of manager, specialist and graduate trainee are in line with the definitions within the GATS. As in the GATS, undertaking means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.*"

¹⁰ **DE**: reservation.

¹¹ OJ L 18, 21.1.1997, p. 1.

¹² **AT**: scrutiny reservation on the deletion of "at least".

- (12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, the transferee should have been employed within the same group of undertakings from at least 6 months up to 12 months prior to the transfer in the case of managers and specialists and from at least 3 months up to 12 months in the case of graduate trainees.¹³
- (12a) As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the European Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for graduate trainees after which they should return to a third country unless they obtain a residence permit on another basis in accordance with national or Union legislation. The duration of the intra-corporate transferee permits reflects the duration of the transfer irrespective of the periods of absence of the holder from the territory of the Member States. A subsequent transfer to the European Union might take place after the return of the third-country national to a third country.
- (12b) In order to ensure the temporary character of an intra-corporate transfer and prevent the perpetual transfer of third-country nationals Member States should be able to require a certain period of time to pass between the end of one transfer and another application concerning the same third-country national for the purposes of this Directive.
- (13) As intra-corporate transfers consist of temporary secondment, the applicant should provide evidence that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. That evidence may consist of the relevant provisions under the work contract. An assignment letter should be produced providing evidence that the third-country national manager or specialist possesses the professional qualifications needed in the Member State to which they have been admitted to occupy the post or the regulated profession.

¹³ **FR:** reservation as a maximum period of previous employment should be indicated only ("up to 12 months").

- (14) Third-country nationals who apply to be admitted as graduate trainees should provide evidence of the higher education qualifications required, namely of any diploma, certificate or other evidence of formal qualifications attesting the successful completion of a bachelor's degree or equivalent tertiary education. In addition, they should, if required, present a training agreement, including a description of the training programme, its duration and the conditions in which the graduate trainees will be supervised, proving that they will benefit from genuine training and not be used as normal workers. ¹⁴
- (14a) Graduate trainee, as referred to in this Directive, is an employee in training for career development purposes or in order to obtain training in business techniques or methods. This directive does, therefore, not cover third-country nationals who are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies.
- (15) Member States should be able to retain restrictions on access to regulated professions, in cases where, in accordance with existing national or Union law, these activities are reserved to nationals, Union citizens or EEA citizens.
- (16) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of the Member States where the ancillary host entities are located must be provided with the relevant information by the applicant.
- (17) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals entering their territory for the purposes of intra-corporate transfer as specified in the Treaty.

¹⁴ **AT, DE, MT:** reservations as reference should be made to a university degree instead. **BE** (reservation): references to a bachelor's degree or equivalent tertiary education are problematic since they correspond to ISCED level 5; reference should be made to ISCED level 6 as is the case in Recital 10a).

- (17a) Member States should have the opportunity to avoid and oppose the abuse of this Directive by refusing, withdrawing or non-renewing a residence permit when the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees. A group of undertakings within which a third-country national may be temporarily transferred should have a genuine activity and should not serve only the purpose of transferring workers.¹⁵
- (17b) Where intra-corporate transferees have exercised their right to short-term mobility, the second Member State should under the requirements of Article 16(4) be in a position to take steps against the intra-corporate transferee's activities if it turns out that the permit is used for purposes other than that for which it was issued. This should for instance be possible if it is proven that the intra-corporate transferee is not a manager, specialist or graduate trainee or that the host entity was only set up to make the transfer possible.
- (18) Member States should provide for effective, proportionate and dissuasive sanctions, such as financial penalties, to be imposed in the event of failure to comply with the conditions laid down in this Directive. The sanctions could be imposed on the host entity.
- (19) Provision for a single procedure leading to one combined title, encompassing both residence and work permit, should contribute to simplifying the rules currently applicable in Member States.
- (20) A fast-track procedure may be set up for groups of undertakings which have been recognised for that purpose. Recognition should be granted on the basis of objective criteria made publicly available by the Member State and ensuring equal treatment between applicants. It should be granted for a maximum of three years, as the criteria need to be reassessed on a regular basis. Such recognition should be restricted to transnational corporations presenting credentials showing their ability to comply with their obligations and supplying information about the expected intra-corporate transfers.

¹⁵ **FR:** reservation on the recital as the requirement for a genuine activity is not included in the corresponding Article.

Any major change affecting the ability of the corporation to meet those obligations and any complementary information on future transfers should be reported without delay to the relevant authority. Appropriate sanctions such as financial sanctions, the possibility of withdrawing recognition, and rejections of future applications for permit should be provided for.

- (21) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, the third-country national should receive a specific residence permit (an intra-corporate transferee permit) allowing the holder to carry out, under certain conditions, their assignment in diverse entities belonging to the same transnational corporation, including entities located in another Member State.
- (21a) This Directive should be applied without prejudice to the relevant Schengen acquis instruments, such as 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 (the Schengen Convention), 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) and, when necessary, the 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. Member States outside the Schengen area are entitled to perform the necessary checks at their borders and deny intra-corporate transferees the entry should there be a reason to do so.
- (21b) The provisions of this Directive should not prevent Member States from issuing an additional paper document in order to be able to give more precise information on the employment activity during the intra-corporate transfer, such as the name and address of the host entity, place of work, name and address of the client, type of work, working hours, remuneration for which the format of the residence permit leaves insufficient space. Such documents should not prevent intra-corporate transferees from exercising specific employment activities at the sites of clients within the same Member State as the host entity but can serve to prevent the exploitation of third-country nationals and combat illegal employment.

The issuance of such documents should be optional for Member States and should not serve as a substitute for a work permit thereby compromising the concept of the single application procedure.

Technical possibilities offered by Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto can also be used to store such information in an electronic format.¹⁶

- (22) This Directive should not affect conditions for the provision of services in the framework of Article 56 of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. Third-country nationals holding an intra-corporate transferee permit cannot avail themselves of the provisions of 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. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.
- (22a) Third-country nationals who are in possession of a valid travel document and an intra-corporate transferee permit issued 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 90 days in any 180-day period in accordance with 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) 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 (Schengen Implementing Convention) subject to restrictions set out notably in Article 25 of this Convention.

¹⁶ **FR:** reservation as the issue of working at the sites of clients should be addressed in the body of the text as well.

(23) Equal treatment should be granted under national law in respect of those branches of social security defined 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 systems¹⁷. 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. The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective and non-discriminatory conditions laid down by the legislation of the host Member State with regard to affiliation and entitlement to social security benefits. In many Member States the right to family benefits is conditional upon a certain attachment to that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive does not affect the right of Member States to restrict equal treatment in respect of family benefits as the intra-corporate transferee and the accompanying family are staying temporarily in a Member State. Since this Directive is without prejudice to provisions included in bilateral agreements, the social security rights enjoyed by third country national intra-corporate transferees on the basis of a bilateral agreement concluded between the Member State to which the person has been admitted and his or her country of origin could be strengthened compared to the social security rights which would be granted to the transferee under national law. This Directive should not confer more rights than those already provided for in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. It should be granted without prejudice to provisions in national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin. 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 intra-corporate transferee to receive survivor's pensions when residing in a third country.¹⁸

¹⁷ OJ L 166, 30.4.2004, p. 1.

¹⁸ **FR:** reservation as could not support exceptions from the principle of equal treatment. **PT:** reservation regretting this approach and its consequences for the citizens concerned and for MS as regards the exclusion of family benefits from the scope of the Directive. **Cion** was opposed to the exclusion of family benefits from the scope of the Directive.

- (24) In order to make the specific set of rules put in place by this Directive more attractive and to allow it to produce all expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification in the Member State which first grants the residence permit on the basis of this Directive. This right would indeed remove an important obstacle to potential intra-corporate transferees for accepting an assignment. In order to preserve family unity, family members should be able to join the intra-corporate transferee in another Member State under the conditions determined by the national law of such Member State.
- (24a) In order to facilitate the fast processing of application Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.
- (24b) The collection and transmission of files and data should be carried out in compliance with the relevant data protection and security rules.
- (25) This Directive should not apply to third country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research¹⁹.
- (26) Since the objectives of a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals cannot be achieved sufficiently by Member States and, therefore, by reason of the scale and effects of the action, can 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. 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.

¹⁹ OJ L 289, 3.11.2005, p. 15.

- (27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (27a) [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.]²⁰
- (28) 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 or subject to its application.
- (29) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and 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:

²⁰ **AT, BG, DE, FR, LV, PT, SI:** scrutiny reservations pending justification from the Cion.

CHAPTER I GENERAL PROVISIONS

Article 1

Subject-matter

This Directive determines:

- (a) the conditions of entry to and residence for more than 90 days in the territory of the Member States, and the rights, of third-country nationals and of their family members in the framework of an intra-corporate transfer;
- (b) the conditions of entry to and residence, and the rights, of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national a residence permit on the basis of this Directive.²¹

Article 2

*Scope*²²

1. This Directive shall apply to third-country nationals who reside outside the territory of a Member State and apply to be admitted or who have been admitted to the territory of a Member State, under the terms of this Directive, in the framework of an intra-corporate transfer.
2. This Directive shall not apply to third-country nationals:²³

²¹ **AT:** scrutiny reservation in relation to the mobility scheme.

²² **AT:** scrutiny reservation on the Article.

²³ **AT:** beneficiaries of international protection and asylum seekers should be explicitly excluded from the scope similarly to Article 3(2)b) of the Blue Card Directive due to a strict distinction in AT law between migration and asylum. **Cion** noted that asylum seekers are excluded from the scope of the Directive by definition.

- (a) who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;
 - (b) who, under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of citizens of the Union or are employed by an undertaking established in those third countries;
 - (c) who are posted in the framework of Directive 96/71/EC;
 - (d) being assigned by temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking.
3. This Directive shall be without prejudice to the right of Member States to issue residence permits other than the intra-corporate transferee permit regulated by this Directive for any purpose of employment for third-country nationals who fall outside the scope of the Directive or do not apply for admission under this Directive or do not meet the criteria set out in this Directive.²⁴

Article 3
*Definitions*²⁵

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 Union, within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;

²⁴ **Cion:** a strong reservation on the creation of a parallel national system.

²⁵ **AT:** scrutiny reservation on the Article. **DE:** all definitions should correspond to the ones used in GATS.

- (b) ‘intra-corporate transfer’ means the temporary secondment of a third-country national from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;
- (c) ‘intra-corporate transferee’ means any third-country national subject to an intra-corporate transfer;
- (d) ‘host entity’ means the entity, regardless of its legal form, established, in accordance with national law, in the territory of a Member State to which the third-country national is transferred;
- (e) ‘manager’ means a person working in a senior position, who principally directs the management of the host entity, receiving general supervision or direction principally from the board of directors or stockholders of the business or equivalent; this position includes: directing the host entity or a department or sub-division of the host entity, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and dismiss or recommend hiring, dismissing or other personnel actions;²⁶

²⁶ **DE, SK:** scrutiny reservations. **SK:** include the requirement to hold a university degree.

- (f) ‘specialist’ means a person possessing uncommon knowledge essential and specific to the host entity’s areas of activity, techniques or management, taking also account of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;²⁷
- (g) ‘graduate trainee means a person with a higher education qualification who is transferred for career development purposes or in order to obtain training in business techniques or methods. This definition does not cover third-country nationals who are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies;²⁸
- (h) ‘higher education qualification’ means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a bachelor's degree or equivalent tertiary education, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated;²⁹

²⁷ **DE, SK:** scrutiny reservations. **AT, SK** suggested the following definition which is identical to the GATS' definition: "*Specialist' means an intra-corporate transferee who possesses uncommon knowledge essential to the host entity's service, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification referring to the type of work or trade requiring specific technical knowledge, including membership of an accredited profession.*" **DE** suggested a similar definition with the following beginning "*specialist' means an intra-corporate transferee working within a juridical person possessing uncommon knowledge essential to...*". **SK** suggested to add a requirement for a university education together with a concrete level of qualification (5a).

²⁸ **FR:** reservation on the deletion of "completed" (supported by **SK**). **Pres** clarified that in paragraph (h) reference is already made to the completion of a degree. **AT, DE, MT, SK:** reservations as reference should be made to a university degree as is the case with the definition used in GATS. **DE:** the required level should correspond to ISCED 2011 levels 7 and 8. **PL** could not support the reference to a university degree preferring current wording which it found more flexible.

²⁹ **AT, BE, DE:** reservations. **AT, BE, DE:** reference should be made to a university degree instead. **AT:** the current definition also covers non-academic degrees which is not acceptable, therefore "or equivalent tertiary education" should be replaced with "or equivalent *university degree*". **HU:** "attesting the *obtaining* of a bachelor's degree or *the completion* of equivalent tertiary education."

- (i) ‘family members’ means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC³⁰;
- (j) ‘intra-corporate transferee permit’ means any authorisation bearing the words ‘intra-corporate transferee’ entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;
- (k) ‘single application procedure’ means the 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 that application;
- (l) ‘group of undertakings’ for the purposes of this Directive means two or more undertakings recognised as linked in the following ways under national law: an undertaking, in relation to another undertaking directly or indirectly: holds a majority of that undertaking's subscribed capital; or controls a majority of the votes attached to that undertaking's issued share capital; or can appoint more than half of the members of that undertaking's administrative, management or supervisory body; or both undertakings are managed on a unified basis by the parent undertaking;³¹
- (m) ‘first Member State’ means the host Member State which first grants a third-country national an intra-corporate transferee permit on the basis of this Directive;
- (n) ‘second Member State’ means any host Member State in which the intra-corporate transferee intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;³²

³⁰ OJ L 251, 3.10.2003, p. 12.

³¹ **SK**: scrutiny reservation on the definition.

³² **AT** (due to the link with the mobility provisions), **FR** suggested deleting the wording “other than the first Member State” as it is redundant.

- (o) ‘regulated profession’ means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:
 - (a) Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other;
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

*Criteria for admission*³³

1. Without prejudice to Article 10, a third-country national who applies to be admitted under the terms of this Directive or the host entity shall:³⁴
 - (a) Provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;
 - (b) present an assignment letter from the employer and/or a work contract, from the employer including:
 - (i) evidence of employment with the undertaking established in a third country;
 - (ii) the duration of the transfer and the location of the host entity;
 - (iii) evidence that the third-country national is taking a position as a manager, specialist or graduate trainee in the host entity or entities in the Member State concerned;

³³ **DE:** scrutiny reservation on the Article, admission should be at the discretion of MS according to their national law.

³⁴ **DE** suggested amending this introductory phrase as follows: “A third-country national who applies to be admitted under the terms of this Directive *may be granted admission if he/she fulfils the following conditions.*” in order to clarify that this Directive is not intended to create an automatic right for admission. **Cion** clarified that no obligation for admission, even if all the criteria are met is imposed on MS, as MS have the discretion to regulate volumes of entries of TCN under this Directive.

- (iv) the remuneration as well as other terms and conditions of employment;³⁵
 - (v) evidence that the third-country national will be able to transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment.
- (c) provide evidence that the third-country national has the professional qualifications needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a graduate trainee, the higher education qualifications required;³⁶
 - (d) present documentation certifying that the third-country national fulfils the conditions laid down under national legislation of the Member State in which the host entity is established for citizens of the Union to exercise the regulated profession which the intra-corporate transferee is applying to work in;
 - (e) present³⁷ a valid travel document of the third-country national, as determined by national law, and an application for a visa or a visa, if required; Member States may³⁸ require the period of validity of the travel document to cover at least the initial duration of the residence permit;
 - (f) without prejudice to existing bilateral agreements, present 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;

³⁵ **HU:** scrutiny reservation. **CZ** could not support the paragraph as the reference to other terms and conditions of employment is too vague and it is not clear what should be stated in the assignment letter. **Cion:** it should be clarified which terms and conditions of employment are meant to be included in the assignment letter, especially in relation to paragraph 2 of this Article and Article 14(1).

³⁶ **AT:** scrutiny reservation. **DE:** reservation on the term "higher education qualifications".

³⁷ **DE:** replace with "*must be in possession of* a valid travel document."

³⁸ **DE** would like the document to be valid for the entire stay.

- 1a. Member States may require the applicant to present the documents listed in paragraphs 1 (a)-(d) and (f) in the language of the Member State concerned.
- 1b. Member States may require the applicant to provide the address of the third-country national concerned in the territory of the Member State.
2. Member States shall require that the terms and conditions of employment set out in Article 5 (1)(b)(iv) which will be granted to the third-country national during the transfer are in line with the provisions of Article 3 of Directive 96/71/EC.³⁹
- 2a. Member States may require that the remuneration which will be granted to the third-country national during the transfer is not less favourable than the remuneration granted for employees in the host Member State concerned occupying comparable positions.
- 2b. Member States may require that the intra-corporate transferee will have sufficient resources during his/her stay to maintain him/herself and his/her family members without having recourse to social benefits including the social assistance system of the Member State concerned.⁴⁰

³⁹ **FR:** scrutiny reservation. **AT:** reservation as this should be a minimum level that MS require, insert “at least”.

⁴⁰ **DE, FR:** scrutiny reservations. **Cion** could not support the term "social benefits" as it is not used in EU law and is thus not clear and suggested to use " without having recourse to the social assistance system" instead.

3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as an employee in training may be required to present a training agreement, related to the preparation for his/her future position within the group of undertakings, including a description of the training programme, which demonstrates that the purpose of stay is to train the employee for career development purposes in order to obtain training in business techniques or methods, its duration and the conditions under which the applicant is supervised during the programme.⁴¹
4. Any modification that affects the conditions for admission set out in this Article shall be notified by the host entity to the competent authorities of the Member State concerned.⁴²
5. 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.⁴³

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⁴¹ **SI:** the requirement to present a training agreement should be mandatory. **AT** suggested to include the possibility to require that the training of graduate trainees is linked to the higher education qualification completed by the graduate trainee.

⁴² **FR:** scrutiny reservation.

⁴³ **DE:** add at the end of the provision: "... or any other significant interests of the host MS."

⁴⁴ **HU** suggested to add the following new paragraph 5a: "*Where a Member State is considering issuing an intra-corporate transferee permit offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with Article 25 of the Convention implementing the Schengen Agreement.*" **AT** could support **HU** suggestion. **CZ, LV** considered **HU** suggestion superfluous. **Cion** considered this superfluous as that Article 25 of the Schengen Implementing Convention applies anyway stating that this could create confusion with the Schengen Convention.

6. Member States shall require the third-country national to provide evidence of employment within the same group of undertakings, from at least 6 months up to 12 months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least 3 up to 12 months in the case of graduate trainees.⁴⁵
7. Member States may, if provided for by national law, require the host entity to provide a statement of financial responsibility to ensure that:
 - (a) The intra-corporate transferee will be guaranteed the required level of remuneration and rights as specified under Article 14, in particular that she/he and his/her family members will not have recourse to the social assistance system of the Member States concerned;⁴⁶
 - (b) All expenses that could be related to the return of the intra-corporate transferee in case of illegal stay are covered. The financial responsibility of the host entity shall end at the latest 12 months after the termination of the assignment in the Member State concerned.

⁴⁵ **FR:** reservation as the maximum period of previous employment should be indicated only ("up to 12 months"). **AT, DE, FR, SI, SK** suggested the following amendments to the paragraph: "Member States *may* require the third-country national to provide evidence of employment within the same group of undertakings, [...] *for* up to 12 months immediately preceding the date of the intra-corporate transfer [...]."

⁴⁶ **HU:** scrutiny reservation pointing out that the employer cannot be expected to ensure what is required here. **Cion** indicated that the term "social assistance system" cannot in this case be interpreted as applying to social security benefits in order to avoid a conflict with ICTs' rights under Article 14.

Article 5A

Volumes of admission

1. This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory.⁴⁷
2. An application for admission to a Member State for the purposes of this Directive may be considered inadmissible on the grounds set out in paragraph 1.

Article 6

*Grounds for refusal*⁴⁸

1. Member States shall reject an application in the following cases:⁴⁹
 - (a) where the criteria set out in Article 5 are not met;

⁴⁷ **AT, DE, SI** suggested to add the following sentence at the end of the paragraph: " ... *Member States retain the possibility not to grant residence permits for intra-corporate transferees in general and/or for certain professions, economic sectors or regions.*" **CLS**: reference to Article 79.5 TFEU is sufficient, determination of volumes and their implementation, including setting a 0-quota, is MS' competence and should not be regulated in this Directive.

⁴⁸ **DE, SK** proposed to add the following ground for refusal in a new paragraph 4: "*Member States may reject an application if the applicant has committed a breach of legal provisions, court rulings or official orders, excepting isolated or minor breaches, or has committed an offence outside the territory of a Member State which is regarded in the Member State's territory as an intentionally committed offence.*" **Cion**: Article 5 already contains an admission condition related to public policy. **SK** suggested to add the following ground for refusal in order to give MS the possibility to apply a labour market test: "*Member States may verify whether the vacancy in question could be filled by nationals or by other EU citizens, or by third-country nationals lawfully residing in that Member State and already forming part of its labour market in accordance with national or Union law, or by EC long-term residents wishing to move to that Member State in accordance with Chapter III of Directive 2003/109/EC, in which case they may reject the application.*"

⁴⁹ **DE** suggested that the grounds for refusal should be discretionary.

or

- (b) where the documents presented have been fraudulently acquired, falsified or tampered with;

or

- (c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees;

or

- (d) where the maximum duration of stay as defined in Article 10A has been reached.

2. Member States may reject an application if:

- (a) the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment or does not meet the legal obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place;⁵⁰

or

⁵⁰ **FR:** scrutiny reservation as "the employer" at the beginning of the paragraph should be deleted. **SI:** it would be better to state "if no *substantial* economic activity is taking place" to exclude cases where minimum economic activity is taking place. **HU:** it should be specified that it is the host entity where no economic activity is taking place.

(b) the terms and conditions of employment according to applicable laws, collective agreements or practices in the Member State where the host entity is established are not met;⁵¹

or

(c) the intent or effect of temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation;⁵²

(d) the host entity within the 12 months immediately preceding the date of the application, has eliminated, by means of a null or unfair dismissal, the positions he/she is trying to fill through the new application.⁵³

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(3) Member States may reject an application for admission to a Member State for the purposes of this Directive on the ground set out in Article 5A(1) or Article 10A(2).

⁵¹ **FR:** scrutiny reservation on the deletion of "binding" and reservation on the notion of collective agreements, "collective agreements *of general application*" should be used instead. **CZ:** scrutiny reservation on the reference to collective agreements. **PL:** "... *universally applicable* collective agreements or..." to ensure consistency with the 96/71/EC Directive. **Cion** did not support the deletion of "binding" as the paragraph is now too broad and open-ended and lacks legal certainty.

⁵² **PL:** scrutiny reservation on the paragraph as the meaning is not clear. **Cion:** reservation on the paragraph as it is not clear. **Pres** clarified that similar wording is used in GATS.

⁵³ **DE:** scrutiny reservation asking what documents should be presented as proof in this case.

⁵⁴ **FR** suggested to insert the following paragraph: "*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 representative employers' and labour organisations at national level and which are applied throughout national territory.*"

Article 7

Withdrawal or non-renewal of the permit

1. Member States shall withdraw an intra-corporate transferee permit ⁵⁵ in the following cases:
 - (a) where it has been fraudulently acquired, or has been falsified, or tampered with;

or
 - (b) where the intra-corporate transferee is residing for purposes other than those for which he/she was authorised to reside.

or
 - (c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees.

2. Member States shall refuse to renew an intra-corporate transferee permit in the following cases:
 - (a) where it has been fraudulently acquired, or has been falsified, or tampered with;

or
 - (b) where the intra-corporate transferee is residing for purposes other than those for which he/she was authorised to reside;

or

⁵⁵ **DE** suggested adding "in particular" in order to emphasise that this would be an indicative list of grounds.

(c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees;

or

(d) where the maximum duration of stay as defined in Article 10A has been reached.

3. Member States may withdraw or refuse to renew an intra-corporate transferee permit in the following cases;

(a) wherever the criteria laid down in Article 5 were not met or are no longer met;⁵⁶

or

(b) where the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment or does not meet the legal obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place;⁵⁷

or

(c) where the terms and conditions of the employment according to applicable laws, collective agreements or practices in the Member State where the host entity is established are not met;⁵⁸

or

⁵⁶ **AT** (reservation): it should be possible to apply volumes of admission also when deciding on the renewal of the permit; thus a reference to Article 5A(1) should be inserted.

⁵⁷ The same comments apply as for Article 6(2)(a).

⁵⁸ The same comments apply as for Article 6(2)(b).

(e) where the intra-corporate transferee has abused the short-term mobility rules set out in Article 16;

or

(f) when the intra-corporate transferee applies for social assistance, provided that the appropriate written information concerning this consequence has been provided to him/her in advance by the Member State concerned.⁵⁹

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Article 8

Sanctions

Member States may, if provided for in national law, hold the host entity responsible and provide for sanctions for failure to comply with the conditions of admission and stay or to comply with administrative and information requirements. Those sanctions shall be effective, proportionate and dissuasive.

⁵⁹ **FR:** scrutiny reservation.

⁶⁰ **FR:** add the same paragraph as suggested to be inserted in Article 6(2).

CHAPTER III
PROCEDURE AND PERMIT

Article 9

*Access to information*⁶¹

1. Member States shall make available information on entry and residence, including rights, and all documentary evidence needed for an application.
2. The first Member State makes available information to the host entity on the right of Member States to impose sanctions in accordance with Article 8 and/or Article 16(5).

Article 10

Applications for admission

1. Member States shall determine whether an application is to be made by the third-country national and/or by the host entity.
2. The application shall be submitted when the third-country national is residing outside the territory of the Member State to which admission is sought.⁶²

⁶¹ **DE:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle.

⁶² **EL:** reservation as would like to add the following at the end of the paragraph for it to be in line with national practice: "The application shall be *considered and examined* when the third-country national is residing outside the territory of the Member State to which admission is sought. The application shall be *considered and examined also in the case that where TCN is already admitted in that Member State as a holder of a respective national long-stay visa.*"
HU would like to keep the possibility to allow applications to be submitted in the territory of a MS but for certain categories only (e.g. those who enjoy visa-free entry to the EU). **Cion:** the provision is in line with the scope of the Directive.

3. Member States shall designate the authorities competent to receive the application and to issue the intra-corporate transferee permit.⁶³
4. The application shall be submitted in a single application procedure.
5. Simplified procedures related to the issuance of intra-corporate transferee permits, and permits granted to family members of an intra-corporate transferee as well as visas may be made available to entities or to groups of undertakings that have been recognised for that purpose by Member States in accordance with their national legislation or administrative practice. Recognition shall be regularly reassessed and appropriate penalties provided for, in accordance with national law.

Article 10A⁶⁴

Duration of an intra-corporate transfer

1. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for graduate trainees after which they shall return to a third country unless they obtain a residence permit on another basis in accordance with national or Union legislation.⁶⁵

⁶³ **DE, AT:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle. **Cion:** this paragraph serves the transparency principle (similarly to para.1).

⁶⁴ **ES:** scrutiny reservation on the Article.

⁶⁵ **EL:** reservation as opposed the possibility to change the purpose of stay after the end of an ICT term. **EL** suggested to insert "... national *and/or* Union law." **ES:** scrutiny reservation on the possibility for a TCN to stay on in the territory of a MS.

2. Member States may require a certain time period of up to 3 years to pass between the end of a transfer and another application concerning the same third-country national for the purposes of this Directive in the same Member State. ⁶⁶
3. An application for admission to a Member State for the purposes of this Directive may be considered inadmissible if the time period set in accordance with paragraph 2 has not passed.

Article 11

Intra-corporate transferee permit

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member States concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for graduate trainees.
3. The intra-corporate transferee permit shall be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002⁶⁷.

⁶⁶ HU was opposed to including paragraphs 2 and 3 in the Directive as these provisions raise a lot of issues related to practical implementation, especially in the case of short-term mobility and especially as these are optional provisions.

⁶⁷ OJ L 157, 15.6.2002, p. 1.

4. Under the heading 'remarks', in accordance with point (a) 7.5-9 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter 'intra-corporate transferee'.⁶⁸
5. Member States shall not issue any additional permits, in particular work permits of any kind.
6. Member States may indicate additional information related to the employment activity during intra-corporate transfer of the third-country national (such as the name and address of the host entity, place of work, name and address of the client, type of work, working hours, remuneration) in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and point (a)16 of its Annex thereto.
7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.

Article 12

Procedural safeguards

1. The competent authorities of the Member State concerned shall adopt a decision on the application for an intra-corporate transferee permit or a renewal of it and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible but no later than 90 days⁶⁹ of the complete application being lodged.

⁶⁸ **DE** suggested the following wording: "*The residence permit shall indicate that it is a residence permit for ICT*".

⁶⁹ **HU**: scrutiny reservation as could not support the deadline of 90 days. **Cion**: it is important to provide for a quick transfer within a group to make the proposal more attractive pointing out that unlike the Blue Card Directive, the periods of stay in this proposal are short and would not justify a processing period of three months; delegations were also reminded that the number of ICT applicants is limited; therefore no significant administrative burden is anticipated.

National law of the relevant Member State shall determine any consequence of a decision not having been taken by the end of the period provided for in this paragraph.⁷⁰

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.

The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information or documents required. If additional information or documents have not been provided within the deadline, the application may be rejected.

3. Reasons for a decision rejecting an application for an intra-corporate transferee permit, refusing modification or renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an intra-corporate residence permit shall be given in writing to the intra-corporate transferee⁷¹ and, when the application for the intra-corporate transferee permit was lodged by the host entity, to the applicant.⁷²
4. Any decision rejecting the application, refusing renewal, or withdrawing an intra-corporate transferee permit shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court and/or administrative authority where an appeal may be lodged and the time-limit for lodging the appeal.

⁷⁰ **DE:** should be a "may-clause".

⁷¹ **SI** suggested deleting the rest of the sentence, notification should be given solely to the TCN as he/she is the only person who is entitled to appeal the rejection decision. **Pres:** If MS decide that only the TCN can lodge the application then he/she should be the only party to be notified.

⁷² **DE:** reservation considering that this provision infringes the subsidiarity principle.

5. Within the period referred to in Article 11(2) an applicant shall be allowed to lodge an application for renewal before the expiry of the intra-corporate transferee permit. Member States may set a maximum deadline of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.
6. If the intra-corporate transferee permit expires during the procedure, Member States may issue, if required by national law, national temporary residence permits or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.⁷³

Article 12A

Fees

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 permits.

⁷³ **CZ** wanted to be sure that the transitional permit can only be issued if the ICT is on the territory of the second MS and the permit issued by the first MS expires. If, however, the ICT is on the territory of the first MS and the permit expires the ICT would have to return to the country of origin.

CHAPTER IV

RIGHTS

Article 13

*Rights on the basis of the intra-corporate transferee permit*⁷⁴

During the period of validity of an intra-corporate transferee permit, the holder shall enjoy at least the following rights:

1. the right to enter and stay in the territory of the Member State issuing the permit;
2. free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;
3. the right to exercise the specific employment activity authorised under the permit in accordance with national law in any host entity belonging to the group of undertakings in the Member State issuing the permit and in second Member States in accordance with Article 16 as long as the employment relationship is maintained with an undertaking established in a third country.⁷⁵

Article 14

*Right to equal treatment*⁷⁶

1. Whatever the law applicable to the employment relationship, intra-corporate transferees admitted under this Directive shall enjoy equal treatment with persons covered by Directive 96/71/EC with regard to the terms and conditions of employment applicable to posted workers in a similar situation in accordance with Article 3 of Directive 96/71/EC in the Member State where the work is carried out;⁷⁷

⁷⁴ **FR:** reservation on the Article.

⁷⁵ **DE:** scrutiny reservation on the paragraph. **FR:** reservation as preferred the wording in doc 17686/11. **Cion:** it might be useful to clarify explicitly that assignments at the sites of clients are not excluded. **DE** suggested to add, for clarification purposes, the following sentence at the end of the paragraph: "*This provision does not prejudice the rights of the host entity with regard to Article 56 TFEU.*"

⁷⁶ **DE, FR:** reservations, **AT:** scrutiny reservation on the Article.

⁷⁷ **AT:** reservation on the paragraph being opposed to the deletion of "at least" as this should not be a maximum standard.

2. Intra-corporate transferees shall enjoy equal treatment with nationals of the host Member State as regards:
- (a) freedom of association and affiliation and membership of an organisation representing workers or employers 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;
 - (b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
 - (c) provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04, with the exception of family benefits, unless the legislation of the country of origin applies by virtue of bilateral agreements or the national legislation of the host Member State, ensuring that the intra-corporate transferee is covered by the social security legislation in one of these countries. In the event of mobility between Member States Council Regulation (EC) No 1231/2010 shall apply accordingly;⁷⁸
 - (d) without prejudice to Council Regulation (EC) 1231/2010 and to existing bilateral agreements, 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 the same rates as the nationals of the Member States concerned when moving to a third country;⁷⁹

⁷⁸ **AT, ES:** scrutiny reservations on the paragraph. **FR, PT:** reservations on the paragraph arguing that equal treatment should also be granted as regards family benefits. **PT** regretted this approach and its consequences for the citizens concerned and for MS as regards the exclusion of family benefits from the scope of the Directive. **Cion:** reference should be made to "*existing* national legislation" as otherwise the provision could be emptied of its meaning. **DE:** reference should be made to Article 3(1) as this is where the branches of social security are defined. **Cion:** the reference to the whole Article 3 should remain as a limitation to Article 3(1) only would result in excluding equal treatment as regards special non-contributory benefits. **DE** did not support the addition of "ensuring that..." which may create problems if the legislation of the country of origin applies. **Cion** was opposed to the exclusion of family benefits from the scope of the Directive.

⁷⁹ **ES, FR:** scrutiny reservations.

- (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, and⁸⁰ services afforded by employment offices.⁸¹
3. This Article shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.

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Article 15

*Family members*⁸³

1. Council Directive 2003/86/EC shall apply in the Member States which issued the intra-corporate transferee permit, subject to the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification in the Member State shall not be made dependent on the requirement that the holder of the permit issued by that Member State on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.
3. By way of derogation from the last subparagraph of Article 4(1) and from Article 7(2) of Directive 2003/86/EC, the integration measures referred to therein may be applied by the Member State only after the persons concerned have been granted family reunification.

⁸⁰ **FR:** replace with "*as well as*" in order to avoid confusion.

⁸¹ **ES, FR:** scrutiny reservations.

⁸² **DE** suggested to add a new paragraph stating that Member States may restrict equal treatment with respect to study and maintenance grants or loans or other grants and loans.

⁸³ **DE:** scrutiny reservation on the Article.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the Member State, if the conditions for family reunification are fulfilled, within 90 days from the date on which the complete application was lodged. The procedural safeguards laid down in Article 12 apply accordingly.⁸⁴
5. By way of derogation from Article 13(2) of Directive 2003/86/EC, the duration of validity of the residence permits of family members in the Member State may be the same as that of the intra-corporate transferee permit.
6. By way of derogation from Article 14(1) b of Directive 2003/86/EC the family members of the intra-corporate transferee who have been granted family reunification shall be entitled to have access to employment and self-employed activity, in the territory of the Member State which issued the intra-corporate transferee permit.⁸⁵

[...] ⁸⁶

⁸⁴ **DE:** scrutiny reservation.

⁸⁵ **NL:** use the wording of Article 15.6 of the Blue Card Directive instead. **CY, FR:** scrutiny reservations. **FR** (supported by **CZ**) suggested to add a reference to national legislation.

⁸⁶ **HU:** reservation on the deletion of a paragraph stating that MS shall not apply any time limits in respect of access to the labour market of family members.

CHAPTER V
MOBILITY BETWEEN MEMBER STATES

Article 16

*Provisions governing short-term mobility*⁸⁷

1. When the intra-corporate transferee intends to work in the same group of undertakings and in the same position in a second Member State for a period of up to 90 days in any 180-day period, the transfer may take place on the basis of the intra-corporate transferee permit issued by the first Member State during its validity under the conditions set out in paragraphs 2 and 3.
2. The host entity of the second Member State shall notify the competent authorities of the first Member State and the second Member State before the transfer. This notification shall take place at least 20 days prior to the intended transfer by sending in the documentation required by the second Member State if paragraph 3(b) is applicable. The second Member State may determine which documents have to be presented proving the fulfilment of the criteria set out in paragraph 3(b).⁸⁸
3. The second Member State shall choose either to:⁸⁹
 - a) decide in accordance with national law that the transfer can be initiated immediately after the notification has taken place or;

⁸⁷ **AT, ES, PL:** scrutiny reservations on the Article.

⁸⁸ **FR:** scrutiny reservation enquiring why the host entity of the second MS has to notify the authorities of the first MS and not the other way round. **AT, MT** suggested the notification deadline of 30 days. **SI:** insert "shall notify, *in accordance with national law*, the competent authorities of ... " **SI** suggested to add a requirement for the file to be complete.

⁸⁹ **HU:** reservation on the "either-or" option as would prefer a mixture of the two where an ICT can start working immediately and the fulfilment of necessary conditions can be checked afterwards. **PL** expressed concerns about the possibility to choose between two options as it would not lead to harmonisation.

- b) based on the notification, examine the documentation within 20 days from having received it. If the second Member State does not react within that time period, the transfer may be initiated. The second Member State may reject the transfer in accordance with national law by informing the host entity within 20 days from having received the documentation if: ⁹⁰
- i. the intra-corporate transferee is considered to pose a threat to public policy, public security or public health in the second Member State,
 - ii. the terms and conditions of employment set out in Article 5(1)(a), 5(2) and (2a) in the second Member State are not fulfilled, ⁹¹
 - iii. where the documents presented have been fraudulently acquired, falsified or tampered with;
 - iv. the time period, which a Member State may require in accordance with Article 10A(2), has not expired in the second Member State ⁹² or,
 - v. the volumes of admission of third-country nationals entering the territory of the second Member State have been exhausted.
4. If the second Member State has not been notified in accordance with paragraph 2, or the grounds set out in paragraph 1 or 3(b) are no longer complied with, or if the intra-corporate transferee permit is used for purposes other than that for which it was issued, or the transfer has been initiated before the expiry of the notification period or in spite of the rejection from the second Member State, the second Member State may take the following measures: ⁹³

⁹⁰ **AT**: scrutiny reservation.

⁹¹ **AT**: reference should also be made to the conditions set out in Article 6.

⁹² **FR** (reservation), **HU**: the paragraph creates confusion between long-term and short-term mobility.

⁹³ **HU**: scrutiny reservation on the paragraph.

- (a) by national legislation require that the intra-corporate transferee and or the host entity in the second Member State has to apply for an intra-corporate transferee permit with the competent authorities of that second Member State, and that the employment activity must stop until a final decision has been made in accordance with Article 16A and/or,⁹⁴
- (b) impose effective, proportionate and dissuasive sanctions⁹⁵ against the host entity and/or,
- (c) inform the authorities of the first Member State accordingly.

⁹⁶

- 5. Where the relevant legislation provides for the requirement for a visa for exercising short-term mobility, such a visa shall be granted in a timely manner within a period that does not hamper the transfer.
- 6. The second Member State may require registrations to be carried out in accordance with national law when the intra-corporate transferee enters the territory of the second Member State with the purpose of work. The second Member State may indicate additional information specified under Article 11(6) as proof of such registration.⁹⁷
- 7. In case the intra-corporate transferee permit is renewed by the first Member State within the maximum duration, the renewed intra-corporate transferee permit continues to authorise its holder to work in the second Member State(s) notified.

⁹⁴ **DE** (scrutiny reservation on the paragraph) suggested the following wording of instead: "by national legislation require that *the employment activity must stop and/or in accordance with Directive 2008/115/EC require the ICT to go to the territory of the first Member State immediately, issue a return decision to the ICT and take all necessary measures to enforce the return decision, and/or*"

⁹⁵ **FR** enquired about the meaning of the term "dissuasive sanctions".

⁹⁶ **DE** suggested to insert the following paragraph: "*The right of the second Member State to carry out inspections of the real working conditions during the short-term-mobility-period remains unaffected.*"

⁹⁷ **FR** enquired about the meaning of registration as referred to in this paragraph.

8. In case the first Member State withdraws the intra-corporate transferee permit, the authorities of the second Member State(s) shall be informed by the authorities of the first Member State host entity or the intra-corporate transferee immediately.

Article 16A

*Provisions governing long-term mobility*⁹⁸

1. If the third-country national who intends to work in a second Member State for more than 90 days within any 180-day period, an application for a new intra-corporate transferee permit shall be lodged to the authorities of the second Member State and present all the documents proving the fulfilment of the criteria set out in Article 5.

The application may be presented to the competent authorities of the second Member State outside the territories of the European Union or while residing in the territory of the first or the second Member State.

2. If the third-country national has already been granted an intra-corporate transferee permit the second Member State may decide not to verify certain criteria for admission and/or may allow the intra-corporate transferee to work until a positive decision on the application has been taken by its competent authority.
3. In cases where long-term mobility in Article 16A has been initiated and the intra-corporate transferee subsequently intends to use the provisions of short-term mobility set out in Article 16 "the second Member State" in accordance with Article 16A shall be understood as "the first Member State" in accordance with Article 16.⁹⁹

⁹⁸ **AT, FR:** scrutiny reservations on the Article.

⁹⁹ **FR** found this paragraph unnecessary.

4. The second Member State issuing or withdrawing a new intra-corporate transferee permit shall inform the first Member State, in cases where the intra-corporate transferee permit issued by the first Member State is still valid.¹⁰⁰
5. Articles 5A, 6, 7, 8, 9, 10, 10A, 11, 12 and 12A shall apply accordingly.

CHAPTER VI FINAL PROVISIONS

Article 17 *Statistics*¹⁰¹

1. Member States shall, in accordance with Regulation (EC) No 862/2007, communicate to the Commission statistics on the number of third-country nationals who have been granted an intra-corporate transferee permits and, as far as possible, on the number of third-country nationals whose intra-corporate transferee permit has been renewed or withdrawn, during the previous calendar year, indicating their nationality and, as far as possible, their transferee position according to this Directive.
2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission within six months of the end of the reference year. The first reference year shall be [two years after the date of transposition of this Directive].

¹⁰⁰ CZ stated that MS should also inform one another when an application is rejected and wanted to know what happens if a MS does not decide within the period of validity of the first permit.

¹⁰¹ AT, DE, SI: scrutiny reservations on the Article. ES: scrutiny reservation until it gets a report on these statistics from the competent services.

Article 18

Reports

By [three years after the date of transposition of this Directive] at the latest and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive in the Member States including any necessary proposal.¹⁰²

Article 19

*Cooperation on information*¹⁰³

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Article 16 and 16A. Member States shall give preference to exchange of information via electronic means.¹⁰⁴
2. Member States shall provide appropriate cooperation on exchanges of the information and documentation referred to in paragraph 1. Such procedural cooperation shall be effectively carried out especially when the application has not been lodged with the designated authorities of the Member State having competence within the meaning of this Directive.

Article 20

*Transposition*¹⁰⁵

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [three years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

¹⁰² **DE:** delete the wording “including any necessary proposal” as it is unclear. **Cion:** it is standard language and **Cion** has the right of initiative. **HU** suggested to add the following: "... any necessary proposal *and stating notably the difficulties that may have been identified regarding the Intra-European mobility.*"

¹⁰³ **AT, DE:** scrutiny reservations on the Article in relation to Article 16.

¹⁰⁴ **PL** asked what kind of information should be exchanged by contact points. **Cion:** the appointment of contact points and the exchange of information on the implementation of the Directive.

¹⁰⁵ **FR:** scrutiny reservation on the Article.

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.

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.

Article 21

Entry into force

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Article 22

Addressees

This Directive is addressed to the Member States in accordance with the Treaty on the Functioning of the European Union.

Done at Brussels, [...]

For the European Parliament

For the Council

The President

The President
