



## Statewatch Analysis

### A proposal for an EU Immigration Code

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#### Introduction

The EU's Stockholm programme, the latest multi-year programme for EU Justice and Home Affairs (JHA) policy, calls for the European Commission to submit a proposal for the "consolidation of all legislation in the area of immigration, starting with legal migration, which would be based on an evaluation of the existing *acquis* and include amendments needed to simplify and/or, where necessary, extend the existing provisions and improve their implementation and coherence." According to the Stockholm programme, this consolidation would implement the objectives set out in the Programme to "ensure fair treatment of third country nationals who reside legally on the territory of [the EU's] Member States", and to develop a "more vigorous integration policy" which "should aim at granting them rights and obligations comparable to those of citizens of the Union".

The Commission assumes that this consolidation of the law will take the form of a "Code" of EU immigration law, similar to the EU visa code and Schengen Borders Code, and it is planning to make a proposal for a Code in 2013. The Code would not apply to the UK, Denmark and Ireland, due to their opt-outs from this area of EU law. It would be adopted on a proposal from the Commission, subject to the "ordinary legislative procedure" (joint decision-making of the Council and the European Parliament; qualified majority vote in the Council).

This future Code will probably have a large impact on the day-to-day life of legal immigrants admitted to the European Union, as regards issues such as reunion with family members and access to employment, education and social benefits. Since the existing EU immigration law has often (rightly) been criticised for setting low standards on these issues, the adoption of an immigration Code will be an important opportunity to improve the substance and coherence of that existing law, in order to ensure that it is fair, understandable and transparent.

The adoption of an EU immigration code will raise three key issues: the amendment of the substance of existing EU immigration law; the "better regulation" agenda of cleaning up inconsistencies and contradictions between the different Directives that

have already been adopted; and the “publicity effect” of adopting a Code, which will likely raise the profile of EU law in this area considerably.

In order to contribute to the debate on the planned immigration Code, this Statewatch analysis proposes a complete text of a draft Code. It also includes a summary of the background to the Code and a short explanation of its provisions. A more detailed explanation of this proposal will be published early in 2012 in the *European Journal of Migration and Law*.

## **Background**

The EU has adopted six Directives on legal migration issues:

- a) Directive 2003/86 on family reunion;
- b) Directive 2003/109 on long-term residents, as amended by Directive 2011/51, which extended the scope of the Directive to refugees and beneficiaries of subsidiary protection;
- c) Directive 2004/114 on the admission of students, school pupils, unpaid trainees and volunteers;
- d) Directive 2005/71 on the admission of researchers;
- e) Directive 2009/50 on the admission of highly qualified employees (the “Blue Card Directive”); and
- f) Directive 2011/98 (the “single permit Directive”), which establishes a single work and residence permit for employment migration, along with a common core of rights for migrant workers.

There are also two proposed Directives under discussion, concerning:

- a) admission of seasonal workers and
- b) admission of intra-corporate transferees

Following the entry into force of the Treaty of Lisbon, the EU has the power (set out in Article 79 of the Treaty on the Functioning of the European Union) to adopt measures to establish a “common immigration policy”. However, Article 79(5) of this Treaty states that the EU’s powers in this area “shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.”

The Commission has produced reports on the implementation of the first four adopted Directives, criticising both their implementation by Member States and

their limited impact, and suggesting possible amendments which should be made to them:

- a) report on the family reunion Directive (2008);
- b) report on the long-term residents Directive (2011);
- c) report on the students' Directive (2011); and
- d) report on the researchers' Directive (2011).

The Commission also released a Green Paper on the reform of the family reunion Directive in 2011.

### **Short explanation of the proposed Code**

The proposed Code consolidates and repeals all the legislation referred to above, and also makes changes that would improve the substantive rights of and procedural fairness for migrants in the European Union, while furthermore simplifying and improving the consistency and readability of the rules. It would not extend EU law to any persons not already covered by it, except to extend the categories of persons who have the right to reunion with their family members. Also, it would still leave Member States free to have higher standards for the persons concerned, to the extent that EU law already provides for that possibility already. It also observes the limit on the EU's competence to adopt rules on the volume of economic migrants coming from outside the EU. The proposal would therefore not fully harmonise all aspects of immigration law in the EU.

The proposed Code takes the form of eight Chapters, as follows:

- a) general provisions (Chapter I);
- b) common provisions (Chapter II);
- c) admission for employment (Chapter III);
- d) admission for research (Chapter IV);
- e) admission for studies (Chapter V);
- f) family reunification (Chapter VI);
- g) long-term resident status (Chapter VII); and
- h) final provisions (Chapter VIII).

There are also three Annexes, setting out more specific rules regarding certain categories of labour migrants:

- a) highly-skilled migrants;
- b) intra-corporate transferees; and
- c) seasonal workers.

Chapters III-VII and the Annexes are based upon the existing relevant Directives, while Chapter II is derived from the common or similar provisions which frequently appear in the current Directives, and Chapters I and VIII are synthesized from the general and final provisions of the existing measures. For the sake of brevity, the proposed Code does not include a preamble.

The proposed Code has 40% fewer Articles, and 27% less text, than the existing legislation.

The main changes which the Code would make as compared to the existing legislation are:

- a) a simplified and fairer set of **standard procedural rules** in Chapter II, which concern issues such as: the waiting periods for a decision on an application (which are new or shorter in several cases); more possibilities to make an application to stay for a longer period without having to leave the country; clearer rules on refusals to renew or to withdraw a residence permit; equal treatment for more categories of migrant workers; improved rules on movement between Member States; rules on information for (would-be) migrants and the general public on immigration law; and fairer rules on fees for applications.
- b) clearer rules on **labour migration** (Chapter III and the Annexes), as regards the extent of Member States' powers to set quotas on admission;
- c) amendments to the rules on **researchers** (Chapter IV), concerning issues such as procedural rights, admission of family members and the possible acquisition of long-term residence status;
- d) amendments to the rules on **students** (Chapter V), to make the current EU rules on admission of school pupils, volunteers and unpaid trainees mandatory, to improve procedural rights and to make it possible to apply to stay after graduation without having to leave the country;
- e) strengthening the rules on **family reunion** (Chapter VI), to: extend the special rules for refugees to beneficiaries of subsidiary protection; apply the same rules to family reunion with EU citizens, regardless of whether those citizens have moved within the EU or not; improve the family reunion rules for

researchers and the family members of migrants who move between Member States; and remove some derogations and restrictive conditions relating to family reunion;

- f) improving the rules on **long-term residents** (Chapter VII), in order to: delete some rules that make it harder to acquire (and easier to lose) long-term residence status, and that unjustly exclude some groups of persons from obtaining it; improve equal treatment for long-term residents; and make it easier for long-term residents to move to, take up work in, and switch their long-term residence status to another Member State; and
- g) enhance the **final provisions** of the EU rules (Chapter VIII), as regards issues such as statistics and reporting obligations, including more transparency as regards proceedings against Member States which have allegedly breached their obligations to apply the rules.

## **Conclusions**

Of course, there are different ways that the EU rules could be amended, and there are other reforms which could be suggested – in particular, amending or deleting the “integration” requirement which many Member States apply before family reunion or long-term residence status is granted. The proposed Code is intended as a contribution to the debate about the future proposal for a Code, which aims to raise the substantive standards and improve the procedural rights of legal immigrants, while also making the law simpler and more consistent.

Annex

**Draft Directive establishing a  
European Union immigration code**

CHAPTER I  
**GENERAL PROVISIONS**

*Article 1*  
**Purpose**

This Directive establishes:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification; and

(b) 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

for the purpose of developing a common immigration policy for the European Union aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in the Member States, while ensuring respect for fundamental rights.

*Article 2*  
**Definitions**

For the purposes of this Directive:

(a) 'third-country national' means any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;

(b) 'single permit' means a residence permit issued by the authorities of a Member State allowing a third-country national to stay legally in its territory in order to work there;

(c) 'single application procedure' means any procedure leading, on the basis of a single application made by a third-country national, or by his or her employer, for the authorisation of residence and work in the territory of a Member State, to a decision ruling on that application for the single permit;

(d) 'research' means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;

(e) 'research organisation' means any public or private organisations which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;

(f) 'researcher' means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required;

(g) 'student' means a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation;

(h) 'school pupil' means a third-country national admitted to the territory of a Member State to follow a recognised programme of secondary education in the context of an exchange scheme operated by an organisation recognised for that purpose by the Member State in accordance with its national legislation or administrative practice;

(i) 'unremunerated trainee' means a third-country national who has been admitted to the territory of a Member State for a training period without remuneration in accordance with its national legislation;

(j) 'establishment' means a public or private establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice for the purposes set out in this Directive;

(k) 'voluntary service scheme' means a programme of activities of practical solidarity, based on a State or a Union scheme, pursuing objectives of general interest;

(l) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002;

(m) 'sponsor' means a third-country national in a Member State who applies, or whose family members apply, for family reunification to be joined with him/her;

(n) 'family reunification' means the entry into and residence in a Member State by family members of a third-country national in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(o) 'unaccompanied minor' means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States;

(p) 'long-term resident' means any third-country national who has long-term resident status as provided for under Articles 52 to 55;

(q) 'first Member State' means the Member State which, as the case may be, either:

- (i) first admitted a third-country national to its territory pursuant to the specific provisions of this Directive before he or she exercised the right of mobility to another Member State pursuant to this Directive, or
- (ii) for the first time granted long-term resident status to a third-country national pursuant to Chapter VII;

(r) 'second Member State' means any Member State other than the one which, as the case may be, either:

- (i) any Member State in which the third-country national exercises the right of mobility to another Member State pursuant to this Directive; or
- (ii) any Member State other than the one which for the first time granted long-term resident status to a third-country national and in which that long-term resident exercises the right of residence pursuant to Chapter VII;

(s) 'family members' means, without prejudice to Article 3, as the case may be, either:

- (i) third-country nationals as defined in Article 42(1) of this Directive, where a third-country does not have long-term resident status pursuant to Chapter VII; or
- (ii) the third-country nationals who reside in the Member State concerned in accordance with Chapter VI, where a third-country has obtained long-term resident status pursuant to Chapter VII;

(t) 'international protection' means international protection as defined in Article 2(a) of Council Directive 2011/95/EU;

(u) 'long-term resident's EU residence permit' means a residence permit issued by the Member State concerned;

(v) 'EU Blue Card' means the residence permit bearing the term 'EU Blue Card' entitling its holder to reside and work in the territory of a Member State under the terms of Annex I.

### *Article 3*

#### **Scope**

1. This Directive shall apply to third-country nationals who apply for admission to, or who are legally resident on, the territory of a Member State.

2. This Directive shall not apply to third-country nationals:

(a) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Union;

(b) who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and the Member States and third countries or between the Union and third countries;

(c) who are authorised to reside in a Member State on the basis of temporary protection, or who have applied for authorisation to reside there on that basis and are awaiting a decision on their status;



(d) who have applied for international protection and whose application has not yet given rise to a final decision;

(e) who are beneficiaries of international protection;

(f) who are beneficiaries of protection in accordance with national law, international obligations or the practice of the Member State or have applied for protection in accordance with national law, international obligations or the practice of the Member State and whose application has not given rise to a final decision;

(g) whose removal has been suspended for reasons of fact or law, pursuant to Article 9 of Directive 2008/115 or in accordance with national law or other relevant provisions of Union law;

(h) who are carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC.

3. By way of derogation from paragraph 2:

(a) Chapters V, VI and VII of this Directive, and, to that extent, the relevant corresponding provisions of Chapter II, shall apply to beneficiaries of international protection;

(b) Chapter VIII of this Directive, and, to that extent, the relevant corresponding provisions of Chapter II, shall apply to the third-country nationals referred to in paragraph 2(a) and (b).

#### *Article 4*

#### **Relationship with national and international law**

1. This Directive shall be without prejudice to more favourable provisions of:

(a) bilateral or multilateral agreements between the Union or the Union and its Member States and one or more third countries; or

(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies, without prejudice to the specific provisions of the Annexes.

3. As regards Chapter VII, Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. As regards Annex I, Member States may issue residence permits other than an EU Blue Card for any purpose of employment.

In each case:

(a) such residence permits shall not confer the right of residence in the other Member States as provided for in Chapter VII or Annex I respectively;

(b) Member States shall not prevent third-country nationals from simultaneously applying for or holding status pursuant to both the relevant provisions of national law and of this Directive.

4. Without prejudice to the possible adoption of amendments to this Directive, which shall not affect the competence of Member States referred to in Article 16(1), Member States may legislate and adopt legally binding acts as regards matters which are outside the scope of this Directive or which are otherwise not regulated by it.

5. Without prejudice to the second subparagraph of Article 53(3), Member States shall not be obliged to take into account the time during which a student, exchange pupil, unremunerated trainee or volunteer has resided as such in their territory for the purpose of granting further rights under national law to the third-country nationals concerned.

## CHAPTER II COMMON PROVISIONS

### *Article 5* **Conditions for admission**

1. A third-country national who applies to be admitted to the territory of a Member State pursuant to Chapters IV to VI or the Annexes to this Directive shall:

(a) present a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;

(b) not be considered to pose a threat to public policy, public security or public health.

2. In addition, the person concerned as appropriate must satisfy and/or may also be required to satisfy the further criteria for admission set out and/or referred to in Chapters IV to VI and the Annexes. Member States may not impose any additional criteria for admission.

3. Once checks to establish that the criteria referred to in paragraphs 1 and 2 are met have been positively concluded, the person concerned shall be admitted on the territory of the Member States to carry out the activity concerned.

### *Article 6* **Applications for admission**

1. Member States shall determine whether applications for admission pursuant to Chapters III to VI, or national law which falls within the scope of Chapter III, shall be made by the third-country national who seeks admission and/or, where appropriate, the relevant employer, research organisation or sponsor.

2. Without prejudice to the specific provisions on mobility between Member States set out in this Directive, the application shall be considered and examined when the third-country

national concerned is residing outside the territory of the Member States to which he/she wishes to be admitted.

3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.

4. By way of derogation from paragraphs 2 and 3:

(a) Member States shall consider an application for admission in order to carry out a research project pursuant to Chapter IV, or an application for a Blue Card pursuant to Annex I, when the third-country national concerned is already residing in that Member State as holder of a valid residence permit or national long-stay visa; and

(b) Member States shall consider an application for admission for employment or self-employment from a student who is already residing in that Member State and holds a valid residence permit pursuant to Chapter V, and who seeks to take up such economic activities at the end of his/her studies.

5. The Member State concerned shall grant the third-country national who has submitted an application and who meets the relevant conditions every facility to obtain the requisite visas.

#### *Article 7*

#### **Procedural safeguards**

1. Member States shall designate the authority competent to receive the application and to issue residence permits pursuant to this Directive or national law which falls within the scope of Chapter III.

2. The competent authority shall adopt a decision on the complete application as soon as possible and no later than:

- four months from the date on which the application was lodged, as regards Chapter III and national law which falls within the scope of that Chapter, as well as Article 64;
- 90 days from the date on which the application was lodged, as regards Chapters IV and V and Annexes I and II;
- 30 days from the date on which the application was lodged, as regards Articles 12 and 68 and Annex III;
- nine months from the date on which the application was lodged, as regards Chapter VI;
- six months from the date on which the application was lodged, as regards Chapter VII, without prejudice to the first and third indents.

The time limit referred to in the first subparagraph may be extended in exceptional circumstances, linked to the complexity of the examination of the application.

Any consequence of no decision being taken by the end of the period provided for in this provision shall be determined by national law of the relevant Member State.

3. The competent authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant national law.

4. If the information or documents supporting the application are incomplete according to the criteria specified in national law, the competent authority shall notify the applicant in writing of the additional information or documents required and may set a reasonable deadline to provide them. The period referred to in paragraph 2 shall be suspended until the authorities have received the additional information required. If additional information or documents have not been provided within the deadline, the application may be rejected.

#### *Article 8*

#### **Procedural rights**

1. Reasons shall be given in the written notification for a decision rejecting the application for a residence permit pursuant to this Directive, not modifying or not renewing such a residence permit, or withdrawing the permit on the basis of the criteria set out or referred to in Article 9 of this Directive.

2. Any decision rejecting the application, not modifying or not renewing or withdrawing a residence permit pursuant to this Directive shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority where the person concerned may lodge an appeal and the time-limit for the appeal.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to applications for residence permits issued pursuant to national law which falls within the scope of Chapter III.

#### *Article 9*

#### **Renewal and withdrawal of residence permits**

1. Member States shall withdraw or refuse to renew a residence permit issued on the basis of Chapters IV-VI or Annexes I-III of this Directive in the following cases:

(a) when it has been fraudulently acquired, or has been falsified or tampered with; or

(b) wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in the relevant provisions of this Directive or is residing for purposes other than that for which the holder was authorised to reside.

2. Member States may withdraw or refuse to renew a residence permit issued on the basis of Chapters IV-VI or Annexes I-III of this Directive for reasons of public policy, public security or public health.

3. Where the relevant provisions of this Directive provide for its renewal, a residence permit issued pursuant to Chapters IV-VI and Annexes I-III of this Directive shall or may additionally be withdrawn or not renewed only pursuant to the additional grounds for withdrawal of non-renewal set out or referred to in those Chapters or Annexes.

#### *Article 10*

#### **Rights on the basis of a residence permit**

Where a residence permit has been issued pursuant to this Directive, or in accordance with national law which falls within the scope of Chapter III, and during its period of validity, it shall authorise its holder as a minimum to:

- (a) entry, re-entry and stay in the territory of the Member State issuing the permit, provided that he or she meets all admission requirements in accordance with national law and/or this Directive;
- (b) have free access to the entire territory of the Member State issuing the permit within the limits provided for by national legislation;
- (c) exercise the concrete activity authorised under the permit in accordance with national and/or EU law, without prejudice to the specific provisions of Annex II;
- (d) be informed about his/her own rights linked to the permit conferred by this Directive and /or by national legislation;
- (e) the rights recognised in the relevant provisions of this Directive.

#### *Article 11*

#### **Right to equal treatment**

1. Third-country nationals admitted pursuant to national law which falls within the scope of Chapter III, or who are authorised to work pursuant to Chapters IV to VI, shall enjoy equal treatment with nationals of the Member State where they reside with regard to:

- (a) working conditions, including pay and dismissal as well as health and safety at the workplace;
- (b) freedom of association and affiliation and membership of an organization representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organizations, without prejudice to the national provisions on public policy and public security;
- (c) education and vocational training;
- (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- (e) branches of social security, as defined in Regulation (EC) No 883/2004;
- (f) tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;
- (g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law. This paragraph is without prejudice to the freedom of contract in accordance with Union and national law;
- (h) advice services afforded by employment offices.

2. Member States may restrict equal treatment with nationals:

(a) under paragraph 1(c):

- by limiting its application to those third-country nationals who are in employment or who have been employed and who are registered as unemployed;
- by excluding those third-country nationals who have been admitted to their territory in conformity with Chapter V;
- by excluding study and maintenance grants and loans or other grants and loans;
- by laying down specific prerequisites including language proficiency and the payment of tuition fees, in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the concrete employment activity;

(b) under paragraph 1(g):

- by limiting its application to those third-country nationals who are in employment;
- by restricting access to housing;

(c) by limiting the rights conferred under paragraph 1(e) for third-country nationals, but shall not restrict such rights for third-country nationals who are in employment or who have been employed for a minimum period of 6 months and who are registered as unemployed.

In addition, Member States may decide that paragraph 1(e) with regard to family benefits shall not apply to third-country nationals who have been authorised to work on the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study or to third-country nationals who are allowed to work on the basis of a visa.

(d) under paragraph 1 (f) with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the third-country national for whom he/she claims benefits, lies within the territory of the Member State concerned.

3. The right to equal treatment as laid down in paragraph 1 is without prejudice to the right of the Member State to withdraw or to refuse to renew the residence permit issued under this Directive pursuant to Article 9 or, where relevant, pursuant to national law.

4. Third-country nationals moving to a third country, or the survivors of such persons residing in a third-country deriving rights from the person concerned, shall receive, in relation to old-age, invalidity and death, statutory pensions based on the workers' previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.

#### *Article 12*

#### **Mobility between Member States**

1. A third-country national admitted to a first Member State pursuant to Chapters IV or V or Annexes I or II has the right to move to a second Member State before obtaining long-term

residence status pursuant to Chapter VIII, subject to the specific conditions set out in Chapters IV and V or Annexes I and II.

The family members of the person concerned have the right to move to the second Member State with that person, subject to the specific conditions set out in Article 51.

2. Where a third-country national and, where relevant, his or her family members, applies for a visa or a residence permit in a second Member State, pursuant to the conditions referred to paragraph 1, the second Member State shall issue a visa or residence permit within the time period referred to in Article 7(2) if those conditions are satisfied.

3. The competent authorities of the first Member State shall, at the request of the competent authorities of the second Member State, provide the appropriate information in relation to the stay of the person concerned in the territory of the first Member State.

In order to ensure the effective application of this Article in practice, The Commission may adopt an implementing decision facilitating cooperation between the competent authorities of the Member States, which shall be adopted in accordance with the procedure referred to in Article 74(2).

#### *Article 13* **Information**

1. Member States shall provide, upon request, adequate information to the third-country national and, where relevant, the future employer, research organisation or sponsor, on the documents required to make a complete application for admission or renewal of a permit pursuant to this Directive or national law which falls within the scope of Chapter III.

2. Each Member State shall make available to the general public a regularly updated set of information concerning the conditions of third-country nationals' entry into and stay in its territory pursuant to this Directive or national law which falls within the scope of Chapter III.

#### *Article 14* **Fees**

Member States may request applicants to pay fees for handling an application for admission or renewal of a permit pursuant to this Directive or national law which falls within the scope of Chapter III. In such cases, the level of fees shall be proportionate and must be based on the principle of the services actually provided for the processing of applications and issuing of permits.

### **CHAPTER III** **ADMISSION FOR EMPLOYMENT**

#### *Article 15* **Scope**

1. Without prejudice to Article 19, this Chapter shall apply to third-country nationals who:

(a) apply to reside for the purpose of work in the territory of a Member State, including for the specific categories of employment set out in Annexes I-III;

(b) who have been admitted for the purpose of work under national law or pursuant to this Directive or other Union law.

2. Additional specific provisions concerning the admission and residence of third-country nationals for certain categories of employment are set out in Annexes I-III.

3. The admission of third-country nationals for categories of employment other than those categories set out in Annexes I-III shall, apart from the provisions of this Chapter and without prejudice to paragraph 4 or the possible adoption of additional Annexes to this Directive, be subject to national law.

4. This Chapter shall not apply to third-country nationals:

(a) who are posted from outside the European Union, as long as they are posted, except to the extent that this Chapter is applicable to intra-corporate transferees pursuant to Annex II;

(b) who have applied for admission or have been admitted to the territory of a Member State to work as intra-corporate transferees, except to the extent that this Chapter is applicable to intra-corporate transferees pursuant to Annex II;

(c) who have applied for admission or have been admitted to the territory of a Member State as seasonal workers, except to the extent that this Chapter is applicable to such workers pursuant to Annex III;

(d) who have applied for admission or have been admitted to the territory of a Member State as au pairs;

(e) who have acquired long-term resident status in accordance with Chapter VII;

(f) who have applied for admission or have been admitted to the territory of a Member State as self-employed workers;

(g) who have applied for admission or have been admitted as seafarers for employment or work in any capacity on board of a ship registered in or sailing under the flag of a Member State;

(h) who are allowed to work on the basis of a visa.

5. Member States may decide that this Chapter does not apply to third-country nationals who have been either authorised to work on the territory of a Member State for a period not exceeding six months or admitted for the purpose of study.

#### *Article 16*

#### **Volumes of admission**

1. Pursuant to Article 79(5) of the Treaty on the Functioning of the European Union, this Chapter shall not affect the right of Member States to determine volumes of admission of



third-country nationals coming from third countries to their territory in order to seek work for the purposes of employment, whether employed or self-employed.

2. An application may be considered as inadmissible on the grounds of volumes of admission pursuant to paragraph 1 and therefore has not to be processed.

#### *Article 17*

#### **Single application procedure**

1. An application for a single permit shall be submitted in a single application procedure.

2. Member States shall examine the application and adopt a decision to grant, to modify or to renew the single permit if the applicant fulfils the requirements specified by national law or the Annexes to this Directive. The decision granting, modifying or renewing the single permit shall constitute a single administrative act combining a residence permit and a work permit.

3. Member States shall issue a single permit, where the conditions provided for are met, to third-country nationals who apply for admission and to third-country nationals already admitted who apply to renew or modify their residence permit after the entry into force of the national implementing provisions.

#### *Article 18*

#### **Single permit**

1. Member States shall indicate the information relating to the permission to work in the single permit, in accordance with the Annex to Regulation (EC) No 1030/2002, a, 7.5-9.

Member States may indicate additional information related to the employment relationship of the third-country national (such as the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and point 16 of its Annex I as amended by Regulation (EC) 380/2008.

2. When issuing the single permit Member States shall not issue any additional permits as proof of the access given to the labour market.

#### *Article 19*

#### **Residence permits issued for purposes other than work**

1. When issuing residence permits in accordance with Regulation (EC) No 1030/2002 to persons who have been admitted for purposes other than work under national law, this Directive, or other Union law, and who are allowed to work, Member States shall indicate the information relating to the permission to work irrespective of the type of the permit.

Member States may indicate additional information related to the employment relationship of the third-country national (such as the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and point 16 of its Annex I as amended by Regulation (EC) 380/2008.

2. When issuing residence permits in accordance with Regulation (EC) No 1030/2002, Member States shall not issue any additional permits as proof of authorisation to access the labour market.

*Article 20*

**Grounds for refusal**

1. Member States shall reject an application for employment pursuant to Annexes I-III whenever the applicant does not meet the conditions set out in Article 5 or whenever the documents presented have been fraudulently acquired, or falsified or tampered with.

2. Member States may reject an application for employment pursuant to Annexes I-III if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

CHAPTER IV

**ADMISSION FOR RESEARCH**

*Article 21*

**Scope**

1. This Chapter shall apply to third-country nationals who apply to be admitted to the territory of a Member State for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.

2. This Directive shall not apply to:

(a) third-country nationals applying to reside in a Member State as students within the meaning of Chapter V in order to carry out research leading to a doctoral degree; or

(b) researchers seconded by a research organisation to another research organisation in another Member State.

*Article 22*

**Approval**

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Chapter shall first be approved for that purpose by the Member State concerned.

2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member States. Applications for approval by both public and private organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on proof that they conduct research.

The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.

3. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her stay and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.

4. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the approved organisation shall provide the competent authorities designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research projects in respect of which a hosting agreement has been signed pursuant to Article 23.

5. The competent authorities in each Member State shall publish and update regularly lists of the research organisations approved for the purposes of this Directive.

6. A Member State may, among other measures, refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2, 3 and 4 or in cases where the approval has been fraudulently acquired or where a research organisation has signed a hosting agreement with a third-country national fraudulently or negligently. Where approval has been refused or withdrawn, the organisation concerned may be banned from reapplying for approval up to five years from the date of publication of the decision on withdrawal or non-renewal.

7. Member States may determine in their national legislation the consequences of the withdrawal of the approval or refusal to renew the approval for the existing hosting agreements, concluded in accordance with Article 23, as well as the consequences for the residence permits of the researchers concerned.

#### *Article 23*

#### **Hosting agreement**

1. A research organisation wishing to host a researcher shall sign a hosting agreement with the latter whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose, without prejudice to Articles 5 and 24.

2. Research organisations may sign hosting agreements only if the following conditions are met:

(a) the research project has been accepted by the relevant authorities in the organisation, after examination of:

(i) the purpose and duration of the research, and the availability of the necessary financial resources for it to be carried out;

(ii) the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his/her qualification in accordance with Article 2(f);

(b) during his/her stay the researcher has sufficient monthly resources to meet his/her expenses and return travel costs in accordance with the minimum amount published for the

purpose by the Member State, without having recourse to the Member State's social assistance system;

(c) during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned;

(d) the hosting agreement specifies the legal relationship and working conditions of the researchers.

3. Once the hosting agreement is signed, the research organisation may be required, in accordance with national legislation, to provide the researcher with an individual statement that for costs within the meaning of Article 22(3) financial responsibility has been assumed.

4. The hosting agreement shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.

5. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement.

#### *Article 24*

#### **Specific conditions for admission**

1. In addition to the conditions set out in Article 5(1), a third-country national who applies to be admitted for the purposes set out in this Chapter shall:

(a) present a hosting agreement signed with a research organisation in accordance with Article 23; and

(b) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 23(3); and

Member States shall check that the conditions referred to in points (a) and (b) are met.

2. Member States may also check the terms upon which the hosting agreement has been based and concluded.

#### *Article 25*

#### **Duration of residence permit**

Member States shall issue a residence permit for a period of at least one year and shall renew it if the conditions laid down in Articles 5(1), 23 and 24 are still met. If the research project is scheduled to last less than one year, the residence permit shall be issued for the duration of the project.

#### *Article 26*

#### **Teaching**

1. Researchers admitted pursuant to this Chapter may teach in accordance with national legislation.

2. Member States may set a maximum number of hours or of days for the activity of teaching.

*Article 27*

**Mobility between Member States**

1. Pursuant to Article 12, a third-country national who has been admitted as a researcher under this Chapter shall be allowed to carry out part of his/her research in another Member State under the conditions as set out in this Article.

2. If the researcher stays in another Member State for a period of up to three months, the research may be carried out on the basis of the hosting agreement concluded in the first Member State, provided that he has sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State.

3. If the researcher stays in another Member State for more than three months, Member States may require a new hosting agreement to carry out the research in that Member State. At all events, the conditions set out in Articles 5(1), 23 and 24 shall be met in relation to the Member State concerned.

5. Member States shall not require the researcher to leave their territory in order to submit applications for the visas or residence permits.

CHAPTER V

**ADMISSION FOR THE PURPOSE OF STUDIES, PUPIL EXCHANGE,  
UNREMUNERATED TRAINING OR VOLUNTARY SERVICE**

*Article 28*

**Scope**

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of the Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

2. This Chapter shall not apply to:

(d) third-country nationals who enjoy long-term resident status in a Member State in accordance with Chapter VII and exercise their right to reside in another Member State in order to study or receive vocational training;

(b) third-country nationals considered under the national legislation of the Member State concerned as workers or self-employed persons.

*SECTION I*  
*CONDITIONS OF ADMISSION*

*Article 29*

**Principle**

1. The admission of a third-country national under this Chapter shall be subject to the verification of documentary evidence showing that he/she meets the conditions laid down in paragraph 2 and in whichever of Articles 30 to 34 applies to the relevant category.

2. In addition to the conditions set out in Article 5(1), a third-country national who applies to be admitted for the purposes set out in Articles 30 to 34 shall:

(a) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation for the planned stay; and

(b) have sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned;

2. Member States shall facilitate the admission procedure for the third-country nationals covered by Articles 30 to 34 who participate in Community programmes enhancing mobility towards or within the Community.

*Article 30*

**Specific conditions for students**

1. In addition to the general conditions stipulated in Articles 5(1) and 29(2), a third-country national who applies to be admitted for the purpose of study shall:

(a) have been accepted by an establishment of higher education to follow a course of study;

(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;

(c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her;

(d) provide evidence, if the Member State so requires, that he/she has paid the fees charged by the establishment.

2. Students who automatically qualify for sickness insurance in respect of all risks normally covered for the nationals of the Member State concerned as a result of enrolment at an establishment shall be presumed to meet the condition of Article 29(2)(b).

*Article 31*

**Mobility of students**

1. Pursuant to Article 12, and without prejudice to Articles 7(4), 9 and 35(2), a third-country national who has already been admitted as a student in a first Member State has the right to

move to a second Member State to continue with part of the studies already commenced, or to complement them with a related course of study in the second Member State, if he or she:

(a) meets the conditions laid down by Articles 5(1), 29(2) and 30 in relation to that Member State; and

(b) has sent, with his/her application for admission, full documentary evidence of his/her academic record and evidence that the course he/she wishes to follow genuinely complements the one he/she has completed; and

(c) participates in a Union or bilateral exchange programme or has been admitted as a student in a Member State for no less than two years.

2. The requirements referred to in paragraph 1(c) shall not apply in the case where the student, in the framework of his/her programme of studies, is obliged to attend a part of his/her courses in an establishment of another Member State.

#### *Article 32*

##### **Specific conditions for school pupils**

1. A third-country national who applies to be admitted in a pupil exchange scheme shall, in addition to the general conditions stipulated in Articles 5(1) and 29(2):

(a) not be below the minimum age nor above the maximum age set by the Member State concerned;

(b) provide evidence of acceptance by a secondary education establishment;

(c) provides evidence of participation in a recognised pupil exchange scheme programme operated by an organisation recognised for that purpose by the Member State concerned in accordance with its national legislation or administrative practice;

(d) provides evidence that the pupil exchange organisation accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned, in particular as regards subsistence, study, healthcare and return travel costs;

(e) be accommodated throughout his/her stay by a family meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme in which he/she is participating.

2. Member States may confine the admission of school pupils participating in an exchange scheme to nationals of third countries which offer the same possibility for their own nationals.

#### *Article 33*

##### **Specific conditions for unremunerated trainees**

A third-country national who applies to be admitted as an unremunerated trainee shall, in addition to the general conditions stipulated in Articles 5(1) and 29(2):

(a) have signed a training agreement, approved if need be by the relevant authority in the Member State concerned in accordance with its national legislation or administrative practice, for an unremunerated placement with a public or private-sector enterprise or vocational training establishment recognised by the Member State in accordance with its national legislation or administrative practice;

(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, training and return travel costs. The Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;

(c) receive, if the Member State so requires, basic language training so as to acquire the knowledge needed for the purposes of the placement.

#### *Article 34*

#### **Specific conditions for volunteers**

A third-country national who applies to be admitted to a voluntary service scheme shall, in addition to the general conditions stipulated in Articles 5(1) and 29(2):

(a) not be below the minimum age nor above the maximum age set by the Member State concerned;

(b) produce an agreement with the organisation responsible in the Member State concerned for the voluntary service scheme in which he/she is participating, giving a description of tasks, the conditions in which he/she is supervised in the performance of those tasks, his/her working hours, the resources available to cover his travel, subsistence, accommodation costs and pocket money throughout his/her stay and, if appropriate, the training he will receive to help him/her perform his/her service;

(c) provide evidence that the organisation responsible for the voluntary service scheme in which he/she is participating has subscribed a third-party insurance policy and accepts full responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence, healthcare and return travel costs;

(d) and, if the host Member State specifically requires it, receive a basic introduction to the language, history and political and social structures of that Member State.

#### *SECTION II*

#### *RESIDENCE PERMITS*

#### *Article 35*

#### **Residence permit issued to students**

1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 5(1), 29(2) and 30. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.

2. In addition to the provisions of Article 9, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:



(a) does not respect the limits imposed on access to economic activities under Article 39;

(b) does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.

*Article 36*

**Residence permit issued to school pupils**

A residence permit issued to school pupils shall be issued for a period of no more than one year.

*Article 37*

**Residence permit issued to unremunerated trainees**

The period of validity of a residence permit issued to unremunerated trainees shall correspond to the duration of the placement or shall be for a maximum of one year. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its national legislation or administrative practice, provided the holder still meets the conditions laid down in Articles 29(2) and 33.

*Article 38*

**Residence permit issued to volunteers**

A residence permit issued to volunteers shall be issued for a period of no more than one year. In exceptional cases, if the duration of the relevant programme is longer than one year, the duration of the validity of the residence permit may correspond to the period concerned.

*SECTION III*

*OTHER PROVISIONS*

*Article 39*

**Economic activities by students**

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity. The situation of the labour market in the host Member State may be taken into account.

Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation.

2. Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 10 hours per week, or the equivalent in days or months per year.

3. Access to economic activities for the first year of residence may be restricted by the host Member State.

4. Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation, in advance or otherwise.

*Article 40*

**Fast-track procedure for issuing residence permits or visas  
to students and school pupils**

An agreement on a fast-track admission procedure allowing residence permits or visas to be issued in the name of the third-country national concerned may be concluded between the authority of a Member State with responsibility for the entry and residence of students or school pupils who are third-country nationals and an establishment of higher education or an organisation operating pupil exchange schemes which has been recognised for this purpose by the Member State concerned in accordance with its national legislation or administrative practice.

CHAPTER VI

**THE RIGHT TO FAMILY REUNIFICATION**

*Article 41*

**Scope**

This Chapter sets out the conditions for the exercise of the right to family reunification. It applies where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more, if the members of his or her family are third-country nationals of whatever status.

*SECTION I*

*GENERAL RULES*

*Article 42*

**Family members**

1. The Member States shall authorise the entry and residence, pursuant to this Chapter and subject to compliance with the conditions laid down in Articles 43 and 44, of the following family members:

(a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

(d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Article 44, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Article 44, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 43(1), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of the minimum age for marriage set out in their national law, before the spouse is able to join him/her.

#### *Article 43*

#### **Conditions of admission**

1. An application for family reunification shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Article 42 and, where applicable, Article 44.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

2. When examining an application, the Member States shall have due regard to the best interests of minor children.

3. In addition to the provisions of Article 5(1), Member States may reject an application for entry and residence for the purpose of family reunification where:

(a) the conditions laid down by this Chapter are not satisfied;

(b) the sponsor and his/her family member(s) do not live in a real marital or family relationship;

(c) it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

4. Member States may also reject an application for entry and residence for the purpose of family reunification where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

5. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2.

6. Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application.

#### *Article 44*

#### **Requirements for the exercise of the right to family reunification**

1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

3. Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

#### *Article 45*

#### **Residence permits**

1. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

2. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

3. Article 43(3)(b) and (c), (4)(b), (5) and (6) shall also apply to the withdrawal or non-renewal of a residence permit.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 44(1)(c), the Member State shall take into account the contributions of the family members to the household income.

4. When considering the potential withdrawal or non-renewal of a residence permit for reasons of public policy, public security or public health pursuant to Article 9(2), the Member State shall consider, besides Article 43(6), the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

5. Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 47.

#### *Article 46*

#### **Rights**

1. Without prejudice to Article 11, the sponsor's family members shall be entitled, in the same way as the sponsor, to:

- (a) access to education;
- (b) access to employment and self-employed activity;
- (c) access to vocational guidance, initial and further training and retraining.

2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.

3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 42(2) applies.

#### *Article 47*

#### **Autonomous residence permit**

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 42(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

5. This Article is without prejudice to the possibility of the family member acquiring long-term residence status pursuant to Chapter VII.

#### *SECTION II*

#### *SPECIAL RULES*

#### *Article 48*

#### **Beneficiaries of international protection**

1. This Chapter shall apply to family reunification with sponsors who are beneficiaries of international protection status in a Member State, subject to the derogations laid down in this Article.

2. Member States may authorise family reunification of other family members not referred to in Article 42, if they are dependent on the beneficiary of international protection.

3. If the beneficiary of international protection is an unaccompanied minor, Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 42(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the beneficiary of international protection has no relatives in the direct ascending line or such relatives cannot be traced.

4. Where a beneficiary of international protection cannot provide official documentary evidence of the family relationship pursuant to Article 43(1), the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

5. By way of derogation from Article 44(1), the Member States shall not require the beneficiary of international protection and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 42(1), the evidence that the beneficiary of international protection fulfils the requirements set out in Article 44(1).

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the beneficiary of international protection to meet the conditions referred to in Article 44(1) if the application for family reunification is not submitted within a period of three months after the granting of international protection status.

6. The integration measures referred to in Article 44(2) may only be applied to the beneficiaries of international protection and/or their family members once the persons concerned have been granted family reunification.

7. By way of derogation from Article 44(3), the Member States shall not require the beneficiary of international protection to have resided in their territory for a certain period of time, before having his/her family members join him/her.

8. Member States may confine the application of this Article to beneficiaries of international protection whose family relationships predate their entry.

9. This Article is without prejudice to any rules granting international protection status to family members.

#### Article 49

##### **Blue Card holders, researchers and intra-corporate transferees**

1. This Chapter shall apply to family reunification with sponsors who have been admitted pursuant to Chapter IV or Annexes I and II, subject to the derogations laid down in this Article.
2. By way of derogation from Article 44(3), family reunification shall not be made dependent on the requirement of the sponsor having a minimum period of residence.
3. By way of derogation from Article 44(2), the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.
4. By way of derogation from the fourth indent of Article 7(2), residence permits for family members shall be granted, where the conditions for family reunification are fulfilled, at the latest within six months from the date on which the application was lodged.
5. By way of derogation from Article 45(1) and (2), the duration of validity of the residence permits of family members shall be the same as that of the residence permits issued to the sponsor insofar as the period of validity of their travel documents allows it.
6. By way of derogation from the second sentence of Article 46(2), Member States shall not apply any time limit in respect of access to the labour market.
7. By way of derogation to Article 47(1), for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States may be cumulated.
8. If Member States have recourse to the option provided for in paragraph 7, the provisions set out in Article 69 in respect of accumulation of periods of residence in different Member States shall apply *mutatis mutandis*.

#### Article 50

##### **Family members of EU citizens**

Where the sponsor is a citizen of the European Union who has not exercised free movement rights within the Union, the relevant provisions of Directive 2004/38 shall apply *mutatis mutandis* as regards family reunification with third-country national family members, without prejudice to the Treaties.

#### Article 51

##### **Mobility between Member States**

1. Pursuant to Article 12, when the sponsor moves to a second Member State in accordance with the relevant provisions of this Directive and when the family was already constituted in the first Member State, the members of his or her family shall be authorised to accompany or join him or her.
2. No later than one month after entering the territory of the second Member State, the family members concerned or the sponsor, in accordance with national law, shall submit an



application for a residence permit as a family member to the competent authorities of that Member State.

In cases where the residence permit of the family members issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, Member States shall allow the person to stay in their territory, if necessary by issuing national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on their territory with the sponsor until a decision on the application has been taken by the competent authorities of the second Member State.

3. The second Member State may require the family members concerned to present with their application for a residence permit: (a) their residence permit in the first Member State and a valid travel document, or their certified copies, as well as a visa, if required; (b) evidence that they have resided as members of the family of the sponsor in the first Member State; (c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the sponsor has such insurance for them.

4. The second Member State may require the sponsor to provide evidence that the holder: (a) has an accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in the Member State concerned; (b) has stable and regular resources which are sufficient to maintain himself or herself and the members of his or her family, without recourse to the social assistance of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

5. Derogations contained in Article 49 shall continue to apply *mutatis mutandis*.

6. Where the family was not already constituted in the first Member State, Section I of this Chapter, along with Article 49 where appropriate, shall apply.

## CHAPTER VII LONG-TERM RESIDENT STATUS

### *Article 52* **Scope**

This Chapter does not apply to third-country nationals who:

(a) reside in order to pursue studies or vocational training;

(b) enjoy a legal status governed by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character of 1975.

### SECTION I LONG-TERM RESIDENT STATUS IN A MEMBER STATE

*Article 53*  
**Duration of residence**

1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application, whether pursuant to this Directive, national law, international agreements, other EU legislation, or a combination thereof, without prejudice to Article 4(5).
2. Member States shall not grant long-term resident status on the basis of international protection in the event of the revocation of, ending of or refusal to renew international protection as laid down in Articles 14(3) and 19(3) of Directive 2011/95/EU.
3. Periods of residence for the reasons referred to in Article 52(b) shall not be taken into account for the purposes of calculating the period referred to in paragraph 1.
4. Periods of absence from the territory of the Member State concerned shall not interrupt the period referred to in paragraph 1 and shall be taken into account for its calculation where they are shorter than twelve consecutive months and do not exceed in total eighteen months within the period referred to in paragraph 1.

In cases of specific or exceptional reasons of a temporary nature and in accordance with their national law, Member States may accept that a longer period of absence than that which is referred to in the first subparagraph shall not interrupt the period referred to in paragraph 1. In such cases Member States shall not take into account the relevant period of absence in the calculation of the period referred to in paragraph 1.

By way of derogation from the second subparagraph, Member States shall take into account in the calculation of the total period referred to in paragraph 1 periods of absence relating to secondment for employment purposes, including the provision of cross-border services.

*Article 54*  
**Conditions for acquiring long-term resident status**

1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:
  - (a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;
  - (b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.
2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.
3. Member States may refuse to grant long-term resident status on grounds of public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having proper regard to the duration of residence and to the existence of links with the country of residence.

4. The refusal referred to in paragraph 3 shall not be founded on economic considerations.

#### *Article 55*

#### **Acquisition of long-term resident status**

1. To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he/she resides.

The application shall be accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 53 and 54(1) and (2) as well as, if required, by a valid travel document or its certified copy.

2. If the conditions provided for by Articles 53 and 54(1) and (2) are met, and the person does not represent a threat within the meaning of Article 54(3) and (4), the Member State concerned shall grant the third-country national concerned long-term resident status.

3. The status as long-term resident shall be permanent, subject to Article 56.

4. Member States shall issue a long-term resident's EU residence permit to long-term residents. The permit shall be valid at least for five years; it shall, upon application if required, be automatically renewable on expiry.

5. Under the heading 'type of permit', the Member States shall enter 'long-term resident — EU'.

6. Where a Member State issues a long-term resident's EU residence permit to a third country national to whom it granted international protection, it shall enter the following remark in that long-term resident's EU residence permit, under the heading "Remarks": "International protection granted by [name of the Member State] on [date]".

7. Where the long-term resident's EU residence permit is issued by a second Member State to a long-term resident who already has a long-term resident's EU residence permit issued by another Member State which contains the remark referred to in paragraph 6, the second Member State shall enter the same remark in the long term resident's EU residence permit.

Before the second Member State enters the remark referred to in paragraph 6, it shall consult the Member State mentioned in that remark to provide information as to whether the long term resident is still a beneficiary of international protection. The Member State mentioned in the remark shall reply no later than one month after receiving the request for information. Where international protection has been withdrawn by a final decision, the second Member State shall not enter that remark.

8. Where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the long-term resident was transferred to the second Member State after the long-term resident's EU residence permit referred to in

paragraph 7 was issued, the second Member State shall amend accordingly the remark referred to in paragraph 6 no later than three months after the transfer.

#### *Article 56*

#### **Withdrawal or loss of status**

1. Long-term residents shall no longer be entitled to maintain long-term resident status in the following cases:

(a) detection of fraudulent acquisition of long-term resident status;

(b) adoption of an expulsion measure under the conditions provided for in Article 58;

(c) in the event of absence from the territory of the Union for a period of 24 consecutive months.

2. By way of derogation from paragraph 1(c), Member States may provide that absences exceeding 24 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of status.

3. Member States may provide that the long-term resident shall no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy, in consideration of the seriousness of the offences he/she committed, but such threat is not a reason for expulsion within the meaning of Article 58.

4. Member States may withdraw the long-term resident status in the event of the revocation of, ending of or refusal to renew international protection as laid down in Articles 14(3) and 19(3) of Directive 2011/95/EU if the long-term resident status was obtained on the basis of international protection.

5. The long-term resident who has resided in another Member State in accordance with Section II shall no longer be entitled to maintain his/her long-term resident status acquired in the first Member State when such a status is granted in another Member State pursuant to Article 68.

In any case after six years of absence from the territory of the Member State that granted long-term resident status the person concerned shall no longer be entitled to maintain his/her long term resident status in the said Member State.

By way of derogation from the second subparagraph the Member State concerned may provide that for specific reasons the long-term resident shall maintain his/her status in the said Member State in case of absences for a period exceeding six years.

6. With regard to the cases referred to in paragraph 1(c) and in paragraph 4, Member States who have granted the status shall provide for a facilitated procedure for the re-acquisition of long-term resident status.

The said procedure shall apply in particular to the cases of persons that have resided in a second Member State on grounds of pursuit of studies.

The conditions and the procedure for the re-acquisition of long-term resident status shall be determined by national law.

7. The expiry of a long-term resident's EU residence permit shall in no case entail withdrawal or loss of long-term resident status.

8. Where the withdrawal or loss of long-term resident status does not lead to removal, the Member State shall authorise the person concerned to remain in its territory if he/she fulfils the conditions provided for in its national legislation and/or if he/she does not constitute a threat to public policy or public security.

#### *Article 57*

#### **Equal treatment**

1. Long-term residents shall enjoy equal treatment with nationals as regards:

(a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;

(b) education and vocational training, including study grants in accordance with national law;

(c) recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures;

(d) social security, social assistance and social protection as defined by national law;

(e) tax benefits;

(f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;

(g) 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;

2. With respect to the provisions of paragraph 1, points (b), (d), (e), (f) and (g), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned.

3. Member States may restrict equal treatment with nationals in the following cases:

(a) Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Union legislation, these activities are reserved to nationals, EU or EEA citizens;

(b) Member States may require proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites.

4. As far as the Member State which granted international protection is concerned, paragraph 3 shall be without prejudice to Directive 2011/95/EU.

5. Member States may decide to grant access to additional benefits in the areas referred to in paragraph 1.

Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1.

#### *Article 58*

#### **Protection against expulsion**

1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

(a) the duration of residence in their territory;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

(d) links with the country of residence or the absence of links with the country of origin.

4. Where a Member State decides to expel a long-term resident whose long-term resident's EU resident permit contains the remark referred to in Article 55(6), it shall request the Member State mentioned in that remark to confirm whether the person concerned is still a beneficiary of international protection in that Member State. The Member State mentioned in the remark shall reply not later than one month after receiving the request for information.

5. If the long-term resident is still a beneficiary of international protection in the Member State mentioned in the remark, that person shall be expelled to that Member State, which shall, without prejudice to the applicable Union or national law and to the principle of family unity, immediately readmit without formalities that beneficiary and his/her family members.

6. By way of derogation from paragraph 5, the Member State which adopted the expulsion decision shall retain the right to remove, in accordance with its international obligations, the long-term resident to a country other than the Member State which granted international protection where that person fulfils the conditions specified in Article 21(2) of Directive 2011/95/EU.

7. Where an expulsion decision has been adopted, a judicial redress procedure shall be available to the long-term resident in the Member State concerned.

8. Legal aid shall be given to long-term residents lacking adequate resources, on the same terms as apply to nationals of the State where they reside.

9. This Article shall be without prejudice to Article 21(1) of Directive 2011/95/EU.

*SECTION II*  
*RESIDENCE IN THE OTHER MEMBER STATES*

*Article 59*

**Principle**

1. A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.

2. A long-term resident may reside in a second Member State on the following grounds:

(a) exercise of an economic activity in an employed or self-employed capacity;

(b) pursuit of studies or vocational training;

(c) other purposes.

3. This Section does not concern the residence of long-term residents in the territory of the Member States:

(a) as employed workers posted by a service provider for the purposes of cross-border provision of services;

(b) as providers of cross-border services.

Member States may decide, in accordance with national law, the conditions under which long-term residents who wish to move to a second Member State with a view to exercising an economic activity as seasonal workers may reside in that Member State. Cross-border workers may also be subject to specific provisions of national law.

4. This Section is without prejudice to the relevant Union legislation on social security with regard to third-country nationals.

*Article 60*

**Conditions for residence in a second Member State**

1. As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit.

Member States may accept that the long-term resident submits the application for a residence permit to the competent authorities of the second Member State while still residing in the territory of the first Member State.

2. Member States may require the persons concerned to provide evidence that they have:

(a) stable and regular resources which are sufficient to maintain themselves and the members of their families, without recourse to the social assistance of the Member State concerned. For each of the categories referred to in Article 59(2), Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions;

(b) sickness insurance covering all risks in the second Member State normally covered for its own nationals in the Member State concerned.

3. Member States may require third-country nationals to comply with integration measures, in accordance with national law.

This condition shall not apply where the third-country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 54(2).

Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses.

4. The application shall be accompanied by documentary evidence, to be determined by national law, that the persons concerned meets the relevant conditions, as well as by their long-term resident permit and a valid travel document or their certified copies.

In particular:

(a) in case of exercise of an economic activity the second Member State may require the persons concerned to provide evidence:

(i) if they are in an employed capacity, that they have an employment contract, a statement by the employer that they are hired or a proposal for an employment contract, under the conditions provided for by national legislation. Member States shall determine which of the said forms of evidence is required;

(ii) if they are in a self-employed capacity, that they have the appropriate funds which are needed, in accordance with national law, to exercise an economic activity in such capacity, presenting the necessary documents and permits;

(b) in case of study or vocational training the second Member State may require the persons concerned to provide evidence of enrolment in an accredited establishment in order to pursue studies or vocational training.



*Article 61*  
**Family members**

1. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, who fulfil the conditions referred to in Article 42(1) shall be authorised to accompany or to join the long-term resident.
2. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, other than those referred to in Article 42(1) may be authorised to accompany or to join the long-term resident.
3. With respect to the submission of the application for a residence permit, the provisions of Article 60(1) apply.
4. The second Member State may require the family members concerned to present with their application for a residence permit:
  - (a) their long-term resident's EU residence permit or residence permit and a valid travel document or their certified copies;
  - (b) evidence that they have resided as members of the family of the long-term resident in the first Member State;
  - (c) evidence that they have stable and regular resources which are sufficient to maintain themselves without recourse to the social assistance of the Member State concerned or that the long-term resident has such resources and insurance for them, as well as sickness insurance covering all risks in the second Member State. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions.
5. Where the family was not already constituted in the first Member State, Chapter VI shall apply.

*Article 62*  
**Public policy and public security**

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security committed by the long-term resident or his/her family member(s), or the danger that emanates from the person concerned.

2. The decision referred to in paragraph 1 shall not be based on economic considerations.

*Article 63*  
**Public health**

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public health.
2. The only diseases that may justify a refusal to allow entry or the right of residence in the territory of the second Member State shall be the diseases as defined by the relevant applicable instruments of the World Health Organisation's and such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to nationals in the host country. Member States shall not introduce new more restrictive provisions or practices.
3. Diseases contracted after the first residence permit was issued in the second Member State shall not justify a refusal to renew the permit or expulsion from the territory.
4. A Member State may require a medical examination, for persons to whom this Directive applies, in order to certify that they do not suffer from any of the diseases referred to in paragraph 2. Such medical examinations, which may be free of charge, shall not be performed on a systematic basis.

#### *Article 64*

#### **Examination of applications and issue of a residence permit**

1. If the conditions provided for in Articles 59, 60 and 61 are met, then, subject to the provisions relating to public policy, public security and public health in Articles 62 and 63, the second Member State shall issue the long-term resident with a renewable residence permit. This residence permit shall, upon application, if required, be renewable on expiry. The second Member State shall inform the first Member State of its decision.
2. The second Member State shall issue members of the long-term resident's family with renewable residence permits valid for the same period as the permit issued to the long-term resident.

#### *Article 65*

#### **Amendments of long-term resident's EU residence permits**

1. Where a long-term resident's EU residence permit contains the remark referred to in Article 55(6), and where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the long-term resident is transferred to a second Member State before that Member State issues the long-term resident's EU residence permit referred to in Article 55(7), the second Member State shall ask the Member State which has issued the long-term resident's EU residence permit to amend that remark accordingly.
2. Where a long-term resident is granted international protection in the second Member State before Member State issued the long-term resident's EU residence permit referred to in Article 55(7), that Member State shall ask the Member State which has issued the long-term resident's EU residence permit to amend it in order to enter the remark referred to in Article 55(6).
3. Following the request referred to in paragraphs 1 and 2, the Member State which issued the long-term resident's EU residence permit shall issue the amended long-term resident's

EU residence permit no later than three months after receiving the request from the second Member State.

*Article 66*

**Treatment granted in the second Member State**

1. As soon as they have received the residence permit provided for by Article 64 in the second Member State, long-term residents shall in that Member State enjoy equal treatment in the areas and under the conditions referred to in Article 57, including access to the labour market.
2. As soon as they have received the residence permit provided for by Article 64 in the second Member State, members of the family of the long-term resident shall in that Member State enjoy the rights listed in Article 46.

*Article 67*

**Withdrawal of residence permit and obligation to readmit**

1. Until the third-country national has obtained long-term resident status, the second Member State may decide to refuse to renew or to withdraw the resident permit and to oblige the person concerned and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory in the following cases:
  - (a) on grounds of public policy or public security as defined in Article 62;
  - (b) where the conditions provided for in Articles 59, 60 and 61 are no longer met;
  - (c) where the third-country national is not lawfully residing in the Member State concerned.
2. If the second Member State adopts one of the measures referred to in paragraph 1, the first Member State shall immediately readmit without formalities the long-term resident and his/her family members. The second Member State shall notify the first Member State of its decision.
3. Until the third-country national has obtained long-term resident status and without prejudice to the obligation to readmit referred to in paragraph 2, the second Member State may adopt a decision to remove the third-country national from the territory of the Union, in accordance with and under the guarantees of Article 58, on serious grounds of public policy or public security.

In such cases, when adopting the said decision the second Member State shall consult the first Member State.

When the second Member State adopts a decision to remove the third-country national concerned, it shall take all the appropriate measures to effectively implement it. In such cases the second Member State shall provide to the first Member State appropriate information with respect to the implementation of the removal decision.

4. Unless, in the meantime, the international protection has been withdrawn or the person falls within one of the categories specified in Article 21(2) of Directive 2011/95/EU,

paragraph 3 of this Article shall not apply to third-country nationals whose long-term resident's EU residence permit issued by the first Member State contains the remark referred to in Article 55(6) of this Directive.

This paragraph shall be without prejudice to Article 21(1) of Directive 2011/95/EU.

5. Removal decisions may not be accompanied by a permanent ban on residence in the cases referred to in paragraph 1(b) and (c).

6. The obligation to readmit referred to in paragraph 2 shall be without prejudice to the possibility of the long-term resident and his/her family members moving to a third Member State.

#### *Article 68*

#### **Acquisition of long-term resident status in the second Member State**

1. Upon application, the second Member State shall grant long-term residents the status provided for by Article 55, subject to the provisions of Articles 52, 53 and 54. The second Member State shall notify its decision to the first Member State.

2. The procedure laid down in Article 55 shall apply to the presentation and examination of applications for long-term resident status in the second Member State, and for the issuance of the residence permit, without prejudice to Article 7. Where the application is rejected, the procedural guarantees provided for by Article 8 shall apply.

### *SECTION III SPECIAL RULES*

#### *Article 69*

#### **EU long-term resident status for Blue Card holders and researchers**

1. This Chapter shall apply to persons who have been admitted pursuant to Chapter IV or Annex I, subject to the derogations laid down in this Article.

2. By way of derogation from Article 53(1), the EU Blue Card holder or researcher having made use of the possibility of mobility between Member States provided for in Article 27 of this Directive or in Article 11 of Annex I is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if the following conditions are met:

(a) five years of legal and continuous residence within the territory of the Union as an EU Blue Card holder or researcher; and

(b) legal and continuous residence for two years immediately prior to the submission of the relevant application as an EU Blue Card holder or researcher within the territory of the Member State where the application for the long-term resident's EU residence permit is lodged.

3. Articles 11(4) and 49 of this Directive shall continue to apply for holders of a long-term residence permit with the remark referred to in Article 70(2), where applicable, after the EU Blue Card holder or researcher has become an EU long-term resident.

*Article 70*  
**Long-term residence permit**

1. EU Blue Card holders or researchers who fulfil the conditions set out in Article 69 of this Directive for the acquisition of the EU long-term resident status shall be issued with a residence permit.
2. Where the person concerned previously held an EU Blue Card, in the residence permit referred to in paragraph 1 under the heading 'remarks', Member States shall enter 'Former EU Blue Card holder'.

CHAPTER VIII  
**FINAL PROVISIONS**

*Article 71*  
**Statistics**

1. Member States shall communicate to the Commission statistics on the volumes of persons who have been granted a visa or residence permit pursuant to each of the specific Chapters and Annexes of this Directive, including national law within the scope of Chapter III, and, as far as possible, volumes of third-country nationals whose visa or residence permit has been renewed or withdrawn, during the previous calendar year.

In relation to third-country nationals who exercise mobility rights or the right to move between Member States as long-term residents pursuant to this Directive, and their family members, the information provided shall, in addition, specify, as far as possible, the Member State of previous residence.

These statistics shall be disaggregated by citizenship, age and sex, length of validity of the permit and, as regards Chapter III and Annexes I to III, occupation.

2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council.
3. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2017.

*Article 72*  
**Reports**

The Commission shall report annually to the European Parliament and the Council on the implementation of this Directive in the Member States, in the context of its annual report on immigration and asylum within the European Union. This report shall *inter alia* indicate whether, in the Commission's view, any Member State is infringing the provisions of this Directive and, if so, what steps are being taken to end such alleged infringements, and whether or not any previous alleged infringements have been resolved.

*Article 73*  
**Contact points**

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information and documentation referred to in Articles 55, 58, 64, 65, 67, 68, 69 and 71 of this Directive and Articles 11 and 12 of Annex I, and needed to implement Article 10 of Annex II.
2. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in paragraph 1.

*Article 74*  
**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 75*  
**Repeal**

1. The following shall be repealed with effect from the date referred to in Article 76(1):
  - (a) Directive 2003/86;
  - (b) Directive 2003/109;
  - (c) Directive 2004/114;
  - (d) Directive 2005/71;
  - (e) Directive 2009/50;
  - (f) Directive 2011/51;
  - (g) Directive 2011/98;
  - (h) Directive 2012/xx;
  - (i) Directive 2012/xx;
  - (j) Council Decision of 22 December 1995 on monitoring the implementation of instruments already adopted concerning admission of third-country nationals.
2. References to the instruments repealed shall be construed as references to this Directive.

*Article 76*  
**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2017. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall 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 77*  
**Entry into force**

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

*Article 78*  
**Addressees**

This Directive is addressed to the Member States, in accordance with the Treaties.

**Annex I: EU Blue Cards**

CHAPTER I  
**GENERAL PROVISIONS**

*Article 1*  
**Scope**

1. This Annex shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment under the terms of this Annex, in conjunction with the remainder of this Directive.

2. This Annex shall not apply to third-country nationals:

(a) who apply to reside in a Member State as researchers, within the meaning of Chapter IV of this Directive, in order to carry out a research project;

(b) who enjoy EU long-term resident status in a Member State in accordance with Chapter VII of this Directive and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity;

(c) who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons, and/or pursuant to Annex II to this Directive;

(d) who have been admitted to the territory of a Member State as seasonal workers, pursuant to Annex III to this Directive.

3. This Annex shall be without prejudice to any agreement between the Union and/or its Member States and one or more third countries, that lists the professions which should not fall under this Annex in order to assure ethical recruitment, in sectors suffering from a lack of personnel, by protecting human resources in the developing countries which are signatories to these agreements.

## *Article 2* **Definitions**

For the purposes of this Annex, and in addition to the definitions set out in Article 2 of this Directive, the following definitions shall apply:

(a) 'highly qualified employment' means the employment of a person who:

- in the Member State concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else,
- is paid, and,
- has the required adequate and specific competence, as proven by higher professional qualifications,

(b) 'higher professional qualifications' means qualifications attested by evidence of higher education qualifications or, by way of derogation, when provided for by national law, attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;

(c) 'higher education qualification' means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated. For the purposes of this Annex, a higher education qualification shall be taken into account, on condition that the studies needed to acquire it lasted at least three years;

(d) 'professional experience' means the actual and lawful pursuit of the profession concerned;

(e) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.

## *Article 3* **Relationship with national law**

This Annex shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of the following provisions:

(a) Article 4(3) of this Annex in application of Article 11 of this Annex;



(b) Articles 7, 8, 51 and 69(4) of this Directive;

(c) Articles 8(1), second sentence and 8(2), and 9 and 10 of this Annex.

## CHAPTER II CONDITIONS OF ADMISSION

### *Article 4* **Criteria for admission**

1. In addition to the provisions of Article 5(1) of this Directive, and without prejudice to Article 6(1) of this Directive, a third-country national who applies for an EU Blue Card under the terms of this Annex shall:

(a) present a valid work contract or, as provided for in national law, a binding job offer for highly qualified employment, of at least one year in the Member State concerned;

(b) present a document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;

(c) for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding job offer as provided for in national law;

(d) present an application for a visa or a visa, if required, and evidence of a valid residence permit or of a national long-term visa, if appropriate;

(e) present evidence of having or, if provided for by national law, having applied for 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 resulting from, the work contract;

2. Member States may require the applicant to provide his or her address in the territory of the Member State concerned, if the person concerned is already resident there.

3. In addition to the conditions laid down in paragraph 1, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to a relevant salary threshold defined and published for that purpose by the Member States, which shall be at least 1,5 times the average gross annual salary in the Member State concerned.

4. When implementing paragraph 3, Member States may require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly qualified employment are met.

5. By way of derogation to paragraph 3, and for employment in professions which are in particular need of third-country national workers and which belong to the major groups 1 and 2 of ISCO, the salary threshold may be at least 1,2 times the average gross annual salary in the Member State concerned.

6. This Article shall be without prejudice to the applicable collective agreements or practices in the relevant occupational branches for highly qualified employment.

7. For the purpose of the implementation of paragraph 3 and, where appropriate, paragraph 5, reference shall be made to Commission (Eurostat) data and, where appropriate, national data.

### CHAPTER III EU BLUE CARD, PROCEDURE AND TRANSPARENCY

#### *Article 5* **EU Blue Card**

1. Member States shall set a standard period of validity of the EU Blue Card, which shall be comprised between one and four years. If the work contract covers a period less than this period, the EU Blue Card shall be issued or renewed for the duration of the work contract plus three months.

2. In accordance with point (a) 7,5-9 of the Annex to Regulation (EC) No 1030/2002, Member States shall indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 8(1) of this Annex. Under the heading 'type of permit' in the residence permit, Member States shall enter 'EU Blue Card'.

#### *Article 6* **Grounds for refusal**

1. In addition to the provisions set out in Article 20 of this Directive, before taking the decision on an application for an EU Blue Card, and when considering renewals or authorisations pursuant to Article 8(1) and (2) of this Annex during the first two years of legal employment as an EU Blue Card holder, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy.

Member States may verify whether the concerned vacancy could not be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter VII.

2. Member States may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin.

#### *Article 7* **Withdrawal or non-renewal of the EU Blue Card**

1. In addition to the provisions set out in Article 9(1) of this Directive, Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Annex when the holder has not respected the limitations set out in Articles 8(1) and (2) and 9 of this Annex.

2. The lack of communication pursuant to Articles 8(2) second subparagraph and 9(4) of this Annex shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder can prove that the communication did not reach the competent authorities for a reason independent of the holder's will.

3. In addition to the provisions set out in Article 9(2) of this Directive, Member States may withdraw or refuse to renew an EU Blue Card issued on the basis of this Annex in the following cases:

(a) wherever the EU Blue Card holder does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family, without having recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members of the person concerned. Such evaluation shall not take place during the period of unemployment referred to in Article 9 of this Annex;

(b) if the person concerned has not communicated his or her address;

(c) when the EU Blue Card holder applies for social assistance, provided that the appropriate written information has been provided to him or her in advance by the Member State concerned.

## CHAPTER IV

### RIGHTS

#### *Article 8*

#### **Labour market access**

1. For the first two years of legal employment in the Member State concerned as an EU Blue Card holder, access to the labour market for the person concerned shall be restricted to the exercise of paid employment activities which meet the conditions for admission set out in Article 4 of this Annex. After these first two years, Member States may grant the persons concerned equal treatment with nationals as regards access to highly qualified employment.

2. For the first two years of legal employment in the Member State concerned as an EU Blue Card holder, changes in employer shall be subject to the prior authorisation in writing of the competent authorities of the Member State of residence, in accordance with national procedures and within the time limits set out in Article 7(2) of this Directive. Modifications that affect the conditions for admission shall be subject to prior communication or, if provided for by national law, prior authorisation. After these first two years, where the Member State concerned does not make use of the possibility provided for in paragraph 1 regarding equal treatment, the person concerned shall, in accordance with national procedures, communicate changes that affect the conditions set out in Article 4 of this Annex to the competent authorities of the Member State of residence.

3. Member States may retain restrictions on access to employment, provided such employment activities entail occasional involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State and where, in accordance with existing national or Union law, these activities are reserved to nationals.

4. Member States may retain restrictions on access to employment activities, in cases where, in accordance with existing national or Union law, these activities are reserved to nationals, Union citizens or EEA citizens.

5. This Article shall be applied without prejudice to the principle of Union preference as expressed in the relevant provisions of any Acts of Accession which are applicable, in particular with respect to the rights of nationals of the Member States concerned to access the labour market.

#### *Article 9*

#### **Temporary unemployment**

1. Unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or it occurs more than once during the period of validity of an EU Blue Card.

2. During the period referred to in paragraph 1, the EU Blue Card holder shall be allowed to seek and take up employment under the conditions set out in Article 8 of this Annex.

3. Member States shall allow the EU Blue Card holder to remain on their territory until the necessary authorisation pursuant to Article 8(2) of this Annex has been granted or denied. The communication under Article 8(2) of this Annex shall automatically end the period of unemployment.

4. The EU Blue Card holder shall communicate the beginning of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures.

#### *Article 10*

#### **Equal treatment**

1. EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the Blue Card, in accordance with Article 11(1), (3) and (4) of this Directive.

2. With respect to Article 11(1)(c) and (g) of this Directive, the Member State concerned may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training, and procedures for obtaining housing.

3. With respect to Article 11(1)(c) of this Directive:

(a) access to university and post-secondary education may be subject to specific prerequisites in accordance with national law;

(b) the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the EU Blue Card holder, or that of the family member for whom benefits are claimed, lies within its territory.

4. When the EU Blue Card holder moves to a second Member State in accordance with Article 11 of this Annex and a positive decision on the issuing of an EU Blue Card has not yet

been taken, Member States may limit equal treatment in the areas listed in Article 11(1) of this Directive, with the exception of Article 11(1)(b) and (d). If, during this period, Member States allow the applicant to work, equal treatment with nationals of the second Member State in all areas of Article 11(1) of this Directive shall be granted.

CHAPTER V  
**RESIDENCE IN OTHER MEMBER STATES**

*Article 11*  
**Mobility between Member States**

1. Pursuant to Article 12 of this Directive, after eighteen months of legal residence in the first Member State as an EU Blue Card holder, the person concerned and his or her family members may move to a Member State other than the first Member State for the purpose of highly qualified employment under the conditions set out in this Article.

2. As soon as possible and no later than one month after entering the territory of the second Member State, the EU Blue Card holder and/or his or her employer shall present an application for an EU Blue Card to the competent authority of that Member State and present all the documents proving the fulfilment of the conditions set out in Article 4 of this Annex for the second Member State. The second Member State may decide, in accordance with national law, not to allow the applicant to work until the positive decision on the application has been taken by its competent authority.

3. The application may also be presented to the competent authorities of the second Member State while the EU Blue Card holder is still residing in the territory of the first Member State.

4. In accordance with the procedures set out in Articles 7 and 8 of this Directive, the second Member State shall process the application and inform in writing the applicant and the first Member State of its decision to either:

(a) issue an EU Blue Card and allow the applicant to reside on its territory for highly qualified employment where the conditions set out in this Article are fulfilled and under the conditions set out or referred to in Articles 6 to 10 of this Annex; or

(b) refuse to issue an EU Blue Card and oblige the applicant and his or her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory where the conditions set out in this Article are not fulfilled. The first Member State shall immediately readmit without formalities the EU Blue Card holder and his or her family members. This shall also apply if the EU Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application. Article 9 of this Annex shall apply after readmission.

5. If the EU Blue Card issued by the first Member State 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.

6. The applicant and/or his or her employer may be held responsible for the costs related to the return and readmission of the EU Blue Card holder and his family members, including costs incurred by public funds, where applicable, pursuant to paragraph 4(b).

7. From the second time that an EU Blue Card holder, and where applicable, his or her family members, makes use of the possibility to move to another Member State under the terms of this Chapter, 'first Member State' shall be understood as the Member States from where the person concerned moves and 'second Member State' as the Member State to which he or she is applying to reside.

8. Article 51 of this Directive shall apply to the family members of the Blue Card holder exercising mobility rights.

## CHAPTER VI FINAL PROVISIONS

### *Article 12* **Implementing measures**

Member States shall communicate to the Commission and the other Member States if legislative or regulatory measures are enacted in respect of Article 16(2) of this Directive (as regards Blue Card holders) or Articles 8(2) and 11(6) of this Annex. Those Member States which make use of the provisions of Article 6(4) of this Annex shall communicate to the Commission and to the other Member States a duly justified decision indicating the countries and sectors concerned. Any Member State invoking Article 4(5) of this Annex shall communicate each year to the Commission the list of the professions for which a derogation has been decided.

## **Annex II: Intra-corporate transferees**

### CHAPTER I GENERAL PROVISIONS

#### *Article 1* **Scope**

1. This Annex shall apply to third-country nationals who reside outside the territory of a Member State and apply to be admitted to the territory of a Member State in the framework of an intra-corporate transfer.

2. This Annex shall not apply to third-country nationals who apply to reside in a Member State as researchers, within the meaning of Chapter IV of this Directive, in order to carry out a research project.

*Article 2*  
**Definitions**

For the purposes of this Annex, and in addition to the definitions set out in Article 2 of this Directive, the following definitions shall apply:

(a) '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, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;

(b) 'intra-corporate transferee' means any third-country national subject to an intra-corporate transfer;

(c) 'host entity' means the entity, regardless of its legal form, established in the territory of a Member State to which the third-country national is transferred;

(d) 'manager' means any 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;

(e) 'specialist' means any person possessing uncommon knowledge essential and specific to the host entity, taking account not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge;

(f) 'graduate trainee' means any person with a higher education qualification who is transferred to broaden his/her knowledge of and experience in a company in preparation for a managerial position within the company;

(g) 'higher education qualification' means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme of at least three years, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated;

(h) '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 Annex;

(i) 'group of undertakings' 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;

(j) 'universally applicable collective agreement' means a collective agreement which must be observed by all undertakings in the geographical area and in the profession or industry concerned. In the absence of a system for declaring collective agreements 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 3*

#### Relationship with national law

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 7, 8 and 51 of this Directive and Article 9 of this Annex.

## **CHAPTER II CONDITIONS OF ADMISSION**

#### *Article 4*

#### *Criteria for admission*

1. In addition to the provisions of Article 5(1) of this Directive, and without prejudice to Article 6(1) of this Directive, a third-country national who applies to be admitted under the terms of this Annex shall:

(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) provide evidence of employment within the same group of undertakings, for at least 12 months immediately preceding the date of the intra-corporate transfer, if required by national legislation, and that he or she 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) present an assignment letter from the employer including:

(i) the duration of the transfer and the location of the host entity or entities of the Member State concerned;

(ii) evidence that he or she is taking a position as a manager, specialist or graduate trainee in the host entity or entities in the Member State concerned;

(iii) the remuneration granted during the transfer;

(d) provide evidence that he or she has the professional qualifications needed in the Member State to which he or she has been admitted for the position of manager or specialist or, for graduate trainees, the higher education qualifications required;



(e) present documentation certifying that he or she fulfils the conditions laid down under national legislation for citizens of the Union to exercise the regulated profession which the transferee will work in;

(f) without prejudice to existing bilateral agreements, present evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work contract.

2. Member States shall require that all conditions in the law, regulations or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met with regard to the remuneration granted during the transfer.

In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.

3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as a graduate trainee shall present a training agreement, including a description of the training programme, its duration and the conditions under which the applicant is supervised during the programme.

4. Where the transfer concerns host entities located in several Member States, any third-country national who applies to be admitted under the terms of this Annex shall present evidence of the notification required pursuant to Article 10(1)(b) of this Annex.

5. Any modification that affects the conditions for admission set out in this Article shall be notified to the competent authorities of the Member State concerned.

6. Where the transfer concerns host entities located in several Member States, the Member State where the application is lodged shall limit the geographical scope of validity of the permit to the Member States where the conditions set out in this Article are met.

#### *Article 5*

#### **Penalties**

Member States may hold the host entity responsible and provide for penalties for failure to comply with the conditions of admission. Those penalties shall be effective, proportionate and dissuasive.

**CHAPTER III**  
**PROCEDURE AND PERMIT**

*Article 6*

**Applications for admission**

1. The application shall be lodged to the authorities of the Member State where the intra-corporate transfer mainly takes place.
2. Simplified procedures may be made available 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 granted for a maximum of three years on the basis of the following information:

- (a) information relating to the financial standing of the group of undertakings aiming to ensure that the intra-corporate transferee will be guaranteed the required level of remuneration and rights as provided for in Article 8 of this Annex;
- (b) evidence that the conditions of admission regarding prior transfers have been complied with;
- (c) evidence that tax law and regulations have been complied with in the host country;
- (d) information related to forthcoming transfers.

3. The simplified procedures provided for in paragraph 2 shall consist of:

- (a) exempting the applicant from presenting the documents referred to in Article 4 of this Annex where they have been previously provided and are still valid;
- (b) a fast-track admission procedure allowing intra-corporate transferee permits to be issued within a shorter time than specified in Article 7(2) of this Directive; or
- (c) specific facilitations for visas.

4. A group of undertakings that has been recognised in accordance with paragraph 2 shall notify to the relevant authority any modification affecting the conditions for recognition.

5. Member States shall provide for appropriate penalties, including revocation of recognition, in the event of failure to provide the evidence and information referred to in paragraph 2.

*Article 7*

**Intra-corporate transferee residence permit**

1. Intra-corporate transferees who fulfil the admission criteria set out or referred to in Article 4 of this Annex shall be issued with an intra-corporate transferee residence permit.
2. The period of validity of the intra-corporate transferee residence permit shall be at least one year or the duration of the transfer to the territory of the Member State 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. Under the heading 'type of permit', the Member States shall enter 'intra-corporate transferee' and the name of the group of undertakings concerned. Member States shall issue to the holder of an intra-corporate transferee permit an additional document containing a list of the entities authorised to host the third-country national and revise it whenever that list is modified. In the event of an application to revise this additional document, Articles 7 and 8 of this Directive shall apply.

## **CHAPTER IV RIGHTS**

### *Article 8*

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

In addition to the rights referred to in Article 10 of this Directive, during the period of validity of an intra-corporate transferee permit, the holder shall enjoy the following further rights:

1. the right to exercise the specific employment activity authorised under the permit in in any other entity belonging to the group of undertakings listed in the additional document provided for in Article 7(3) of this Annex in accordance with Article 10 of this Annex;
2. the right to carry out his/her assignment at the sites of clients of the entities belonging to the group of undertakings listed in the additional document provided for in Article 7(3) of this Annex, as long as the employment relationship is maintained with the undertaking established in a third country.

### *Article 9*

#### **Equal treatment**

Whatever the law applicable to the employment relationship, intra-corporate transferees shall be entitled to equal treatment with nationals of the host Member State at least with regard to the matters referred to in Article 11(1)(a), (b), (e) and (g) and (4) of this Directive, except public housing and counselling services afforded by employment services. Article 11(3) of this Directive shall apply *mutatis mutandis*.

## **CHAPTER V MOBILITY BETWEEN MEMBER STATES**

### *Article 10*

#### **Mobility between Member States**

1. Pursuant to Article 12 of this Directive, third-country nationals who have been granted an intra-corporate transferee permit in a first Member State, who fulfil the criteria for admission as set out in Article 4 of this Annex and who apply for an intra-corporate transferee permit in another Member State shall be allowed to work in any other entity established in that Member State and belonging to the same group of undertakings and at the sites of clients of that host entity if the conditions set out in Article 8(2) of this Annex are

fulfilled, on the basis of the residence permit issued by the first Member State and the additional document provided for in Article 7(3) of this Annex, provided that:

(a) the duration of the transfer in the other Member State(s) does not exceed twelve months;

(b) the applicant has submitted to the competent authority of the other Member State, before his or her transfer to that Member State, the documents referred to in Article 4(1) (2) and (3) of this Annex relating to the transfer to that Member State and has provided evidence of such submission to the first Member State.

2. If the duration of the transfer in the other Member State exceeds twelve months, the other Member State may require a new application for a residence permit as an intra-corporate transferee in that Member State.

Member States shall not require intra-corporate transferees to leave their territory in order to submit applications for visas or residence permits.

3. 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.

4. Article 51 of this Directive shall apply to the family members of the intra-corporate transferee exercising mobility rights.

## **Annex III: Seasonal workers**

### **CHAPTER I GENERAL PROVISIONS**

#### *Article 1* **Scope**

This Annex shall apply to third-country nationals who reside outside the territory of the Member States and apply to be admitted to the territory of a Member State for the purpose of employment as seasonal workers.

#### *Article 2* **Definitions**

For the purposes of this Annex, and in addition to the definitions set out in Article 2 of this Directive, the following definitions shall apply:

(a) 'seasonal worker' means a third-country national who retains a legal domicile in a third country but resides temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in a Member State;

(b) 'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year by an event or pattern during which labour levels are required that are far above those necessary for usually ongoing operations;

(c) 'seasonal worker permit' means the residence permit bearing the words 'seasonal worker' entitling its holder to reside and work in the territory of a Member State under the terms of this Annex;

#### *Article 3*

### **Relationship with national law**

This Annex 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 7, 8, 10 and 11 of this Directive and Articles 9 to 11 of this Annex.

## **CHAPTER II**

### **CONDITIONS OF ADMISSION**

#### *Article 4*

### **Criteria for admission**

1. Applications for admission to a Member State under the terms of this Annex shall be accompanied by the following documents:

(a) a valid work contract or, as provided for in national law, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in the Member State that specifies the rate of pay and the working hours per week or month and, when applicable, other relevant working conditions;

(b) evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work contract;

(c) evidence of having accommodation as set out in Article 9 of this Annex.

2. Member States shall require that the seasonal worker will have sufficient resources during his/her stay to maintain him/herself without having recourse to the social assistance system of the Member State concerned.

#### *Article 5*

### **Grounds for refusal**

In addition to the provisions set out in Article 20 of this Directive, Member States may verify whether the vacancy concerned could not be filled by national or EU, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market by virtue of EU or national law and reject the application.

**CHAPTER III**  
**PROCEDURE AND PERMIT**

*Article 6*

**Seasonal worker residence permit**

The seasonal worker residence permit shall be issued by the competent authorities of the Member States. In accordance with point (a) 6.4 of the Annex to Council Regulation (EC) No 1030/2002, Member States shall enter 'seasonal worker' under the heading 'type of permit'.

*Article 7*

**Duration of stay**

1. Seasonal workers shall be allowed to reside for a maximum of six months in any calendar year, after which they shall return to a third country.
2. Within the period referred to under paragraph 1, and provided that the criteria of Article 4 of this Annex are met, seasonal workers shall be allowed to extend their contract or to be employed as seasonal workers with a different employer.

*Article 8*

**Facilitation of re-entry**

1. Member States shall either:
  - (a) upon application, issue up to three seasonal worker permits covering up to three subsequent seasons within one administrative act ('multi-seasonal worker permit'), or
  - (b) provide a facilitated procedure for third-country nationals who were admitted to that Member State as seasonal workers and who apply to be admitted as such in a subsequent year.
2. Member States shall provide that:
  - (a) a third-country national who has not complied with the obligations arising from the admission decision during a previous stay as a seasonal worker, and in particular with the obligation to return to a third country on the expiry of the permit, shall be excluded from admission as seasonal worker for one or more subsequent years;
  - (b) an employer who has not fulfilled the obligations arising out of the work contract shall be subject to effective, proportionate and dissuasive sanctions. Such employers shall be excluded from applications for seasonal workers for one or more subsequent years.

*Article 9*

**Accommodation**

Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living.

If seasonal workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration.

## **CHAPTER IV RIGHTS**

### *Article 10* **Equal treatment**

Whatever the law applicable to the employment relationship, seasonal workers shall be entitled to equal treatment with nationals of the host Member State at least with regard to the matters referred to in Article 11(1)(a), (b), (e) and (g) and (4) of this Directive, except public housing and counselling services afforded by employment services. Article 11(3) of this Directive shall apply *mutatis mutandis*.

### *Article 11* **Facilitation of complaints**

Member States shall ensure that third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Annex in conjunction with the relevant provisions of this Directive, may engage either on behalf of or in support of a seasonal worker, with his/her approval, in any administrative or civil proceedings provided for with the objective of implementing this Annex in conjunction with the relevant provisions of this Directive.

January 2012

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