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from: Presidency
to: Working Party on Integration, Migration and Expulsion
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Subject: Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

Delegations will find attached Presidency compromise suggestions for the above proposal on which the discussion will be focused at the meeting on 23 November. Changes to the previous text, as it appeared in doc. 15047/11 are indicated with **bold** and [...].

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 79(2)(a) and (b) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) The Treaty provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, as well as the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.
- (3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth"³ sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists or employees in training to enter the Union in the framework of an intra-corporate transfer should be seen in this broader context.
- (4) The Stockholm Programme, adopted by the European Council at its meeting of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. It thus invites the Commission and the Council to continue to implement the 2005 Policy Plan on Legal Migration⁴.
- (5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational corporations, in recent years movements of managerial and technical employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.

³ COM(2010) 2020.

⁴ COM(2005)669.

- (6) These intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host companies, thus advancing the knowledge-based economy in Europe while fostering investment flows across the Union. Well-managed transfers from third countries also have the potential to facilitate transfers from Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best.
- (7) The set of rules established by this Directive is also beneficial to the migrants' countries of origin as this temporary migration fosters transfers of skills, knowledge, technology and know-how.
- (8) This Directive should be applied without prejudice to the principle of Union preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. According to that principle, the Member States should, during any period when national measures or those resulting from bilateral agreements are applied, give preference to workers who are nationals of the Member States over workers who are nationals of third-countries as regards access to their labour market.
- (8a) This Directive should be without prejudice to the right of Member States to issue residence permits other than an intra-corporate transferee permit for any purpose of employment if a third-country national **does not meet the conditions to be admitted as an intra-corporate transferee under the terms and conditions of this Directive** or does not fall under the scope of this Directive.
- (9) This Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria. These set of rules should be applied without prejudice to Member States having the right to decide upon the technical formalities relating to the application, such as requesting that the address of the third-country national be provided.

- (10) For the purpose of this Directive, intra-corporate transferees encompass managers, specialists and employees in training with a higher education qualification. Their definition builds on specific commitments of the Union under the General Agreement on Trade in Services⁵ (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and facilitates the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive is broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement. The criteria set out in the definition of specialists is in line with the definition of professional qualifications in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.
- (10a) For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference may be made to ISCED (International Standard Classification of Education) 1997 levels 5a and 6.
- (11) Intra-corporate transferees should benefit from the same working conditions as posted workers whose employer is established on the territory of the European Union, as defined by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services⁶. That requirement is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.

⁵ WTO Doc. S/L/286 and S/C/W/273 Suppl. 1 of 18 December 2006.

⁶ OJ L 18, 21.1.1997, p. 1.

- (12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, the transferee should have been employed within the same group of undertakings [...] **from at least 6 months up to 12 months** prior to the transfer in the case of managers and specialists and 3 months in the case of employees in training.
- (12a) As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the European Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for employees in training after which they should return to a third country. The duration of the intra-corporate transferee permits reflects the duration of the transfer irrespective of the periods of absence of the holder from the territory of the Member States. A subsequent transfer to the European Union might take place after the return of the third-country national to a third country.**
- (13) As intra-corporate transfers consist of temporary [...] **secondment**, the applicant should provide evidence that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. That evidence may consist of the relevant provisions under the work contract. An assignment letter should be produced providing evidence that the third-country national manager or specialist possesses the professional qualifications needed in the Member State to which they have been admitted to occupy the post or the regulated profession.
- (14) Third-country nationals who apply to be admitted as employees in training should provide evidence of the higher education qualifications required, namely of any diploma, certificate or other evidence of formal qualifications attesting the successful completion of a post-secondary higher education programme of at least three years. In addition, they [...] **should, if required**, present a training agreement, including a description of the training programme, its duration and the conditions in which the trainees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.

- (15) Unless this condition conflicts with the principle of Union preference as expressed in the relevant provisions of the Acts of Accession, no labour market test should be required, since this criterion would be in contradiction with the purpose of setting up a transparent and simplified scheme for admission of intra-corporate transferees.
- (16) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of the Member States where the ancillary host entities are located must be provided with the relevant information by the applicant.
- (17) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals entering their territory for the purposes of intra-corporate transfer as specified in the Treaty.
- (18) Member States should provide for [...] **effective, proportionate and dissuasive sanctions**, such as financial penalties, to be imposed in the event of failure to comply with the conditions laid down in this Directive. The **sanctions** [...] could be imposed on the host entity.
- (19) Provision for a single procedure leading to one combined title, encompassing both residence and work permit, should contribute to simplifying the rules currently applicable in Member States.
- (20) A fast-track procedure may be set up for groups of undertakings which have been recognised for that purpose. Recognition should be granted on the basis of objective criteria made publicly available by the Member State and ensuring equal treatment between applicants. It should be granted for a maximum of three years, as the criteria need to be reassessed on a regular basis. Such recognition should be restricted to transnational corporations presenting credentials showing their ability to comply with their obligations and supplying information about the expected intra-corporate transfers. Any major change affecting the ability of the corporation to meet those obligations and any complementary information on future transfers should be reported without delay to the relevant authority. Appropriate sanctions such as financial sanctions, the possibility of withdrawing recognition, and rejections of future applications for permit should be provided for.

(21) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, the third-country national should receive a specific residence permit (an intra-corporate transferee permit) allowing the holder to carry out, under certain conditions, their assignment in diverse entities belonging to the same transnational corporation, including entities located in another Member State.

(21a) This Directive should be applied without prejudice to the relevant Schengen acquis instruments, such as the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (the Schengen Convention), Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and, when necessary, the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Member States outside the Schengen area are entitled to perform the necessary checks at their borders and deny intra-corporate transferees the entry should there be a reason to do so.

(21b) The provisions of this Directive should not prevent Member States from issuing an additional paper document in order to be able to give more precise information on the employment activity during the intra-corporate transfer, such as the name and address of the host entity, place of work, name and address of the client, type of work, working hours, remuneration for which the format of the residence permit leaves insufficient space. Such documents can serve to prevent the exploitation of third-country nationals and combat illegal employment but should be optional for Member States and should not serve as a substitute for a work permit thereby compromising the concept of the single application procedure. Technical possibilities offered by Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto can also be used to store such information in an electronic format.

- (22) This Directive should not affect conditions for the provision of services in the framework of Article 56 of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. As a result, third-country nationals holding an intra-corporate transferee permit cannot avail themselves of the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.
- (22a) Third-country nationals who are in possession of a valid travel document and an intra-corporate transferee permit issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months in any six-month period in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Article 21 of the Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention)

- (23) Equal treatment should be granted under national law in respect of those branches of social security defined in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems⁷. The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective **and non-discriminatory** conditions laid down by the legislation of the host Member State with regard to affiliation and entitlement to social security benefits. Since this Directive is without prejudice to provisions included in bilateral agreements, the social security rights enjoyed by third country national intra-corporate transferees on the basis of a bilateral agreement concluded between the Member State to which the person has been admitted and his or her country of origin could be strengthened compared to the social security rights which would be granted to the transferee under national law. This Directive should not confer more rights than those already provided for in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. It should be granted without prejudice to posting provisions on national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin.
- (24) In order to make the specific set of rules put in place by this Directive more attractive and to allow it to produce all expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification in the Member State which first grants the residence permit on the basis of this Directive. This right would indeed remove an important obstacle to potential intra-corporate transferees for accepting an assignment. In order to preserve family unity, family members should be able to join the intra-corporate transferee in another Member State under the conditions determined by the national law of such Member State.

⁷ OJ L 166, 30.4.2004, p. 1.

- (24a) In order to facilitate the fast processing of application Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.
- (24b) The collection and transmission of files and data should be carried out in compliance with the relevant data protection and security rules.
- (25) This Directive should not apply to third country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research⁸.
- (26) Since the objectives of a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals cannot be achieved sufficiently by Member States and, therefore, by reason of the scale and effects of the action, can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (28) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by or subject to its application.]

⁸ OJ L 289, 3.11.2005, p. 15.

(29) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I General provisions

Article 1

Subject-matter

This Directive determines:

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

Article 2

Scope

1. This Directive shall apply to third-country nationals who reside outside the territory of a Member State and apply to be admitted or who have been admitted to the territory of a Member State, under the terms of this Directive, in the framework of an intra-corporate transfer.

2. This Directive shall not apply to third-country nationals:
- (a) who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;
 - (b) who, under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of citizens of the Union or are employed by an undertaking established in those third countries;
 - (c) [...] **who are posted** in the framework of [...] Directive 96/71/EC;
 - (d) being assigned by temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking.
3. **This Directive shall be without prejudice to the right of Member States to issue residence permits⁹ other than the intra-corporate transferee permit regulated by this Directive for any purpose of employment for third-country nationals who fall outside the scope of the Directive or do not apply for admission under this Directive or do not meet the criteria set out in this Directive. Such residence permits shall not confer the rights of residence in the other Member States as provided for in this Directive.**

⁹ Recital (8a): "This Directive should be without prejudice to the right of Member States to issue residence permits other than an intra-corporate transferee permit for any purpose of employment if a third-country national **does not meet the conditions to be admitted as an intra-corporate transferee under the terms and conditions of this Directive** or does not fall under the scope of this Directive."

Article 3
Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘third-country national’ means any person who is not a citizen of the Union, within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;
- (b) ‘intra-corporate transfer’ means the temporary secondment of a third-country national from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;
- (c) ‘intra-corporate transferee’ means any third-country national subject to an intra-corporate transfer;
- (d) ‘host entity’ means the entity, regardless of its legal form, established, in accordance with national law, in the territory of a Member State to which the third-country national is transferred;
- (e) ‘manager’ means an intra-corporate transferee 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;

- (f) ‘specialist’ means an intra-corporate transferee possessing specific knowledge essential to the host entity, taking also account of whether the person has a high level of formal qualification and/or professional experience referring to a type of work or trade requiring specific technical knowledge;
- (g) ‘employee in training’ means an intra-corporate transferee with a higher education qualification who is transferred to broaden his/her knowledge of and experience in a company in preparation for a managerial or a specialist position within the company;
- (h) ‘higher education qualification’ means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a 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;
- (i) ‘family members’ means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC¹⁰;
- (j) ‘intra-corporate transferee permit’ means any authorisation bearing the words ‘intra-corporate transferee’ entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;
- (k) ‘single application procedure’ means the procedure leading, on the basis of one application for the authorisation of a third-country national’s residence and work in the territory of a Member State, to a decision on that application;

¹⁰ OJ L 251, 3.10.2003, p. 12.

- (l) 'group of undertakings' for the purposes of this Directive means two or more undertakings recognised as linked in the following ways under national law: an undertaking, in relation to another undertaking directly or indirectly: holds a majority of that undertaking's subscribed capital; or controls a majority of the votes attached to that undertaking's issued share capital; or can appoint more than half of the members of that undertaking's administrative, management or supervisory body;
- (m) 'first Member State' means the host Member State which first grants a third-country national an intra-corporate transferee permit on the basis of this Directive;
- (n) 'second Member State' means any host Member State in which the intra-corporate transferee intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;
- (o) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:
 1. Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other;
 2. bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15.

CHAPTER II

Conditions of admission

Article 5

Criteria for admission

1. Without prejudice to Article 10, a third-country national who applies to be admitted under the terms of this Directive or the host entity shall:
 - (a) Provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;
 - (b) Present an assignment letter from the employer and/or a work contract from the employer including:¹¹
 - (i) evidence of employment with the undertaking established in a third country;
 - (ii) the duration of the transfer and the location of the host entity or entities of each Member State concerned;
 - (iii) evidence that the third-country national is taking a position as a manager, specialist or employee in training in the host entity or entities in the Member State concerned;
 - (iv) the remuneration including overtime rates of pay, as well as maximum work periods, minimum rest periods and minimum paid annual holidays granted during the transfer;

¹¹ Recital 13: "As intra-corporate transfers consist of temporary [...] **secondment**, the applicant should provide evidence that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. That evidence may consist of the relevant provisions under the work contract. An assignment letter should be produced providing evidence that the third-country national manager or specialist possesses the professional qualifications needed in the Member State to which they have been admitted to occupy the post or the regulated profession."

- (v) evidence that the third-country national will be able to transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment.
 - (c) provide evidence that the third-country national has the professional qualifications needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of employee in training, the higher education qualifications required;
 - (d) present documentation certifying that the third-country national fulfils the conditions laid down under national legislation of the Member State in which the host entity is established for citizens of the Union to exercise the regulated profession which the transferee is applying to work in;
 - (e) present a valid travel document of the third-country national, as determined by national law, and an application for a visa or a visa, if required; Member States may require the period of validity of the travel document to cover at least the initial duration of the residence permit;
 - (f) without prejudice to existing bilateral agreements, present evidence that the third-country national has or is entitled to have by virtue of the application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in the Member State concerned;
- 1a. Member States may require the applicant to present the documents listed in paragraphs 1 a)-d) and f) in the language of the Member State concerned.

- 1b. Member States may require the applicant to provide the address of the third-country national concerned in the territory of the Member State.¹²**
2. Member States shall require that the conditions of employment set out in Article 5 (1) b) iv which will be granted to the third-country national during the transfer are in line with the provisions of [...] **Article 14 (1)**.
- 2a. Member States may require that the remuneration which will be granted to the third-country national during the transfer is not lower than that granted for comparable employees in the Member State concerned.**
- 2b.** Member States may require that the intra-corporate transferee will have sufficient resources during his/her stay to maintain him/herself and his/her family members without having recourse to the social assistance system of the Member State concerned.
3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as an employee in training [...] **may be required to** present a training agreement, related to the preparation for his/her future position within the group of undertakings, including a description of the training programme, its duration and the conditions under which the applicant is supervised during the programme.¹³

¹² Recital 9: "This Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria. These set of rules should be applied without prejudice to Member States having the right to decide upon the technical formalities relating to the application, such as requesting that the address of the third-country national be provided."

¹³ Recital 14: "Third-country nationals who apply to be admitted as employees in training should provide evidence of the higher education qualifications required, namely of any diploma, certificate or other evidence of formal qualifications attesting the successful completion of a post-secondary higher education programme of at least three years. In addition, they [...] **should, if required,** present a training agreement, including a description of the training programme, its duration and the conditions in which the trainees will be supervised, proving that they will benefit from genuine training and not be used as normal workers."

4. Any modification that affects the conditions for admission set out in this Article shall be notified by the host entity to the competent authorities of the Member State concerned.
5. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.
6. Member States shall require the third-country national to provide evidence of employment within the same group of undertakings, [...] **from at least 6 months up to 12 months** immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and for 3 months in the case of employees in training.¹⁴
7. Member States may, if provided for by national law, require the host entity to provide a statement of financial responsibility to ensure that:
 - (a) The intra-corporate transferee will be guaranteed the required level of remuneration and rights as specified under Article 14, in particular that she/he and his/her family members will not have recourse to the social assistance system of the Member State concerned.
 - (b) All expenses that could be related to the return of the intra-corporate transferee in case of illegal stay are covered. The financial responsibility of the host entity shall end at the latest [...] **12 months** after the termination of the assignment in the Member State concerned.

¹⁴ Recital 12: "In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, the transferee should have been employed within the same group of undertakings [...] **from at least 6 months up to 12 months** prior to the transfer in the case of managers and specialists and 3 months in the case of employees in training."

Article 5A

Volumes of admission

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

Article 6

Grounds for refusal

1. Member States shall reject an application in the following cases:
 - (a) where the conditions set out in Article 5 are not met;or
 - (b) where the documents presented have been fraudulently acquired, falsified or tampered with;or
 - (c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees;or
 - (d) where the maximum duration of stay as defined in Article 10A has been reached.

2. Member States may reject an application if the employer or the host entity:
 - (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment;
 - or
 - (b) does not meet the legal obligations regarding social security and/or taxation set out in national law;
 - or
 - (c) **within the 12 months immediately preceding the date of the application, has eliminated, by means of a null or unfair dismissal, the positions he is trying to fill through the new application, or has terminated a contract on which a work permit was based on a date prior to the expiry of this work permit.**

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

Article 7

Withdrawal or non-renewal of the permit

1. Member States shall withdraw an intra-corporate transferee permit in the following cases:
 - (a) where it has been fraudulently acquired, or has been falsified, or tampered with;
 - or
 - (b) where the holder is residing for purposes other than those for which he/she was authorised to reside.

or

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

2. Member States shall refuse to renew an intra-corporate transferee permit in the following cases:

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

or

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

or

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

or

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

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

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

or

- (b) where the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment;

or

- (c) does not meet the legal obligations regarding social security, taxation and/or working conditions, set out in national law;

or

(d) where the holder has abused the short-term mobility rules set out in Article 16.

Article 8

[...] Sanctions¹⁵

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

CHAPTER III

Procedure and permit

Article 9

Access to information

Member States shall take the necessary measures to make available information on entry and residence, including rights, and all documentary evidence needed for an application.

Article 10

Applications for admission

1. Member States shall determine whether an application is to be made by the third-country national and/or by the host entity.

¹⁵ Recital 18: "Member States should provide for appropriate [...] **sanctions**, such as financial penalties, to be imposed in the event of failure to comply with the conditions laid down in this Directive. The **sanctions** [...] could be imposed on the host entity."

2. The application shall be considered and examined when the third-country national is residing outside the territory of the Member State to which admission is sought.
3. Member States shall designate the authority competent to receive and process the application and to issue the intra-corporate transferee permit.
4. The application shall be submitted in a single application procedure.
5. Simplified procedures related to the issuance of intra-corporate transferee permits, [...] **intra-corporate transferee** family permits as well as visas may be made available to entities or to groups of undertakings that have been recognised for that purpose by Member States in accordance with their national legislation or administrative practice. Recognition shall be regularly reassessed and appropriate penalties provided for, in accordance with national law.

Article 10A¹⁶

Duration of an intra-corporate transfer

The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for employees in training **after which they shall return to a third country.**

¹⁶ **New Recital (12a): "As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the European Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for employees in training after which they should return to a third country. The duration of the intra-corporate transferee permits reflects the duration of the transfer irrespective of the periods of absence of the holder from the territory of the Member States. A subsequent transfer to the European Union might take place after the return of the third-country national to a third country."**

Article 11

Intra-corporate transferee permit

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member States concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for employees in training.
3. The intra-corporate transferee permit shall be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002.
4. Under the heading [...] **'remarks', in accordance with point (a) 7.5-9 of the Annex to Regulation (EC) No 1030/2002**, the Member States shall enter 'intra-corporate transferee'.
5. Member States shall not issue any additional permits, in particular work permits of any kind.
6. Member States may indicate additional information related to the employment activity during the intra-corporate transfer of the third-country national (such as the name and address of the host entity, place of work, name and address of the client, type of work, working hours, remuneration) in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and point (a)16 of its Annex thereto.
7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.

Article 12

Procedural safeguards

1. The competent authorities of the Member State concerned shall adopt a decision on the application for an intra-corporate transferee permit or a renewal of it and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible but no later than 60 days of the complete application being lodged.

In exceptional cases involving complex applications the deadline may be extended by a maximum of 30 days.

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

2. Where the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.

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

3. Reasons for a decision rejecting an application for an intra-corporate transferee permit or renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an intra-corporate residence permit shall be given in writing to the intra-corporate transferee and, when the application for the intra-corporate transferee permit was lodged by the host entity, to the applicant.

4. Any decision rejecting the application, refusing renewal, or withdrawing an intra-corporate transferee permit shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court and/or administrative authority where an appeal may be lodged and the time-limit for lodging the appeal.
5. Within the period referred to in Article 11(2) an applicant shall be allowed to lodge an application for renewal before the expiry of the intra-corporate transferee permit. Member States may set a maximum deadline up to 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.
6. If the intra-corporate transferee permit expires during the procedure, Member States may issue, if required by national law, national temporary residence permits or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.

Article 12A

Fees

Member States may request applicants to pay fees for handling applications in accordance with this Directive. The level of fees must be proportionate and reasonable.

CHAPTER IV

Rights

Article 13

Rights on the basis of the intra-corporate transferee permit

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

1. the right to enter and stay in the territory of the Member State issuing the permit;
2. free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;
3. the right to exercise the specific employment activity authorised under the permit in accordance with national law in any entity belonging to the group of undertakings in the Member State issuing the permit and in [...] **second** Member States [...] in accordance with Article 16, including carrying out assignments at the sites of clients of host entities provided that the host entity and the site of its clients are located in the same Member State and as long as the employment relationship is maintained with an undertaking established in a third country **and provided that the assignments at the sites of clients do not constitute the main purpose of the intra-corporate transfer;**

Article 14

Rights

1. Whatever the law applicable to the employment relationship, intra-corporate transferees admitted under this Directive shall enjoy, **without prejudice to Article 5 (2a)**, equal treatment with persons covered by Directive 96/71/EC with regard to the terms and conditions of employment applicable to posted workers in a similar situation in accordance with Article 3 of Directive 96/71/EC in the Member State where the work is carried out;

2. Intra-corporate transferees shall enjoy equal treatment with nationals of the host Member State as regards:
 - (a) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

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

- (c) without prejudice to existing bilateral agreements, provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No1231/2010 shall apply accordingly;¹⁷
 - (d) without prejudice to Regulation (EC) No 1231/10 and to existing bilateral agreements, payment of statutory pensions based on the worker's previous employment when moving to a third country;
 - (e) access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining [...] housing as provided for by national law, without prejudice to the freedom of contract in accordance with Union and national law, and services afforded by employment offices.
3. The right to equal treatment laid down in [...] **this Article** shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.

¹⁷ Recital 23: "Equal treatment should be granted under national law in respect of those branches of social security defined in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems¹⁷. The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective and **non-discriminatory** conditions laid down by the legislation of the host Member State with regard to affiliation and entitlement to social security benefits. Since this Directive is without prejudice to provisions included in bilateral agreements, the social security rights enjoyed by third country national intra-corporate transferees on the basis of a bilateral agreement concluded between the Member State to which the person has been admitted and his or her country of origin could be strengthened compared to the social security rights which would be granted to the transferee under national law. This Directive should not confer more rights than those already provided for in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. It should be granted without prejudice to posting provisions on national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin."

4. The Member State concerned may restrict equal treatment under point (c) of paragraph 2 as regards family benefits.

Article 15

Family members

1. Council Directive 2003/86/EC shall apply in the Member States which issued the intra-corporate transferee permit, subject to the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification in the Member State shall not be made dependent on the requirement that the holder of the permit issued by that Member State on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.
3. By way of derogation from the last subparagraph of Article 4(1) and from Article 7(2) of Directive 2003/86/EC, the integration measures referred to therein may be applied by the Member State only after the persons concerned have been granted family reunification.
4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the Member State, if the conditions for family reunification are fulfilled, at the latest within two months from the date on which the complete application was lodged and not before the ICT permit is issued. Article 12 applies accordingly.
5. By way of derogation from Article 13(2) of Directive 2003/86/EC, the duration of validity of the residence permits of family members in the Member State may be the same as that of the intra-corporate transferee permit.

6. By way of derogation from Article 14(1) b of Directive 2003/86/EC the family members of the intra-corporate transferee who have been granted family reunification shall be entitled to have access to employment and self-employed activity, in the territory of the Member State which issued the intra-corporate transferee permit.
7. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC Member States shall not apply any time limits in respect of access to the labour market.

CHAPTER V

Mobility between Member States

Article 16

*Provisions governing short-term mobility*¹⁸

1. When the intra-corporate transferee intends to work in a second Member State for a period of up to three months in any six-month period, the transfer may take place on the basis of the intra-corporate transferee permit issued by the first Member State during its validity, provided that:

¹⁸ **New Recital 21a): "This Directive should be applied without prejudice to the relevant Schengen acquis instruments, such as the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (the Schengen Convention), Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and, when necessary, the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Member States outside the Schengen area are entitled to perform the necessary checks at their borders and deny intra-corporate transferees the entry should there be a reason to do so."**

- a) there is a host entity belonging to the same group of undertakings in the second Member State concerned,
 - b) the transfer covers the same position,
 - c) the intra-corporate transferee is not considered to pose a threat to public policy, public security or public health in that second Member State,
 - d) the second Member State has been notified in accordance with paragraph 2,
 - e) the volumes of admission of third-country nationals entering territory of the second Member State have not been exhausted and
 - f) as long as the terms and conditions of employment set out in [...] **Article 5 (2) and (2a)** in the second Member State are fulfilled.
2. When lodging the application for an intra-corporate transferee permit the applicant shall notify the competent authorities of the first Member State, and the host entity shall notify the competent authorities of the second Member State about the transfer intended to take place in that second Member State by sending to that second Member State the documents - **or copies thereof where applicable** - specified in Article 5 (1) a), b), d), f) and Article 5 (3) **concerning the second Member State**, and the information [...] **on the residence permit issued by the first Member State or on the application lodged in the first Member State.**
- 2a. The second Member State informs the host entity of the exhaustion of volumes of admission of third-country nationals entering its territory within [...] **10 working** days from receiving the documents in accordance with paragraph 2. **The absence of a reply within this deadline shall mean that the volumes of admission have not been exhausted.**
3. The intra-corporate transferee permit issued by the first Member State entitles the intra-corporate transferee to work, [...] **in accordance with [...] Article [...] 14**, in the first and in the second Members State(s), except where the criteria set out in paragraph 1 are not fulfilled.

Where the relevant legislation provides for the requirement for a visa for exercising short-term mobility, such a visa shall be granted in a timely manner within a period that does not hamper the transfer.

4. If the intra-corporate transferee intends to exercise the right of short-term mobility in a second Member State other than the Member State(s) notified during the application procedure, the host entity shall notify the competent authorities of the first and of the second Member State about this intention before the transfer takes place in that second Member State in accordance with paragraph 2. The transfer may take place to that second Member State in accordance with paragraph 3.
5. The second Member State may require registrations to be carried out in accordance with national law when the intra-corporate transferee enters the territory of the second Member State with the purpose of work. The second Member State may indicate additional information specified under Article 11 (6) as proof of such registration.
6. In case the intra-corporate transferee permit is renewed by the first Member State within the maximum duration, the renewed intra-corporate transferee permit continues to authorise its holder to work in the second Member State(s) notified. Paragraphs 2, 3 and 4 shall apply accordingly to the application for renewal of the intra-corporate transferee permit and to the renewed intra-corporate transferee permit.
7. In case the first Member State withdraws the intra-corporate transferee permit, the authorities of the second Member State(s) shall be informed by the first Member State.
8. In case the employment activity of the third-country national in the second Member State is not in accordance with [...] **paragraph 1**, the second Member State may take the following measures:
 - (a) impose effective, proportionate and dissuasive sanctions against the host entity;
 - (b) inform the authorities of the first Member State accordingly.

Article 16A

Provisions governing long-term mobility

1. If the third-country national who intends to work in a second Member State for more than 3 months within any 6-month period, an application for a new intra-corporate transferee permit shall be lodged to the authorities of the second Member State and present all the documents proving the fulfilment of the conditions set out in Article 5.

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

2. If the third-country national has already been granted an intra-corporate transferee permit the second Member State may decide not to verify certain criteria for admission and/or may allow the intra-corporate transferee to work until a positive decision on the application has been taken by its competent authority.
3. The provisions set out in Article 16 shall apply in a way that "the first Member State" shall be understood as the second Member States in which the application for a new intra-corporate permit is lodged and "the second Member State" as the Member State in which short-term mobility right is intended to be exercised.
4. The second Member State issuing or withdrawing a new intra-corporate transferee permit shall inform the first Member State about it, in case the intra-corporate transferee permit issued by the first Member State is still valid.
5. Articles 5A, 6, 7, 10, 10A, 11, 12 and 12A shall apply accordingly.

CHAPTER VI

Final Provisions

Article 17

Statistics

1. Member States shall communicate to the Commission statistics on the number of residence permits issued for the first time or renewed and, as far as possible, on the number of residence permits withdrawn for the purpose of intra-corporate transfer to persons who are third-country nationals, disaggregated by citizenship, age and sex, by transferee position (manager, specialist and graduate trainee), by length of validity of the permit and by economic sector.
2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007.
3. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission within six months of the end of the reference year. The first reference year shall be [...].

Article 18

Reports

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

Article 19
Cooperation on information

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

Article 20
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 21

Entry into force

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

Article 22

Addressees

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

Done at Brussels, [...]

For the European Parliament

For the Council

The President

The President