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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	12211/10 MIGR 67 SOC 462 DRS 27 CODEC 691
Subject:	Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [First reading] - Analysis of the final draft compromise text with a view to agreement

1. The Commission presented on 13 July 2010 a proposal on entry and residence of intra-corporate transferees. This proposal is aimed at creating an European Union wide scheme for attracting highly-qualified managers, specialists and trainee employees in the framework of transfers from an undertaking outside the EU to an entity of that undertaking established in a Member State¹.

¹ In accordance with 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, the United Kingdom and Ireland are not taking part in the adoption of the Intra-corporate transferee directive. In accordance with the Protocol on the position of Denmark, also Denmark does not take part in its adoption and is not bound by it or subject to its application.

2. In light of the discussion in the Committee of Permanent Representatives on 19/20 February 2014 and with the aim to find an overall agreement between the Council and the European Parliament in first reading, the Presidency submitted a package of compromise suggestions to the Parliament. These suggestions are reflected in the consolidated text of the Directive, as it appears in the Annex.
3. In addition to the legislative text, three statements would be made:

An inter-institutional statement by the Council, the Parliament and the Commission:

*"This Directive establishes an autonomous mobility scheme providing for specific rules, adopted on the basis of Article 79(2)(a) and (b) TFEU, regarding the conditions of entry, stay and freedom of movement of a third-country national for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, which are to be considered as a *lex specialis* with respect to the Schengen *acquis*.*

The European Parliament and the Council take note of the Commission's intention to examine whether any action needs to be taken in order to enhance legal certainty as regards the interaction between the two legal regimes, and in particular to examine the need for updating the Schengen Handbook."

Two statements by the Commission:

Statement on definition of "specialist"

"The Commission considers that the definition of "specialist" in Article 3 (f) of this Directive is in line with the equivalent definition ("person possessing uncommon knowledge") used in the EU's schedule of specific commitments of the WTO's General Agreement on Trade in Services (GATS). The use of the word "specialised" instead of "uncommon" does not entail any change or extension of the GATS definition and is only adapted to the language now in use."

Statement on the bilateral agreements referred to in Article 14(2), points c) and d):

"The Commission will monitor the implementation of Article 14(2), points (c) and (d), of this Directive in order to assess the possible impact of the bilateral agreements referred to in that Article on the treatment of intra-corporate transferees and on the application of Regulation (EC) No 1231/2010 and take, where necessary, any appropriate measure".

4. On 25 February the rapporteurs and the shadow-rapporteurs of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Employment and Social Affairs (EMPL) indicated they could accept the consolidated text annexed in combination with the above three statements.
5. Against that background, the Presidency invites the Permanent Representatives Committee to endorse the annexed text of the Intra-corporate transferee directive as well as the inter-institutional statement of the European Parliament, the Council and the Commission as it appears in paragraph 3.
6. Endorsement of the annexed text by the Permanent Representatives Committee would enable the Chair of the Permanent Representatives Committee to send a letter to the Chairs of the European Parliament's LIBE and EMPL Committees informing them that, if the Parliament, after lawyer-linguist revision, adopts the annexed text, the Council will approve the position of Parliament without amendments.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.
- (2) The Treaty provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence, and standards on the issue by Member States of long-stay visas and residence permits, as well as the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.

² OJ C , , p. .

³ OJ C , , p. .

- (3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth"⁴ 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 trainee *employees* to enter the Union in the framework of an intra-corporate transfer should be seen in this broader context.
- (4) The Stockholm Programme, adopted by the European Council at its meeting of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. It thus invites the Commission and the Council to continue to implement the 2005 Policy Plan on Legal Migration⁵.
- (5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational corporations, in recent years movements of *managers, specialists and trainee employees* of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.
- (6) These intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host companies, thus advancing the knowledge-based economy in Europe while fostering investment flows across the Union. *Intra-corporate* transfers from third countries also have the potential to facilitate *intra-corporate* 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.

⁴ COM(2010)2020.

⁵ COM(2005) 669.

- (7) The set of rules established by this Directive *may* also *be* beneficial to the migrants' countries of origin as this temporary migration *may, under its well-established rules, foster* transfers of skills, knowledge technology and know-how.
- (8) This Directive should be applied without prejudice to the principle of *preference for* Union *citizens* as regards access to Member States' labour market as expressed in the relevant provisions of *the relevant* Acts of Accession.
- (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 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.
- (9a) Member States should ensure that appropriate checks and effective inspections are carried out in order to guarantee the proper enforcement of this Directive. The fact that an intra-corporate transferee permit has been issued should not affect or prevent the Member States from applying during the intra-corporate transfer their labour law provisions having - in accordance with Union law - as their objective the control of compliance with the working conditions as set out in Article 14(1).*
- (9b) The possibility for a Member State to impose, on the basis of national law, sanctions against an intra-corporate transferee's employer established in a third country should remain unaffected.*

- (10) For the purpose of this Directive, intra-corporate transferees encompass managers, specialists and trainee *employees*. Their definition builds on specific commitments of the Union under the General Agreement on Trade in Services (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.
- (10a) To assess the qualifications of intra-corporate transferees, Member States should make use of the European Qualifications Framework (EQF) for lifelong learning, as appropriate, for the assessment of qualifications in a comparable and transparent manner. EQF National Coordination Points may provide information and guidance on how national qualifications levels relate to the EQF.*
- (11) Intra-corporate transferees should benefit from *at least* the same *terms and conditions of employment* 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. *Member States should require that intra-corporate transferees enjoy equal treatment with nationals occupying comparable positions as regards the remuneration which will be granted during the entire transfer. Each Member State should be responsible for checking the remuneration granted to the intra-corporate transferees during their stay on its territory. This 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.*

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 3 up to 12 uninterrupted* months prior to the transfer *in the case of managers and specialists and from at least 3 up to 6 uninterrupted months in the case of trainee employees*.

(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 trainee employees after which they should return to a third country unless they obtain a residence permit on another basis in accordance with national or Union legislation. The maximum duration of the transfer encompasses the cumulated durations of consecutively issued intra-corporate permits. A subsequent transfer to the European Union might take place after the return of the third-country national to a third country.

(12b) In order to ensure the temporary character of an intra-corporate transfer and prevent abuses, Member States should be able to require a certain period of time to pass between the end of the maximum duration of one transfer and another application concerning the same third-country national for the purposes of this Directive in the same Member State.

(13) As intra-corporate transfers consist of temporary secondment, the applicant should provide evidence, *as part of the contract or the assignment letter*, 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. Evidence *should also be provided* that the third-country national manager or specialist possesses the professional qualifications *and adequate professional experience* needed in the *host entity* to which *he or she is to be transferred* to occupy the post.

- (14) Third-country nationals who apply to be admitted as *trainee employees* should provide evidence of a *university degree*. 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 *trainee employees* 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 preference *for Union citizens* as expressed in the relevant provisions of the *relevant* Acts of Accession, no labour market test should be required.
- (15a) A Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third-country in accordance with Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications.*

This should be without prejudice to any restrictions on access to regulated professions deriving from reservations to the existing commitments as regards regulated professions taken by the Union or by the Union and its Member States in the framework of trade agreements. In any event, this Directive should not provide for a more favourable treatment for intra-corporate transferees, in comparison to Union or EEA nationals, as regards access to regulated professions in a Member State.

- (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 *not affect* the right of the Member States to determine the volumes of admission *in accordance with Article 79(5) of the Treaty on the Functioning of the European Union*.

(17a) *With a view to fighting possible abuses of the Directive, Member States should be able to refuse, withdraw or non-renew an intra-corporate transferee permit when the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees and/or does not have a genuine activity.*

(17aa) *This Directive aims to facilitate intra-EU mobility of intra-corporate transferees and to reduce the administrative burden associated with work assignments in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State is allowed to enter, to stay and to work in one or more Member States in accordance with the provisions governing short term and long term mobility under this Directive. Short term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit for a period of up to 90 days per Member State. Long-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit for more than 90 days per Member State. In order to prevent circumvention of the distinction between short-term and long-term mobility, a short-term mobility in the same Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to introduce a notification for short term mobility and an application for long term mobility at the same time. Where the need for long term mobility arises after the short term mobility of the intra-corporate transferee has started, the second Member State may request that the application is submitted at least 20 days before the end of the short term mobility period.*

- (17aaa) *While the specific mobility scheme established by this Directive should set up autonomous rules regarding the entry and stay for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen acquis continue to apply.*
- (17b) *Where intra-corporate transferees have exercised their right to mobility, the second Member State should, under certain conditions, be in a position to take steps against the intra-corporate transferee's activities contravening the relevant provisions of this Directive.*
- (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 *provisions of* this Directive. *Those could inter alia consist of sanctions as provided for in Article 7 of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.* The *sanctions* could be imposed on the host entity *established in the Member State concerned.*
- (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 *simplified* procedure may be set up for *entities or* groups of undertakings which have been recognised for that purpose. Recognition should be *regularly assessed.*

(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.

(21aa) Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen acquis in full and the intra-corporate transferee, in the framework of a mobility, crosses an external border within the meaning of Regulation (EC) No 562/2006 of the European Parliament and of the Council (Schengen Borders Code), a Member State should be entitled to require evidence proving that the intra-corporate transferee is moving to its territory for the purpose of an intra-corporate transfer. Besides, in case of crossing of an external border, the Member States applying the Schengen acquis in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purposes of refusing entry and stay, as referred to in Regulation (EC) No 1987/2006 (SIS II), has been issued in that system.

(21b) Member States should be able to indicate additional information in paper format or store such data in electronic format, as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto, in order to provide more precise information on the employment activity during the intra-corporate transfer. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.

(21ba) The provisions of this Directive should not prevent intra-corporate transferees from exercising specific activities at the sites of clients within the same Member State as the host entity in accordance with the provisions applying in that Member State with regard to such activities.

(22) This Directive should not affect conditions for the provision of services in the framework of Article 56 of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. Third-country nationals holding an intra-corporate transferee permit cannot avail themselves of the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.

(22b) When a visa is required and the third-country national fulfils the criteria for being issued an intra-corporate transferee permit, the Member State should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate to that purpose.

(23) *Adequate social security coverage for intra-corporate transferees, including, where relevant, benefits for their family members is important for ensuring decent working and living conditions while staying in the Union.* 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. In many Member States the right to family benefits is conditional upon a certain attachment to that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive does not affect the right of Member States to restrict, under certain conditions, equal treatment in respect of family benefits as the intra-corporate transferee and the accompanying family are staying temporarily in the first Member State. Social security rights should be granted without prejudice to provisions in national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin. However, bilateral agreements or national legislation on social security rights of intra-corporate transferees which are adopted after the entry into force of this directive should not provide for less favourable treatment than the treatment granted to nationals of the Member State where the work is carried out. As a result of such agreements or national legislation, it may be, for example, in the interest of the intra-corporate transferees to remain affiliated to the social security system of their country of origin if interruption of this affiliation would adversely affect their rights or would result in bearing the costs of double coverage. Member States should always retain the possibility to grant more favourable social security rights to intra-corporate transferees. Nothing in this Directive affects the right of survivors who derive rights from the intra-corporate transferee to receive survivor's pensions when residing in a third country.*

⁷ OJ L 166, 30.4.2004, p. 1.

(23a) In the event of mobility between Member States, Council Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 on nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality⁸ should apply accordingly. 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.

(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, ***and their access to the labour market should be facilitated.***

(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.

⁸ OJ L 344, 29.12.2010, p.1.

- (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 research⁹.
- (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 by the Charter of Fundamental Rights of the European Union, *which itself builds upon the rights deriving from the Social Charters adopted by the Union and by the Council of Europe*.
- (27a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.*

⁹ OJ L 289, 3.11.2005, p. 15.

- (28) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by or subject to its application.
- (29) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I GENERAL PROVISIONS

Article 1

Subject-matter

This Directive determines:

- (a) the conditions of entry to and residence for more than **90 days** in the territory of the Member States, ***and the rights***, of third-country nationals and of their family members in the framework of an intra-corporate transfer;
- (b) the conditions of entry to and residence, ***and the rights***, of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national ***an intra-corporate transferee*** 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 the Member States *at the time of application* 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 *as managers, specialists or trainee employees*.

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;
 - (ca) *carrying out activities as self-employed workers*;

 - (cb) *being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking*.

 - (cc) *who are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies*;

3. *This Directive shall be without prejudice to the right of Member States to issue residence permits other than the intra-corporate transferee permit regulated by this Directive for any purpose of employment for third-country nationals who fall outside the scope of the Directive.*

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 *for occupational or training purposes* of a third-country national *who resides outside the territory of the Member States at the time of application* from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract *prior to and during the transfer*, to an entity belonging to the undertaking or to the same group of undertakings which is established *in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States*;
- (c) 'intra-corporate transferee' means any third-country national *who resides outside the territory of the Member States at the time of application for an intra-corporate transferee permit* and who is subject to an intra-corporate transfer;
- (d) 'host entity' means the entity *to which the third-country national is transferred*, regardless of its legal form, established, *in accordance with national law*, in the territory of a Member State *concerned*;

- (e) 'manager' means **a** person **holding** a senior position, who **primarily** directs the management of the host entity, receiving general supervision or **guidance** principally from the board of directors or stockholders of the business or equivalent; this position **shall include**: directing the host entity or a department or sub-division of the host entity; supervising and controlling work of the other supervisory, professional or managerial employees; having the authority to recommend hiring, dismissing or other personnel action;
- (f) 'specialist' means **a** person **working within the group of undertakings** possessing **specialised** knowledge **essential to the host entity's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession.**
- (g) 'trainee **employee**' means **a** person with **a university degree** who is transferred **to a host entity for career development purposes or in order to obtain training in business techniques or methods and is paid during the transfer;**
- (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 **an** authorisation bearing the **acronym 'ICT'** entitling its holder to reside and work in the territory of **the first** Member State under the terms of this Directive;

¹⁰ OJ L 251, 3.10.2003, p. 12.

- (ja) *‘permit for long-term mobility’ means an authorisation bearing the term “mobile ICT” entitling the holder of an intra-corporate transferee permit to reside and work in the territory of the second Member State under the terms of this Directive;*
- (k) 'single application procedure' means the procedure leading, on the basis of one application for the authorisation of a third-country national's residence and work in the territory of a Member State, to a decision on *that* application;
- (l) 'group of undertakings' for the purposes of this Directive means two or more undertakings recognised as linked in the following ways under national law: an undertaking, in relation to another undertaking directly or indirectly: holds a majority of that undertaking's subscribed capital; or controls a majority of the votes attached to that undertaking's issued share capital; or can appoint more than half of the members of that undertaking's administrative, management or supervisory body; *or both undertakings are managed on a unified basis by the parent undertaking;*
- (m) ‘first Member State’ means the Member State which first *issues* a third-country national *an intra-corporate transferee* permit on the basis of this Directive;
- (n) *‘second Member State’ means any 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:
 - (a) Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other;
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 3(i), 12, 14 and 15.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

Criteria for admission

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) provide evidence of employment within the same group of undertakings, from at least **3 up to 12 uninterrupted months** immediately preceding the date of the intra-corporate transfer **in the case of managers and specialists, and from at least 3 up to 6 uninterrupted months in the case of trainee employees.**
- (c) present a **work contract and, if necessary,** an assignment letter from the employer **providing:**
- (i) **details of** the duration of the transfer and the location of the host entity **or entities;**
 - (ii) evidence that **the third country national** is taking a position as a manager, specialist or trainee **employee** in the host entity or entities in the Member State concerned;
 - (iii) the remuneration **as well as other terms and conditions of employment** granted during the transfer;
 - (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.**
- (d) provide evidence that the third-country national has the professional qualifications **and experience** needed in the **host entity** to which he or she **is to be transferred as** manager or specialist or, **in the case of a trainee employee** the **university degree** required;
- (e) **where applicable,** present documentation certifying that **the third-country national** fulfils the conditions laid down under national legislation **of the Member State concerned** for citizens of the Union to exercise the regulated profession **to which the application relates;**

- (f) 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 intra-corporate transferee permit;*
- (g) without prejudice to existing bilateral agreements, *provide* 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 *carried out in the Member State concerned;*

1a. Member States may require the applicant to present the documents listed in paragraphs 1 (a), (c), (d), (e) and (g) in the language of the Member State concerned.

1b. Member States may require the applicant to provide, at the latest at the time of the issuance of the intra-corporate transferee permit, the address of the third-country national concerned in the territory of the Member State.

2. Member States shall require that:

- (a) *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 during the transfer of the intra-corporate transferee with regard to terms and conditions of employment other than remuneration;*

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.

(b) *the remuneration granted to the third-country national during the entire transfer is not less favourable than the remuneration granted to nationals of the host Member State concerned occupying comparable positions according to applicable laws or collective agreements or practices in the Member State where the host entity is established.*

2b. Based on the documentation provided pursuant to paragraph 1, 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 their social assistance systems.

3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as a trainee *employee may be required to* present a training agreement, *related to the preparation for his/her future position within the group of undertakings*, including a description of the training programme, *which demonstrates that the purpose of stay is to train the employee for career development purposes or in order to obtain training in business techniques or methods*, its duration and the conditions under which the applicant is supervised during the programme.

5. Any modification *during the application procedure* that affects the conditions for admission set out in this Article shall be notified *by the applicant* 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.

Article 5A

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission in accordance with Article 79(5) of the Treaty on the Functioning of the European Union. On this basis and for the purposes of this Directive, an application for an intra-corporate transferee permit may be either considered inadmissible or be rejected.

Article 6

Grounds for rejection

1. Member States shall reject an application *in the following cases*:

(a) *when Article 5 is not complied with;*

or

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

or

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

or

(d) *where the maximum duration of stay as defined in Article 10A(1) has been reached.*

1a. Member States shall, if appropriate, reject an application where the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

2. Member States *may* reject an application if:

(a) the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

or

(b) the employer's or the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;

or

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

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 10A(2)*.

3a. Without prejudice to paragraph 1 before taking a decision to reject an application, the Member State shall take account of the specific circumstances of the case and respect the principle of proportionality.

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 *intra-corporate transferee* is residing for purposes other than those for which he/she was authorised to reside;

or

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

1a. Member States shall, if appropriate, withdraw an intra-corporate transferee permit where the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

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

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

or

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

or

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

or

- (d) *where the maximum duration of stay as defined in Article 10A(1) has been reached.*

2a. Member States shall, if appropriate, refuse to renew an intra-corporate transferee permit where the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

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

- (a) wherever the **criteria** laid down in Article 5 *are not or* are no longer *complied with*;

or

- b) *the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;*

or

- (c) *where the employer's or the host entity's business is being or has been wound up under national insolvency laws or if no economic activity is taking place;*

or

(d) where the intra-corporate transferee has not complied with the mobility rules set out in Articles 16A and 16B;

3a. Without prejudice to paragraphs 1 and 2, before taking a decision to withdraw or to refuse to renew an application, the Member State shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 8

Sanctions

1. Member States may hold the host entity responsible for failure to comply with the conditions of admission, *stay and mobility laid down in this Directive*.

2. *Where the host entity is held responsible in accordance with paragraph 1, the Member State concerned shall provide for sanctions.* Those *sanctions* shall be effective, proportionate and dissuasive.

3. *Member States shall lay down measures aimed at preventing possible abuses and at sanctioning infringements. They shall include monitoring, assessment and, where appropriate, inspection measures, in accordance with national law or administrative practices.*

CHAPTER III
PROCEDURE AND PERMIT

Article 9

Access to information

1. Member States shall make *easily accessible to applicants the information on* all documentary evidence needed for an application and information on entry and residence, including *the rights, obligations and procedural safeguards, of the intra-corporate transferee and of their family members. Member States shall also make easily available information on the procedures applied to the short-term mobility referred to in Article 16A (2) and the long-term mobility referred to in Article 16B (1).*

2. *The Member States concerned shall make available information to the host entity on the right of Member States to impose sanctions in accordance with Article 8 and Article 16C.*

Article 10

Applications for admission

1. Member States shall determine whether an application is to be *submitted* by the third country national or by the host entity. *Member States may also decide to allow an application from either of the two.*

2. The application shall be *submitted* when the third-country national is residing outside the territory of the Member State to which admission is sought.

3. The application shall be *submitted* to the authorities of the Member State where the *first stay takes place. In case of mobility, the application shall be submitted to the authorities of the Member State where the longest overall stay will take place during the transfer.*

3. Member States shall designate the *authorities* competent to receive the application and to issue the intra-corporate transferee permit.

4. The *applicant* shall be *entitled to submit his or her application* in a single application procedure.

7. Simplified procedures *related to the issuance of intra-corporate transferee permits, permits for long term mobility, permits granted to family members of an intra-corporate transferee and 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 practices*.

Recognition shall be regularly reassessed.

8. The simplified procedures provided for in paragraph 7 shall *at least include*:

(a) exempting the applicant from presenting *some of the evidence* referred to in Article 5 *or Article 16B(2)(a)*;

and/or

(b) a fast-track admission procedure allowing intra-corporate transferee permits *and permits for long-term mobility* to be issued within a shorter time than specified in Article 12(1) *or in Article 16B(2)*;

and/or

(c) *facilitated and/or accelerated procedures in relation to the issuance of the requisite visas*.

9. *Entities or groups* of undertakings *which have* been recognised in accordance with paragraph 7 shall notify to the relevant authority any modification affecting the conditions for recognition *without delay and, in any event, within no more than 30 days.*

10. Member States shall provide for appropriate penalties, including revocation of recognition, in the event of failure to *notify the relevant authority.*

Article 10A

Duration of an intra-corporate transfer

1. *The maximum duration of the transfer to the territory of the Member States shall not exceed three years for managers and specialists and one year for trainee employees after which they shall leave the territory of the Member States unless they obtain a residence permit on another basis in accordance with national or Union legislation.*

2. *Without prejudice to their obligations under international agreements, Member States may require a period of up to 6 months to pass between the end of the maximum duration of a transfer referred to in paragraph 1 and another application concerning the same third-country national for the purposes of this Directive in the same Member State.*

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 State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for *trainee employees*.

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 1030/2002¹¹.

4. Under the heading '*type of permit*', in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter "*ICT*".

Member States may also add an indication in their official language or languages.

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 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.

¹¹ OJ L 157, 15.6.2002, p. 1.

Article 11a

Modifications during the stay

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

Article 12

Procedural safeguards

1. The competent authorities of the Member State concerned shall adopt a decision on the application for *an intra-corporate transferee permit or a renewal of it* and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, *as soon as possible but no later than 90 days* of the complete application being lodged.
2. Where the information *or documentation* supplied in support of the application is *incomplete*, 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 required.*
3. *Reasons for a decision declaring inadmissible or rejecting an application for an intra-corporate transferee permit or refusing renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an intra-corporate transferee permit shall be given in writing to both the intra-corporate transferee and the host entity.*

4. Any decision *declaring inadmissible or* 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 of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.*

6. *Where the validity of the intra-corporate transferee permit expires during the procedure for renewal, Member States shall allow the intra-corporate transferee to stay on their territory until the competent authorities have taken a decision on the application. In such a case, they may issue, where required under national law, national temporary residence permits or equivalent authorisations.*

Article 12A

Fees

Member States may require payment of fees for handling applications in accordance with this Directive. The level of such fees shall not be excessive or disproportionate.

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 host entity belonging to the group of undertakings *in the first Member State and in second Member States* in accordance with **Article 16**.

Article 14

Right to equal treatment

1. Whatever the law applicable to the employment relationship, *and without prejudice to Article 5(2)(b)*, intra-corporate transferees *admitted under this Directive shall enjoy at least equal treatment with persons covered by Directive 96/71/EC with regard to the terms and conditions of employment 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 Member State ***where the work is carried out*** 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 ***and rights*** conferred by such organisations, without prejudice to the national provisions on public policy and public security;
- (b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- (c) provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/2004, ***unless the legislation of the country of origin applies by virtue of bilateral agreements or national legislation of the host Member State, ensuring that the intra-corporate transferee is covered by the social security legislation in one of these countries.*** In the event of mobility between Member States, ***and without prejudice to bilateral agreements ensuring that the intra-corporate transferee is covered by the national legislation of the country of origin,*** Council Regulation (EC) No 1231/2010 shall apply accordingly;
- (d) without prejudice to ***Council Regulation (EC) 1231/2010*** and to bilateral agreements, ***payment of old-age, invalidity and death, statutory pensions based on the workers' previous employment and acquired by intra-corporate transferees moving to a third-country, or the survivors of such workers residing in a third-country deriving rights from the worker, 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.***

- (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 *public* employment offices.

The bilateral agreements or national legislation referred to in this paragraph shall constitute international agreements or Member States' provisions within the meaning of Article 4.

2a. Without prejudice to Regulation (EU) No 1231/2010, Member States may decide that point (c) of paragraph 2 with regard to family benefits shall not apply to intra-corporate transferees who have been authorised to stay and work in the territory of a Member State for a period not exceeding 9 months.

3. *This Article* shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.

Article 15

Family members

1. Council Directive 2003/86/EC shall apply in the Member States which issued the intra-corporate transferee permit *and in Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with Article 16B*, 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 those Member States* 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 States* 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 *a* Member State, if the conditions for family reunification are fulfilled within **90 days** from the date on which the *complete* application was lodged. *The competent authority of the Member State shall process the residence permit application for the intra-corporate transferee's family members at the same time as the application for the intra-corporate transferee permit or the long term mobility permit, in cases where the residence permit application for the intra-corporate transferee's family members is submitted at the same time. The procedural safeguards laid down in Article 12 apply 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 *shall, as a general rule, end on the date of expiry of the intra-corporate transferee permit or the long term mobility permit issued by that Member State.*

6. *By way of derogation from Article 14(2) of Directive 2003/86/EC and without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, 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 family member residence permit.*

CHAPTER V
MOBILITY BETWEEN MEMBER STATES

Article 16

Mobility

Third country nationals who hold a valid intra-corporate transferee permit issued by the first Member State may, on the basis of that permit and a valid travel document and under the conditions laid down in Article 16A and 16B and subject to Article 16C, enter, stay and work in one or several second Member States.

Article 16A

Short-term mobility

1. Third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State shall be entitled to stay and work in any other entity established in any Member State and belonging to the same group of undertakings for a period of up to 90 days in any 180-day period per Member State subject to the conditions laid down in this Article.

2. The second Member State may require the host entity in the first Member State to notify the first Member State and the second Member State of the intention of the intra-corporate transferee to work in an entity established in the second Member State.

In such cases, the second Member State shall allow the notification to take place:

(a) either at the time of the application in the first Member State, where the mobility to the second Member State is already foreseen at that stage; or

(b) *after the intra-corporate transferee was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.*

3. *The second Member State may require the notification to include the transmission of the following documents and information:*

(a) *evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;*

(b) *the work contract and, if necessary, the assignment letter, which were transferred to the first Member State as provided for in Article 5 (1) (c);*

(ba) *where applicable, documentation certifying that the intra-corporate transferee fulfils the conditions laid down under national legislation of the Member State concerned for citizens of the Union to exercise the regulated profession to which the application relates;*

(c) *a valid travel document, as provided for in Article 5 (1) (f); and*

(d) *where not specified in any of the preceding documents, the planned duration and dates of the mobility.*

The second Member State may require these documents and information to be presented in a language of the Member State concerned.

4. *Where the notification has taken place in accordance with paragraph 2 (a), and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 6, the mobility of the intra-corporate transferee to the second Member State may take place at any moment within the validity of the intra-corporate transferee permit.*

5. *Where the notification has taken place in accordance with paragraph 2 (b), the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the validity of the intra-corporate transferee permit.*

6. *Based on the notification referred to in paragraph 2, the second Member State may object to the mobility of the intra-corporate transferee to its territory within 20 days from having received the notification, where:*

(a) *the conditions set out in Article 5(2)(b) or paragraph 3 (a) or (ba) or (c) of this Article, are not complied with;*

(ba) *the documents presented have been fraudulently acquired, falsified or tampered with;*

(c) *the maximum duration of stay as defined in Articles 10A(1) or 16A(1) has been reached;*

The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State and the host entity in the first Member State about their objection to the mobility.

7. *Where the second Member State objects to the mobility in accordance with paragraph 6 and the mobility has not yet taken place, the intra-corporate transferee shall not be allowed to work in the second Member State as part of the intra-corporate transfer. In case the mobility has already taken place, Article 16C(2) and (2a) shall apply.*

8. *In case the intra-corporate transferee permit is renewed by the first Member State within the maximum duration provided for by Article 10A(1), the renewed intra-corporate transferee permit continues to authorise its holder to work in the second Member State notified, subject to the maximum duration stated in Article 16A(1).*

9. Intra corporate transferees who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

Article 16B

Long-term mobility

1. In relation to third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State and who intend to stay and work in any other entity or entities established in one or several other Member States and belonging to the same group of undertakings for more than 90 days per Member State, the second Member State may decide to:

(a) apply the provisions referred to in Article 16A and allow the intra-corporate transferee to stay and work on its territory based on and during the validity of the intra-corporate transferee permit issued by the first Member State;

or

(b) apply the procedure provided for in the paragraphs 2 to 5.

2. Where an application for long-term mobility is made:

(a) The second Member State may require the applicant to transmit some or all of the following documents where these documents are required by the second Member State for an initial application:

(i) evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;

- (ii) *a work contract and, if necessary, an assignment letter, as provided for in Article 5 (1) (c);*
- (iii) *where applicable, documentation certifying that the third-country national fulfils the conditions laid down under national legislation of the Member State concerned for citizens of the Union to exercise the regulated profession to which the application relates;*
- (iv) *a valid travel document, as provided for in Article 5 (1) (f);*
- (v) *evidence of having, or, if provided for by national law, having applied for sickness insurance, as provided for in Article 5 (1) (g).*

The second Member State may require the applicant to provide, at the latest at the time of issuance of the mobile intra-corporate transferee permit, the address of the intra-corporate transferee concerned in the territory of the second Member State.

The second Member State may require these documents and information to be presented in a language of the Member State concerned;

- (b) *The second Member State shall take a decision on the application for long-term mobility and notify the applicant in writing as soon as possible but not later than 90 days after the second Member State has received the application and the documents foreseen in point (a);*
- (c) *The intra-corporate transferee shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;*

(d) The intra-corporate transferee shall be allowed to work in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that:

- the time period referred to in Article 16A(1) and the period of validity of the intra-corporate transferee permit issued by the first Member State has not expired; and*
- if the second Member State requires so, the complete application has been submitted to the second Member State at least 20 days before the long-term mobility of the intra-corporate transferee starts.*

e) An application for long term mobility may not be submitted at the same time as a notification for short term mobility. In case the need for long term mobility arises after the short term mobility of the intra-corporate transferee has started, the second Member State may request that it is submitted at least 20 days before the short-term mobility ends.

3. Member States may reject an application for long-term mobility where:

(a) the conditions set out in paragraph 2(a) are not complied with or the criteria set out in Article 5(2)(b), 5(2b) and 5(5) are not complied with;

or

(b) one of the grounds covered by Article 6(1) points (b), (d) or (1a) or by Article 6(2) or 6(3) applies;

or

(c) *the intra-corporate transferee permit of the first Member State expires during the procedure.*

4. *Where the second Member State takes a positive decision on the application for long-term mobility as referred to in paragraph 2, the intra corporate transferee shall be issued a permit for long-term mobility in the framework of an intra-corporate transfer allowing the intra-corporate transferee to stay and work in its territory. This permit shall be issued using the uniform format as laid down in Council Regulation (EC) No 1030/2002. Under the heading ‘type of permit’, in accordance with point (a) 6.4. of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter: “mobile ICT”. Member States may also add an indication in their official language or languages.*

Member States may indicate additional information related to the employment activity during intra-corporate transfer of the third-country national 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.

4a. *Renewal of a permit for long-term mobility is without prejudice to Article 10(3).*

4b. *The second Member State shall inform the competent authorities in the first Member State in case a permit for long-term mobility is issued.*

5. *Where a Member State takes a decision on an application for long-term mobility, the provisions of Articles 7, 12(2) to (6) and 12A shall apply accordingly.*

Article 16C

Safeguards and sanctions

1a. Where the intra-corporate transferee permit is issued by a Member State not implementing the Schengen acquis in full and the intra-corporate transferee crosses an external border, the second Member State shall be entitled to require as proof that the intra-corporate transferee is moving to the second Member State for the purpose of an intra-corporate transfer:

(a) a copy of the notification sent by the host entity in the first Member State in accordance with Article 16A(2);

or

(b) a letter of the host entity in the second Member State that specifies at least the details of the duration of the transfer and the location of the host entity or entities in the second Member State.

1aa. In case the first Member State withdraws the intra-corporate transferee permit it shall inform the authorities of the second Member State immediately.

1. The host entity of the second Member State shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.

2. The second Member State may request that the intra-corporate transferee shall immediately cease all employment activity and leave its territory where:

(a) it has not been notified in accordance with Article 16A (2) and (3) and requires such notification;

- (b) it has objected to the mobility in accordance with Article 16A(6);*
- (d) it has rejected a request for mobility in accordance with Article 16B(3);*
- (e) the intra-corporate transferee permit is used for purposes other than those for which it was issued;*
- (f) the conditions on which the mobility was allowed to take place are no longer fulfilled,*

2a. In the cases referred to in paragraph 2, the first Member State shall, upon request of the second Member State, allow re-entry of the intra-corporate transferee without formalities and without delay and, where applicable, of his or her family members. This shall also apply if the intra-corporate transferee permit issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

2aa In cases where the holder of an intra-corporate transferee permit crosses its external border, a Member State applying the Schengen acquis in full shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

3. Member States may impose sanctions against the host entity established on its territory in accordance with Article 8, where:

- (a) the host entity has failed to notify the mobility of the intra-corporate transferee in accordance with Article 16(A)(2) and (3);*
- (b) the intra-corporate transferee permit is used for purposes other than that for which it was issued;*

- (c) *the application for admission referred to in Article 10 has been submitted to a Member State other than the one where the longest overall stay takes place;*
- (d) *the intra-corporate transferee no longer fulfils the criteria and conditions on which basis the mobility was allowed to take place and the host entity fails to notify the competent authorities of the second Member State of such a modification;*
- (e) *the intra-corporate transferee started to work in the second Member State, although the conditions for mobility were not fulfilled in case Article 16A(5) or Article 16B(2)(d) applies.*

CHAPTER VI FINAL PROVISIONS

Article 17

Statistics

1. Member States shall communicate to the Commission statistics on the number of *intra-corporate transferee* permits *and permits for long-term mobility* issued for the first time, and, *where applicable, the notifications received pursuant to Article 16A(2) and*, as far as possible, on the number of *intra-corporate transferees whose permit has been renewed or withdrawn. These statistics shall be* disaggregated by citizenship, the length of validity of the permit and, *as far as possible*, by the economic sector *and transferee position*.
2. The statistics referred to 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 *[the year following the point of time referred to in Article 20(1)]*.
3. 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.

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. ***The report shall focus in particular on the assessment of the proper functioning of the intra-EU mobility scheme and on possible misuses of such a scheme as well as its interaction with the Schengen acquis. The Commission shall notably assess the practical application of the Articles 16, 16A, 16B, 16C and 19.***

Article 19

Cooperation between contact points

1. Member States shall appoint contact points which shall ***cooperate effectively and be responsible for receiving and transmitting the information needed to implement Articles 16 A, 16 B and 16 C. Member States shall give preference to exchange of information via electronic means.***

1a. Each Member State shall inform the other Member States, via the national contact points referred to in paragraph 1 about the designated authorities referred to in Article 10(3) and about the procedure applied to mobility referred to in the Articles 16A and 16B.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [30 months after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions .

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

The President

For the Council

The President