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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

At its meeting on 15 March, the Working Party on Integration, Migration and Expulsion examined Presidency compromise suggestions for Articles 12, 16, 16A and 19 of the above proposal as well as Articles 11 and Article 15.

The results of the above discussions, as well as relevant contributions by delegations received subsequently, have been incorporated in the text of the previous outcomes of proceedings and are set out in the Annex to this Note, with delegations' comments in the footnotes.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer¹

**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 for more than three months, 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.²

¹ **FI, AT:** general reservations on the proposal; (**AT** related mainly to subsidiarity, legal basis and implementation concerns). **CZ, BE, DE, EE, EL, ES, HU, IT, LT, LV, MT, NL, PL, PT, SE, SI, SK:** general scrutiny reservations on the proposal. **HU, MT, LT, PL, SE:** Parliamentary scrutiny reservations on the proposal. **DE, LT, SE:** language reservations on the proposal. **MT:** concerns about - among other issues - the fact that no labour market test is provided for in the draft Directive. **SE** would prefer a more ambitious and flexible system. **NL, SE:** general scrutiny reservations, **LV:** reservation on the **Pres** compromise suggestions laid out in doc. 7409/11. **RO** could support the **Pres** compromise suggestions set out in doc. 7409/11.

² **AT, SI:** scrutiny reservations on this point in relation to the mobility regime related to ICT.

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 in the framework of an intra-corporate transfer.³

³ **NL:** scrutiny reservation on the Article; **LT:** adapt the provision in order to clarify that the first application for an ICT permit must be lodged while the applicant is still residing in a third country: “This Directive applies to third-country nationals who (*usually / effectively*) reside in *third countries*...”. **Pres / Cion:** it is already pointed out in the scope and in the relevant definition.

SE: add in the proposal’s scope the following: “This Directive shall also, if provided for by national law, apply to third-country nationals (TCN) who are legally staying in the territory of a MS and who apply for an ICT permit in that MS”. Similarly, **DE** suggested transferring the relevant provision from Article 10(2) to this paragraph. **DE:** any potential conflict / overlap with other instruments in the area (notably the Long-term residents Directive) should be avoided and the relationship of this proposal to the existing *acquis* should be confirmed. **PT** has concerns as to whether this provision is compatible with Article 10(2). **Cion:** the objectives of Article 2(1) and 10(2) differ; the addition made by the **Pres** “or who have been admitted” aims at better reflecting the contents of the proposal, as some provisions (e.g. rights) are directed to ICT who have already been admitted under its framework. Article 10(2) addresses the question of whether TCN already residing in the EU may be covered by the proposal.

NL, PT: the scope provides for an applicant who asks to be admitted from outside the EU, whereas Arts 13 and 14 of the draft Directive presuppose that he/she is already present in the territory of a MS; therefore, a language adaptation might be needed.

DE: clarification should be added that with regard to social security rights, this Directive would not affect any provisions in national law, bilateral agreements and EU law on the applicability of law (e.g. Council Regulation (EC) No 859/2003 and the subsequent legislation). In this sense, it should be clarified (possibly in a recital) that TCN are not entitled to family and child benefits because of this proposal.

SI: add in the scope: “This Directive also applies to an ICT moving to another MS”. **Cion:** all those TCN who obtained the ICT title fall under the scope of this draft Directive.

2. This Directive shall not apply to:⁴

- (a) third-country nationals 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) third-country nationals 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) third-country nationals carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC;⁵
- (d) third-country nationals employed by a temporary work agency.⁶

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;

⁴ **AT** considered that more grounds of exclusion should be added in the scope of the provision.

⁵ **AT**: scrutiny reservation on the point as considered it unclear.

⁶ **CZ, FI, AT, NL, SE, SI**: scrutiny reservations. **FI, AT**: not only official temporary work agencies but also those which carry out these activities without any authorisation / occasionally, or those whose objective is to offer work opportunities of a more permanent nature ought to be excluded. **DE** requested clarification as to whether an employee of such agencies (e.g. a manager) would be covered.

- (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,⁷ to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;⁸
- (c) ‘intra-corporate transferee’ means any third-country national subject to an intra-corporate transfer;⁹
- (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 any person working in a senior position, who principally directs the management of the host entity, receiving general supervision or direction principally from the board of directors or stockholders of the business or equivalent; this position includes: directing the host entity or a department or sub-division of the host entity, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and dismiss or recommend hiring, dismissing or other personnel actions;¹⁰

⁷ **SE:** suggested adding after “contract” the wording “during the transfer” to ensure that the employment relationship is valid during the whole transfer period.

⁸ **ES:** scrutiny reservation. **FI** stated that this concept should be defined more precisely and should be in line with Directive 96/71/EC on posted workers. The following text could be added to the end of this provision: “According to Article 1(3)(b) of Directive 96/71/EC this means transnational situations where a company posts workers to an establishment or an undertaking owned by the group in the territory of a MS, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting. **NL:** multinationals which have their headquarters within the EU and branches outside should be excluded from the scope of this provision. **Pres:** this Directive shall cover those TCN who are seconded temporarily to an entity established within the territory of a MS.

⁹ **DE:** scrutiny reservation. **SE** sought clarification on whether the posting of workers is included in this definition.

¹⁰ **DE, EL, ES, IT** (which suggested simplifying it and including middle-management, etc.), **PT** (considers the definition too detailed): scrutiny reservations on this point. **Cion:** the purpose was to provide for the clearest possible criteria.

- (f) ‘specialist’ means any person possessing [...] **rare**¹¹ knowledge essential and specific to the host entity, taking **also** account [...] also 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;¹²
- (g) [...] ‘**employee in training**’ means any person with a higher education qualification¹³ 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;¹⁴

¹¹ **CZ, EL, ES, FR, IT, LV, AT, NL, SE** (**NL, SE** preferred not using any adjective): suggested deleting "rare" as it was too vague. **CZ** suggested aligning the wording of this provision with draft Article 5(1)(c) on the conditions of admission. **Pres** pointed out that besides high-level education, practical experience could constitute as a qualifying element to become an “expert”. **FI, AT**: suggested maintaining the term “uncommon” as GATS terminology; **AT** advised against widening too much the scope of this provision (which it considers may happen by saying “and/or professional experience”] for fear of abuse.

DE: If such a term (“rare” or “uncommon”) is to be maintained it should be defined in order to ensure consistency. It pointed out that these specific areas of expertise should be considered by the company concerned as “unusual” **DE, EL, PL, PT** (which entered a scrutiny reservation on the link with Directive 2005/36/EC): the GATS relevant language should be taken on board. **Cion**: to ensure consistency it should not divert too far from the original GATS definition.

¹² **EL, ES, IT, PL**: scrutiny reservations. **AT** suggested adding at the end of the definition: "including membership of an accredited profession" like in the GATS text. **Pres** suggested adding the following sentence to Recital (10): “**The criteria [SE suggested adding here: regarding formal qualification and professional experience] 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.**”

¹³ **AT**: make clear that, along the lines of the GATS text, a university degree should be required. **Cion**: a three-year university degree is required.

¹⁴ **EL, ES, IT**: scrutiny reservations. **SE** suggested to delete the last part of the sentence "*in preparation for a managerial position within the company*" in order to make the definition more flexible. **DE, AT, SK** preferred reverting to “graduate trainee”, which is in line with the GATS relevant wording. **FR** considered that the GATS definition is a little too wide, possibly covering stagiaires, etc. **IT** suggested deleting the sentence after the word “company”. In reply to a query by **FI, Pres** confirmed that the target group of this provision is normal, salaried employees. **PL** supported the **Pres** compromise.

- (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;¹⁵
- (i) ‘family members’ means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC¹⁶;
- (j) ‘intra-corporate transferee¹⁷ 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;¹⁸
- (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;¹⁹

¹⁵ **DE, IT:** scrutiny reservations. In reply to **HU, Pres, Cion** pointed out that this definition is based on the Blue Card Directive. **SK** suggested using this definition. **SE** would prefer the same wording as in the Blue Card Directive.

¹⁶ OJ L 251, 3.10.2003, p. 12.

¹⁷ **IT:** add "residence". **FR** queried whether the indication "ICT" could be included in the permit.

¹⁸ **DE, AT, PT:** scrutiny reservations.

¹⁹ **IT, AT** (scrutiny reservation): clarify that the application can also be made by the employer. **Cion** recalled that is provided for in Article 10(1) of the proposal.

- (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;²⁰
- (m) 'first Member State' means the Member State which first grants a third-country national an intra-corporate transferee permit on the basis of this Directive;²¹
- (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;**²²

²⁰ **NL:** in order to avoid abuse (shell companies, etc) the following sentence could be added at the end of the point: "MS may require that the undertaking(s) should have a minimum turnover and a minimum number of employees and that the undertaking(s) have been registered with an official authority".

CY: reservation (in relation to its national law definition), **PT:** scrutiny reservation (only certain links between groups are covered in the definition, would prefer a broader wording), **RO:** reservation because it considered this definition to be open to abuse, as the notion of group of undertakings may vary considerably among MS. **DE** (which queried whether companies with contractual rather than corporate links are included in the scope of the provision), **ES, IT** (which suggested including in the scope of the definition undertakings which have commercial rather than legal links), **AT:** scrutiny reservations. **Cion:** could further examine whether MS, under their national law, would ascertain whether certain entities fall under this definition. Furthermore, **Cion** considered that sibling companies would be within the scope of this definition whereas, companies / entities contractually linked but not in the same group would not. **SE** pointed out that the language of the 7th Company Law Directive should be taken on board.

²¹ **LV, SI:** scrutiny reservations; **LV** in relation with the mobility conditions under this proposal.

²² **CZ:** reservation due to its relation with the mobility provisions. **EL, AT** (due to the link with the mobility provisions), **PL, SI:** scrutiny reservations. **FR** suggested deleting the wording "other than the first Member State" as it is redundant.

- (o) ‘universally applicable collective agreement’ means a collective agreement which must be observed by all undertakings in the geographical area and²³ in the profession or industry concerned.²⁴
- (p) ‘regulated profession’ means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.

Article 4

*More favourable provisions*²⁵

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;²⁶
- (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.²⁷

²³ **EL:** change it to: “and/or” to make the wording more flexible.

²⁴ **FI:** delete the definition as it is too detailed for this proposal, the latter should not affect the definition of wages or remuneration in national systems; reference to the applicable labour law (including Directive 96/71/EC on the posting of workers) concerning terms and conditions of employment in general could suffice. **PT:** unlike **FI**, considered the definition comprehensive; reference should also be made to decisions of arbitration tribunals, etc. scrutiny reservation on this point. **Cion:** Reference to arbitration applies only to specific sectors, it is not necessarily related with the scope of this provision. **FR, AT:** scrutiny reservations on this provision, along with Article 14 (*see relevant footnotes*);

²⁵ **SE** wishes to apply national rules, as it considers the scope of the proposal too narrow and would like to be able to grant national permits to those TCN who will not meet the criteria of the Directive. In the same vein, **ES, FI** suggested adding a third point in para. 1, with reference to national legislation, whereby a TCN who will not be eligible under this Directive's target groups could benefit from the mobility frame, etc. while as **ES** wanted to clarify, national legislation would be applicable to them. **AT:** scrutiny reservation on this suggestion. **DE** queried whether the mobility regime of this proposal could be compatible with the more favourable provisions framework.

²⁶ **CZ** queried as to whether the EU preference concept includes a TCN resident in a MS.

²⁷ **CZ:** concerns about the additional administrative burden arising from the examination of these agreements against the Directive.

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 15.²⁸

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²⁸ **IT:** reservation, querying about the inclusion of Article 11 enabling the application of more favourable provisions on the maximum time the ICT permit may last, longer periods for ICT permits of managers, etc. **FI:** reference to Article 13 of the proposal could be included.

²⁹ **SE,** supported by **AT:** add a new point, on the basis of Article 3(4) of the Blue Card Directive: “This Directive shall be without prejudice to the right of the MS to issue residence permits other than an ICT permit for any purpose of employment. Such residence permits shall not confer the right of mobility between MS as provided for in this Directive”.
Cion: the more favourable provisions concept should essentially apply to provisions conferring rights to the TCN concerned, while the provisions which are important for the legal framework of the Directive ought not be affected by this concept.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

*Criteria for admission*³⁰

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:³¹
 - (a) Provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;

[...]

³⁰ **CY** considered that “Conditions of admission” as the title of the Article would better reflect its contents. **IT**: reservation on the Article, asking for clarification that the host entity can also lodge an application. **PL**: scrutiny reservation on the Article. **AT**: scrutiny reservation on the Article due to the exhaustive nature of the list of criteria. **EL**: MS should be allowed to add further conditions for admission.

In reply to **DE**, **Cion** clarified that no obligation for admission, even if all the criteria are met is imposed on MS, and MS will have discretion to regulate volumes of entries of TCN under this Directive. In this context, **DE** suggested, in order to clarify the above, the following wording for the introductory sentence of para.1: “A TCN who applies to be admitted under the terms of this Directive **may be granted admission if he/she fulfils the following conditions.**” **AT** (which also questioned the legal basis of the proposal, arguing that is closer linked to the labour market than immigration) suggested an open-ended list of criteria for admission. **Pres / CLS** pointed out that this list should be exhaustive in order to avoid legal uncertainty and to avoid further a legal instrument devoid of any real impact. As regards the legal basis, **CLS** pointed out that the objective of this proposal is to regulate in a transparent way the conditions of entry and residence of the TCN concerned, including the rights and obligations which emanate from this context therefore, Art. 79(2)(a) and (b) constitute the correct base.

SE: this Article should become optional; MS may require these conditions to be fulfilled if provided for by their national legislation.

³¹ **DE** suggested amending this introductory phrase as follows: “A TCN **may be admitted** under the terms of this Directive, **if the following conditions are met**” in order to clarify that this Directive is not intended to create a right for admission.

PL supported the Pres compromise. Pres suggested adding the following sentence to Recital (9): “This set of rules should be applied without prejudice to Member States having the right to decide upon the technical formalities [*SI suggested amending the term "technical formalities"*] relating to the application, such as requesting that the address of the third-country national be provided.”

- (b) present an assignment letter **from the employer and/or**³² a work contract, from the employer including:
- (i) **evidence of employment with the undertaking established outside the territory of a Member State;**³³
 - (ii) the duration of the transfer and the location of the host entity or entities of each Member State³⁴ 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;

³² **AT:** which maintains a scrutiny reservation on the point; suggested (supported by **CZ**) that those documents should also be presented in the language of the MS where the application is lodged. **FR:** scrutiny reservation on the point, it does not provide for a new contract but an endorsement to the original work contract.

EL, SE queried as to whether the list of requirements under (b)-(g) has an exhaustive character or not. **Cion:** it is an exhaustive list with a specific limited number of conditions. **DE:** if it amounts to an exhaustive list, MS should be allowed to have discretion concerning admission; in this context, filled quotas as a ground for refusal should also be reflected in this Article.

³³ **LT:** inconsistency between the wordings "established outside the territory of a MS" and the wording on point (a) "established in a third country".

³⁴ In reply to a query by **DE** concerning possible responsibility for MS to obtain and share the relevant information, **Pres** pointed out that the applicant has to provide such information to the MS concerned in order for them to find out whether they could be considered as first or second MS, etc. **DE** queried about cases where more than one MS (or none) consider that they are responsible as first or second MS. **Pres:** Article 19(2) might be a basis for clarifying this issue.

(iv) the remuneration granted during the transfer;³⁵

(v) **evidence that the third-country national will be able to transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment.**³⁶

(c) provide evidence that [...] **the third-country national** has the professional qualifications needed in the Member State³⁷ to which [...] **the third-country national** applied to be admitted for the position of manager or specialist or, [...] **in the case of employee in training**, the higher education qualifications required;³⁸

³⁵ **FI:** the assignment letter should include other terms and conditions of employment apart from remuneration, as provided for by Article 3(1) of Directive 96/71/EC concerning the posting of workers. To this effect, point (c) should read: “the terms and conditions of employment granted during the transfer”. **CZ, SE** supported enhancing the list of employment conditions; **SE** suggested to add the following wording: “**insurances and other terms of employment / working conditions** granted during the transfer; **EL**, supported by **DE** (which suggested adding “other working and employment conditions”), **AT** also supported a reference to working conditions, derived from the work contract and assignment letter. It also suggested making reference to the working conditions in the light of draft Article 14(1) of this proposal, as well as on Article 3(1) of the Blue Card Directive.

FR: reservation; a minimum wage criterion could be added. **SE** was against a minimum salary provision; **HU:** the equal treatment principle without an absolute threshold shall be applied in this case. **Cion** wanted to avoid lengthy checks, but in any case, pursuant to para. 2 of this Article and Article 14, all seconded persons in a similar situation shall receive the same remuneration.

³⁶ **SE** considered that this element could not be added in the assignment letter and that this provision should become optional. In reply to **IT** concerns related to the means of demonstrating the will to transfer back to the entity in the third country, **Pres** pointed out that this could be stated in the assignment letter. **RO** supported the **Pres** compromise.

³⁷ **DE** suggested amending the wording of this provision as follows: “provide evidence that he or she ... **needed in the host entity at which he or she is employed as...** or, for graduate trainees, **has the higher education...**”

³⁸ **SE:** this provision can be deleted or become entirely optional for MS. **AT:** scrutiny reservation. In reply to **AT**, **Pres** pointed out that prior experience as manager or specialist would probably be required in the form of professional qualification.

- (d) present documentation certifying that [...] **the third-country national** fulfils the conditions laid down under national legislation³⁹ for citizens of the Union to exercise the regulated profession which the transferee is applying to work in;⁴⁰

- (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 may⁴¹ require the period of validity of the travel document to cover at least the initial duration of the residence permit;

- (g) without prejudice to existing bilateral agreements, present evidence [...] **that the third-country national has [...]** or, if provided for by national law, [...] **has** 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 EU;⁴²

[...]

³⁹ **RO:** add “... under national legislation **of the MS in which the host entity is established** for citizens...”.

⁴⁰ **SE:** this provision should become optional.

⁴¹ **LT:** replace “may” with “shall” as ICT holders will be moving within the Schengen area. **DE** would like the document to be valid for the entire stay.

⁴² **BG, PL:** scrutiny reservations - **BG** related to Article 14(2); **DE, AT:** the wording is not clear; would rather say “shall have to present evidence of having sufficient sickness insurance”. **FI** questioned the added value of the compromise suggestion.

2. Member States shall require that the remuneration which will be granted to third country national during the transfer is in line with the provisions of Article 14 (1).⁴⁴
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** shall 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.⁴⁵

⁴³ **NL, PL:** provide, as an additional ground for admission, for the host entity's registration in the MS national trade registry. **Pres:** Pursuant to Article 3(d) host entities will have to be registered if national legislation provides for it. **LT:** additional criteria along the following wording could be added: "i) provide evidence that he/she has suitable accommodation for himself/herself and family members during the transfer (supported by **BG, AT**). **ES:** suggested a point whereby the applicant should have to submit the tax domicile of the transferring company in order to confirm that it is a member of the group of undertakings. In the same vein, **SK** suggested providing as a criterion that the host entity should comply with its social security obligations and **CZ** suggested that the TCN should provide evidence of prior employment in the third country and that the transfer will not last more for than 3 years. **BE** (which pointed out that bona fide host entities could enjoy faster procedures) and **Cion:** multiplication of the criteria for admission could make the prospect less attractive for possible ICT. **CZ, SK** suggested adding the following point: "MS may require the applicant to provide his/her address in the territory of the MS concerned". **Cion:** MS may decide to impose - if entitled to under Recital 9 - some of the obligations described above. It also pointed out that not all the above evidence can be produced at the moment of the application.

⁴⁴ **DE, AT:** scrutiny reservations as consider that with regard to remuneration conditions the law of the MS where the TCN is going to stay and work shall apply and not of the MS to which he/she is admitted. **SE** supported this suggestion and also suggested adding that MS may require that the ICT should have sufficient resources during his/her stay. In this context **DE** suggested ensuring that the application could be refused if remuneration and other benefits are not up to national standards.

FI, SE: add that remuneration / all employment conditions have to comply with other existing agreements or national practice; **SE** suggested making the provision optional (replace "shall" with "may") and referring at the end of the provision to: "... remuneration, **insurances and other terms of employment granted during the transfer.**" **NL** queried as to why reference is made only to remuneration; it should be clarified that the requirements of this provision shall be met for the whole duration of the employment to avoid abuses.

⁴⁵ **EL, FR, AT:** scrutiny reservations; **FR** on the issue of graduate trainees, **AT** related to the university degree qualifications required for the training. In reply to **AT**, **Cion** recalled that these qualifications are provided for in Article 5(1)(d).

4. Any modification that affects the conditions for admission set out in this Article shall be notified by the host entity⁴⁶ 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.**⁴⁷
6. **Member States may require the third-country national to provide evidence of employment within the same group of undertakings, for up to six months immediately preceding the date of the intra-corporate transfer.**⁴⁸
7. Member States may, if provided for by national law, required 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** will not have recourse to the social assistance system of the Member State concerned;⁴⁹

⁴⁶ SE suggested adding that the ICT could also notify the modification to the competent authorities.

⁴⁷ DE suggested adding at the end of the provision: “... **or any other significant interests of the host MS.**” in order to cover mainly foreign policy-related grounds. Pres / CLS recalled that the current wording has been a standard pattern throughout the relevant EU acquis and it is considered to cover the concerns that DE might have.

⁴⁸ PL, SI suggested making the provision mandatory by replacing “may” with “shall” to avoid problems related in particular with mobility. CY, DE, AT opposed this suggestion. DE, EL (which entered a reservation), ES, AT, SI, SK (which argued for maintaining the GATS approach to avoid transfers of convenience): suggested reverting to a 12-month period. Pres pointed out that the knowledge/experience does not necessarily have to be gained from working for one company only. CY, CZ suggested maintaining the “at least 6 months” period. FR: the question of choosing the appropriate period in this context could be addressed to the SQWP.

⁴⁹ FI: reservation, FR, PT: scrutiny reservations on the provision’s scope. CZ, AT, PL: the language has to be improved; AT suggested taking on board the language of the Researchers Directive.

- (b) All expenses that could be related to the return of the ICT in case of illegally stay are covered.⁵⁰ **The financial responsibility of the host entity shall end at the latest six months⁵¹ after the termination of the assignment in the Member State concerned.**

Article 5A

Ground for inadmissibility

Member States may consider inadmissible an application for admission for the purposes of this Directive on the grounds of volumes of admission of third-country nationals entering their territory.⁵²

⁵⁰ **Cion** expressed doubts about the added value of the provision, which it considered could be converted in a recital - especially point (b). The ICT permit can always be withdrawn if the relevant requirements described in this provision are not met.

⁵¹ **NL, PT, RO** suggested extending the period of financial responsibility to 12 months. **PL** supported the **Pres** compromise. **Cion** queried if the financial responsibility of the host entity also covers point (a) and suggested aligning this provision with the relevant one in the Sanctions Directive.

⁵² Recital (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 Article 79(5) of the Treaty on the Functioning of the European Union.**" **DE** considered that Article 5A should be incorporated into Article 6. **Pres** maintained that inadmissibility should be pre-examined separately and therefore the provisions should remain separate. **DE** also suggested inserting this draft Recital into the operative part of the text in order to emphasise that it is the right of the MS to determine that these volumes shall not be affected. In this context **CZ** suggested that the last part of Recital 17 ("... and not to grant residence permits for employment in general or for certain professions, economic sectors, or regions.") should be reflected in this Article as well. **AT**: scrutiny reservation on the draft Recital; Article 5A could be reworded on the basis of Article 6 of the Blue Card Directive. **CZ** supported the flexibility offered by an optional wording as is the case with this **Pres** compromise.

Article 6
*Grounds for refusal*⁵³

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.**

⁵³ **CY** suggested adding (also in Article 7) the wording “without prejudice to Article 5A” in order to highlight that the latter also constitutes a ground for refusal of permit. **EE** suggested adding a new ground for refusal whereby MS may refuse to issue a permit in cases where the host entity is facing serious financial problems, is not paying taxes, etc. (supported by **CZ**), or has no economic activities at all. In this vein, **CZ**, **SK** suggested adding grounds concerning non-compliance with national legislation of social security and welfare issues. **ES** suggested providing (drawing from the Posted Workers Directive) that MS may refuse a permit in cases of non-compliance by the employer with his social security and working conditions obligations. It also suggested checking (as a ground for refusal) if the employer/host entity has freed up the post by unfairly firing its previous holder within 12 months prior to the employment in question. **Cion:** addition of new grounds should be very carefully checked to avoid rendering the proposal overly strict. **DE** queried (related to the evidence procedure) if not meeting the criteria for admission is considered a refusal and vice versa. **Cion:** in principle, certain grounds such as public policy, security and health serve for both cases. **DE** suggested a non-exhaustive list of grounds for refusal. **CZ:** add a new ground if the ICT has no sufficient funds and needs social services support.

2. Member States may reject an application if the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

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[...]

Article 7

*Withdrawal or non-renewal of the permit*⁵⁵

1. Member States shall withdraw [...] an intra-corporate transferee permit⁵⁶ 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

⁵⁴ **AT** suggested adding an additional ground for refusal of an application, where the intention / effect are to interfere with the outcome of labour-related negotiations/disputes.

⁵⁵ **LT** suggested adding a new ground for the withdrawal of a residence permit "If the TCN obtains an ICT permit in another MS according to Article 16, the first MS may withdraw the previous ICT permit." **DE:** seek clarification that MS maintain their discretion for granting the residence permit. **CZ, AT, SK:** add a new ground if the ICT has no sufficient funds and needs social services support. **Cion:** adding too many grounds should be avoided.

⁵⁶ **DE** suggested adding "in particular" in order to emphasize that this would be an indicative list of grounds.

(d) where, during the validity period of the permit, an intra-corporate transferee permit is issued in accordance with Article 16.⁵⁷

2.⁵⁸ 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 11(2) 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

⁵⁷ **PT:** the question of the documents issued by the second MS during the mobility period needs to be clarified. **AT:** scrutiny reservation in relation with concerns linked to mobility.

⁵⁸ **ES:** scrutiny reservation.

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

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Article 8

Penalties

Member States may, as⁶⁰ provided for in national law, hold the host entity responsible and provide for penalties for failure to comply with the conditions of admission and stay⁶¹. Those penalties shall be effective, proportionate and dissuasive.

CHAPTER III

PROCEDURE AND PERMIT⁶²

Article 9

Access to information⁶³

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.

⁵⁹ **PL** suggested adding a ground whereby the ICT permit of third-country nationals who are considered to pose a threat to public policy, public security or public health may be withdrawn or not be renewed. **Pres:** The relevant reference in Article 5 covers this concern.

⁶⁰ **SE** suggested replacing “as” with “if”.

⁶¹ **NL** suggested adding: “... conditions of admission **or to comply with administrative and information requirements**”.

⁶² **ES:** general scrutiny reservation on Chapter III for its interaction with the "Single permit" proposal. **Cion:** as these two proposals are under negotiation in parallel they might not tally absolutely.

⁶³ **DE:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle. **Cion:** MS may ask a fee for dealing with the application.

Article 10
*Applications for admission*⁶⁴

1. Member States shall determine whether an application is to be made by the third-country national and/or by the host entity.⁶⁵
 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. If provided for by national law, Member States may consider and examine an application submitted when the intra-corporate transferee⁶⁶ concerned is already legally staying in its territory.⁶⁷
- [...]

⁶⁴ **IT:** scrutiny reservation.

⁶⁵ **LT:** amend the provision as follows: “MS may determine that an application can be made by the TCN, by the host entity, **by the employer, or by the undertaking established in a third country.**”

⁶⁶ **PT, SE** suggested replacing “intra-corporate transferee” with “third-country national”.

⁶⁷ **DE** (sought clarification about the relation of this provision and Article 11(8) with a view to confirm whether a TCN already in the territory of a MS on a different residence title could switch to an ICT permit), **EL, LT** (which maintained that in principle, applications ought to be made before the TCN enters the MS concerned), **AT:** have concerns about the legal certainty if the TCN is already on the territory of a MS; an overlapping of residence permits might occur, especially if he/she exercises mobility to another MS. **Pres,** supported by **LV, PL, PT:** the scope of this provision does not cover a TCN who has been living for several years in the EU but rather a TCN who has recently come to a MS (e.g. without a visa); this provision aims at facilitating the procedure for obtaining a residence permit under this draft Directive; at any rate it is up to the MS concerned to decide if it would allow such applications. **PL** pointed out that the time spent in the EU under an ICT permit should not be included in the time necessary for a long-term residence permit.

3. Member States shall designate the authority competent to receive and process⁶⁸ the application and to issue the intra-corporate transferee permit.⁶⁹
4. The application shall be submitted in a single application procedure.⁷⁰
[...]
5. Simplified procedures related to the issuance of intra-corporate transferee permits, ICT 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.

⁶⁸ **ES, AT, PL, SI:** reservations on the reference to processing of the application which should be deleted because it may interfere with the national competence of the MS - where more than one authority may be involved in this procedure; moreover, the Blue Card and the draft Single Permit Directives do not have a similar provision. **Cion:** in agreement with the above delegations questioned the usefulness and the compliance with the Acquis of this wording. In this vein, **SI** considered the whole para. 3 superfluous.

⁶⁹ **DE, AT:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle. **ES** could accept the above suggestion, if the provision is included in the Single Permit proposal, it should also appear in this one. **Cion:** this paragraph serves the transparency principle (as para.1 does as well).

⁷⁰ **AT:** reservation.

Article 11
*Intra-corporate transferee permit*⁷¹

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member States concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for graduate trainees.⁷²
3. The intra-corporate transferee permit⁷³ shall be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002⁷⁴. In accordance with point (a) 7.5-9 of the Annex to that Regulation, Member States shall enter on the residence permit indications relating to the permission to work under the conditions laid down in Article 13 and the Member State(s) in which the transferee is entitled to exercise the right to work.⁷⁵

⁷¹ **IT:** reservation on the Article; should add in the title reference to Council Regulation/EC 1030/2002 laying down a uniform format for residence permits for TCN. **AT, PL, PT:** scrutiny reservations on the Article, the latter in particular linked with the issue of residence permits for trainees.

⁷² LT suggested to add the following: "Member States may determine the minimum period after the end of validity of the intra-corporate transferee permit after which a new intra-corporate transferee permit may be issued to the same person." SE suggested amending the provision as follows, based on Article 7(2) of the Blue Card Directive in order to allow for more flexibility: "MS shall set a standard period of validity of the ICT permit, which shall comprise between one and four years. If the work contract covers a period less than this period, the ICT permit shall be issued or renewed for the duration of the work contract. The aggregated period of validity of the ICT permit shall not exceed four years".

⁷³ **LT** queried as to whether a single issue with a life-long validity could be possible under the draft Directive.

⁷⁴ OJ L 157, 15.6.2002, p. 1. **FI** wished to have the reference for the Regulation mentioned including the biometrics element.

⁷⁵ **DE** (which pointed out that with an electronic card/chip lack of space should not be a significant problem), **EE, AT, PL:** scrutiny reservations. **NL:** in order to provide more precise information a list of all undertakings to which the ICT is entitled to work should be inserted in the additional document.

4. Under the heading ‘type of permit’, the Member States shall enter ‘intra-corporate transferee’.⁷⁶
5. Member States shall not issue any additional permits, in particular work permits of any kind.⁷⁷
6. Member States concerned may issue to the holder of an intra-corporate transferee permit an additional document containing a list of the entities authorised to host the third-country national.⁷⁸
7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.
8. Member States shall not require intra-corporate transferees to leave their territory in order to submit applications for visas or intra-corporate transferee permits without prejudice to Article 10 (2).⁷⁹

⁷⁶ **LV:** scrutiny reservation (in relation to its general scrutiny reservation on all the mobility-related provisions). **FR** maintains a reservation on the point, asking for its deletion. **DE** suggested amending the provision as follows: "The residence permit shall indicate that it is a residence permit for ICT".

⁷⁷ **SE** suggested the following clarifying addition: “MS shall not, **for persons who have been granted an intra-corporate transferee permit**, issue any additional permits, in particular work permits of any kind”.

⁷⁸ **AT:** scrutiny reservation as the additional document should also refer to the nature of the job in addition to the list of entities.

⁷⁹ **SE:** this point would fit better in Chapter V. **NL:** this point is superfluous as it essentially repeats Article 10(2).

Article 12
Procedural safeguards

1. Excluding applications concerning mobility between Member States, 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 notify⁸⁰ 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.⁸¹

⁸⁰ **IT** suggested replacing “notify” with “communicate” or “inform”. **BE** suggested that MS could also inform the employer. **Cion:** this can be done under the principle of more favourable provisions (in this sense, to also notify the employer in the third country).

⁸¹ **DE** (which has concerns that this provision infringes the subsidiarity principle and indicated that it might be able to consider a vaguer wording such as: “within a reasonable period of time”), **AT:** reservations in relation to the time-limits of 60 and 90 days, due to the fact that there will probably not be enough time to consult other MS on the residence permit application. **AT, PT:** to add the following wording in paragraph 1: “National law of the relevant MS shall determine any consequence of a decision not having been taken by the end of the period provided for in the first subparagraph.”

EL, ES (suggested the wording “as soon as possible, but no later than 90 days”), **NL, AT, PT, SI** would prefer 90 days instead of 60, following the Blue Card Directive. **LT, PL** supported the **Pres** compromise for the 60-day time-limit; **PL** considered that it should not be exceeded, especially if an electronic treatment of the application is introduced. In reply to **NL** point that with an electronic treatment the majority of the time will be needed for the actual checking of the application and thus it won’t make any major difference, **Pres** recalled that the relevant deadline under the mobility provision of Article 16A - where the examination is more complex - is 90 days.

Cion: it is important to provide for a quick transfer within a group to make the proposal more attractive; undertakings need something more concrete than “as soon as possible”. **Pres, Cion** also pointed out that unlike the Blue Card Directive, the periods of stay in this proposal are short and would not justify a processing period of three months; delegations were also reminded that the number of ICT applicants is limited; therefore no significant administrative burden is anticipated. They also stressed that for complex cases involving mobility the deadline could be extended beyond 60 days.

SE suggested replacing the 60-day time-limit with “as soon as possible”.

PL, RO: the possibility of suspending the running of the time-limit where the application is not complete should be added.

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

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

3. Reasons for a decision rejecting an application for an intra-corporate transferee permit, refusing modification or renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an intra-corporate residence permit shall be given in writing to the intra-corporate transferee⁸² and, when the application for the intra-corporate transferee permit was lodged by the host entity, to the applicant.⁸³
4. Any decision rejecting the application, refusing modification or renewal, or 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.⁸⁴
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 of⁸⁵ 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.

⁸² **SI** suggested deleting the rest of the sentence, notification should be given solely to the TCN as he/she is the only person who is entitled to appeal the rejection decision. **Pres:** If MS decide that only the TCN can lodge the application then he/she should be the only party to be notified.

⁸³ **DE:** reservation, considering that this provision infringes the subsidiarity principle.

⁸⁴ **CZ:** the last sentence's provision pertains to national competence issues, a Directive ought not to enter into such details.

⁸⁵ **ES** suggested replacing "of" with "up to".

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.**⁸⁶

Article 12A

*Fees*⁸⁷

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*⁸⁸

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 States which have taken a positive decision on the application;

⁸⁶ **SK**: scrutiny reservation.

⁸⁷ **EL** has concerns about the timely introduction of such a provision, taking into account the ongoing negotiations with the European Parliament on the Single Permit proposal. **NL** has concerns about including such a provision in the proposal. **EE**, **AT**: scrutiny reservations on the wording; **PL** could support it.

⁸⁸ **LT** expressed concerns that this provision might restrain the right of movement in the Schengen area. **PT** queried about how the right of entry described in this Article will be exercised in practice if no permit is issued.

2. free access to the entire territory of the [...] Member States which have taken a positive decision on the application, within the limits provided for by national law;
3. the right to exercise the specific employment activity authorized under the permit in accordance with national law in any entity belonging to the group of undertakings—[...]in accordance with Article 16;
4. the right to carry out his/her assignment at the sites of clients of the entities belonging to the group of undertakings [...], as long as the employment relationship is maintained with the undertaking established in a third country.⁸⁹

Article 14

Rights⁹⁰

Whatever the law applicable to the employment relationship, intra-corporate transferees shall be entitled to:⁹¹

⁸⁹ **AT:** reservation, **CZ, FI, FR:** scrutiny reservations on the provision, having concerns about abuse related to illegal hiring out of labour.

⁹⁰ **DE, AT** (which entered a reservation on the Article): MS should retain the power to decide on what rights should be allocated; additional costs should be avoided. **BG, CY, CZ, FI, LV:** reservations, **PL:** scrutiny reservation due to concerns about the effect of the draft Directive on their social security systems. **AT:** In Article 14(1) the type of posting should be clarified because Directive 96/71 provides for 3 types of posting and the issue might have an impact on social security issues. **EE** queried whether a definition of seconded workers (which might draw on Directive 96/71) should be inserted in Article 3 of this proposal.

Cion: Article 14 lays down the core provisions of Directive 96/71; however, some of its elements have not been taken into account (arbitration awards, last part of Article 3(8) thereof, with a view to simplifying the text). Moreover, MS can apply on their own a higher degree of protection for those ICT coming directly from outside the EU. **Cion** recalled that Recital 22 of this proposal clarifies that this draft Directive should not affect the conditions for the provision of services in the framework of Article 56 TFEU nor in particular the terms and conditions of employment which, pursuant to Directive 96/71, apply to workers posted by an undertaking established in a MS to provide a service in the territory of another MS.

⁹¹ **SE:** paragraph 1 of this Article should be titled “working conditions” and paragraph 2 “equal treatment”. **FI**, supporting **SE**, suggested splitting this Article and referring in what is the current paragraph 1, to Directive 96/71 on the posting of workers.

SE suggested the following wording: “Whatever the law applicable to the employment relationship, holders of an ICT permit shall:

1. be treated equally with posted workers as laid down in Directive 96/71, Article 3 and
 2. be entitled to equal treatment with national of the host MS as regards...”
- and continue the provision by taking up the wording of para. 2 of this Article.

- ⁹²1. the terms and conditions of employment applicable to posted workers in a similar situation, as laid down by law, regulation or administrative provision and/or universally applicable collective agreements in the Member State to which they have been admitted pursuant to this Directive.⁹³

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

2. Equal treatment with nationals of the host Member State⁹⁴ 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;⁹⁵

⁹² **ES:** scrutiny reservation on this paragraph, having concerns that it may have negative results on working conditions; **LT** queried about the term “similar situation”. **HU** considers that it is too broadly drafted and that a list of minimum conditions for the protection of the employee, on the basis of the one in Article 3(1) of Directive 96/71 could be inserted.

⁹³ **FI:** add at the end of the sentence: “... which ensure at least the same level of protection as provided for in Article 3(1) of Directive 96/71” and delete the rest of paragraph 1.

⁹⁴ **EE** queried why reference is made here to “host MS” whereas in paragraph 1 to “the MS to which they have been admitted.

⁹⁵ **DE** questioned the relevance of such a provision as the TCN should be able to prove that he/she meets the qualifications requirements when applying for the ICT permit. **Cion** recalled that such provision has already been applicable to the Blue Card holders; it could also be of interest for the ICT whose qualifications were recognised in a MS according to Directive 2005/36/EC on the recognition of professional qualifications.

- (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 883/04⁹⁶. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No 859/2003⁹⁷ shall apply accordingly;⁹⁸

⁹⁶ **DE** suggested rewording this part of the provision as follows: "... in Article "(1)(a) through (i) ... (except for family benefits), as far as national law of the host country does not apply because of this Regulation, because of ... or because of national law of the host country".

⁹⁷ OJ L 124, 20.5.2003, p. 1.

⁹⁸ **IT** (which entered a scrutiny reservation on the point), **PL**: concerns about the application of Regulation 883/04 and the application of social security / use of unemployment benefits. **Cion**: all branches of unemployment benefits pursuant to Regulation 883/04 are applicable in this Article. It is not possible to differentiate access to unemployment benefits, as long as same contributions are paid. **ES**: the principle of equal treatment (which should be the first one stated in the provision) applies to branches of social security rather than in the framework of bilateral agreements. Moreover, it should be clarified that this principle applies without prejudice to bilateral agreements and (supported by **CZ, EE, EL, IT, LT, LV**) provided that the ICT is able to pay his/her contribution. It shall be clarified whether this obligation for contribution applies in the first, or in the second MS. **Cion**: if the ICT is transferred to a MS which does not have a bilateral agreement with the third country concerned, the national legislation of this MS applies; if the ICT moves to another MS, this matter is regulated under the relevant Community co-ordination rules.

CZ suggested deletion of the point as, it interferes with national law on social security; it may constitute an obstacle for facilitating the entry and residence of prospective ICT and equal treatment also entails obligation to pay contributions and it is likely to create a double obligation for ICT to pay contributions in the MS and the third country as well. **CZ, FI**: query as to whether the obligation in Article 5 to provide proof that he/she has sickness insurance contradicts the principle of equal treatment; pointed out that where, by virtue of bilateral agreement on social security pensions, the TCN is covered by the third country, it should be clarified that the relevant rights do not affect the social security system of the MS concerned. **FI** also has concerns whether certain benefits for the ICT families are linked with the country / MS of residence. **Cion**: TCN are eligible for those benefits which are already granted to own nationals and under the same conditions (including contributions). Unemployment benefits are already provided for in other legal migration instruments and discrimination on the basis of nationality is not allowed in this area, according to the ECHR case-law.

There is no contradiction between Article 5(1)(g), (which covers periods of insurance that are not already covered as a result of the employment activity), and this provision.

Cion also clarified that if there is no bilateral agreement, the situation in each country as regards the affiliation issue may differ. As regards intra EU mobility, equal treatment applies pursuant to Regulation 859/2003.

DE: discussions should be on hold pending the outcome of the Single Permit Directive negotiations; it should be clarified that bilateral agreements in the context of national law continue to apply.

- (d) without prejudice to Regulation (EC) No 859/2003 and to existing bilateral agreements,⁹⁹ payment of statutory pensions based on the worker's previous employment when moving to a third country;¹⁰⁰
- (e) access to goods and services and the supply of goods and services made available to the public, except public housing¹⁰¹ and counselling services afforded by employment services.¹⁰²

⁹⁹ **ES** suggested deleting the first part of the sentence until “bilateral agreements” as redundant.
¹⁰⁰ **CZ** suggested deletion of the point having concerns similar to those in point (c) of this paragraph (see footnote under point (c)). **DE:** delete point (d) and have a new para. 3 as follows: "When moving to a third country in case of age, invalidity or death, intra-corporate transferees and their surviving dependents are to receive statutory pension payments based on the worker's previous employment under the same conditions and in the same amount as nationals of the Member State concerned. Member States may make the application of this provision dependent on the existence of a bilateral agreement recognizing the reciprocal payment of pensions and governing the technical cooperation." in order to maintain the principle of reciprocity in the export of pension benefits. **DE** also maintained a general scrutiny reservation on the principle of equal treatment; as regards social security, it has particular concerns about the family members allowances, which should be granted only to TCN who settle permanently, otherwise could constitute a pull factor. **Cion:** An entitlement for pension rights (five years of insurance) could be built taking into account the time passed as an ICT. **HU, AT:** like **DE**, reservation on the granting of allowances/benefits for family members of TCN under this Directive, because they are destined to TCN planning to stay for longer periods. **LT:** scrutiny reservation on points (c) and (d); social security should not come under the principle of equal treatment, unless the TCN is covered by social security in the MS concerned; in the same vein, **EE, LV** pointed out that TCN under this Directive should not be granted access to certain benefits. **SE** considers that ICT should be treated as national workers given their contribution to the MS economies.

AT has concerns about this provision, because it might entail less favourable treatment to own nationals than to the TCN concerned. **Cion:** only the benefits which could be granted to own nationals could fall under this provision. **CY** stated that the wording in points (c) and (d) should be adjusted to the relevant provisions of the Single Permit Directive. **EL** has concerns whether under this point MS are obliged to pay pension rights.

¹⁰¹ **MT:** housing as a whole (not just public) should be excluded. **SI:** scrutiny reservation on the reference to public housing.

¹⁰² **FI** suggested amending the provision as follows: "... except public housing **and public** employment services". **FI** also suggested clarifying that the security of the wages in case of insolvency of the employer is not covered by this proposal. **DE:** services in the social sphere should also be excluded; counseling services ought not to be mentioned under the employment framework; long-term training / educational services should also be excluded. The concern about training was shared by **IT**, which entered a reservation on the point. **Cion:** coherence with the Seasonal Workers and the Single Permit proposals will be ensured.

The right to equal treatment laid down in paragraph 2 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*¹⁰³

1. Council Directive 2003/86/EC shall apply, 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 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.¹⁰⁴

¹⁰³ **DE, AT:** scrutiny reservations on this Article; query about the number of ICT who come to EU for only a short period (e.g. 3-4 months) for whom family reunification is not particularly relevant. If they constitute the bulk of ICT cases, maybe Article 15 has no added value. **Cion:** there is no data for the duration of stay for ICT. **EL:** the rights of family members of the ICT should be clarified. Any deviations from certain provisions of Directive 2003/86 on family reunification should be clearly made for the purposes of this proposal.

¹⁰⁴ **AT:** delete this paragraph (will be counter to its upcoming legislation).

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 first Member State, if the conditions for family reunification are fulfilled, at the latest within two months from the date on which the application was lodged.¹⁰⁵
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.¹⁰⁶

¹⁰⁵ **IT:** reservation on the provision, inquired when the two-month period starts to run. **Cion:** it starts when the application for family reunification is lodged. **LT** noted that as in Article 12 it should also be provided in this Article that in certain cases the examination of applications can be extended by up to 30 days or suspended if some documents are not provided. **SE:** replace the two months with “as soon as possible” and stress that the period starts after a complete application has been lodged (as it is worded for the ICT application). **ES** (which entered a scrutiny reservation on the paragraph), **NL, AT** suggested 90 days (as they did for the treatment of the ICT application in Article 12). **AT:** a longer deadline in the light of Directive 2004/38/EC (which provides for six months) could be considered.

¹⁰⁶ **SE** wished to make provision for the access of family members to the labour market on the basis of the relevant provision in the Blue Card Directive. **LT:** delete reference to Article 13(2) because the duration of the residence permit granted to the family member cannot go beyond the duration of the ICT residence permit. **EL:** reservation on this paragraph with regard to access to labour market rights for family members; provision for family reunification in the second MS could be useful. **NL** suggested adding a new paragraph: "By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, MS shall not apply any time limit with respect to access to the labour market" with a view to making the admission scheme more attractive, to approximate the rights of family members under this proposal with those under the Blue Card Directive and to facilitate the integration of these family members to the host society. **PT** supported **NL** proposal but stated that considering the relatively short duration of their stay, such a provision should not be extended to the family members of graduate trainees. **AT** expressed concerns regarding access to the labour market of family members since this is a long-term entitlement.

CHAPTER V
MOBILITY BETWEEN MEMBER STATES¹⁰⁷

Article 16

Application for an intra-corporate transferee permit involving mobility

1. When the third-country national intends to work in host entities located in different Member States, the application, **including the application for renewal**, shall be lodged to the competent authority of the Member State where the intra-corporate transfer intends to work for the longest period.

¹⁰⁷ **AT, BE, CZ, CY, DE, EE, EL, ES, FR, IT, PT, RO, SK**: scrutiny reservations on Articles 16 and 16A concerning mobility between Member States. **IT, SI**: reservations on Articles 16 and 16A.

PL, emphasising the importance of workability of the mobility mechanism, could support the approach taken by the **Pres**. **AT, CZ, DE, EL, FR, IT, LV, SE** found the proposed mobility measure too complicated involving complex administrative procedures. **DE** was opposed to the one-stop shop model and suggested that an applicant applies directly in the Member State to which he/she would like to be transferred. **FR** would like a model similar to the one used in other instruments in the field of legal migration, such as those regulating the admission of students, researches, long-term residents. (**CZ, LV** supported **FR** proposal.) **PT** would prefer a simplified mobility system and referred to its contribution in doc 6166/11 proposing two distinct models - one for stays up to 3 months and another one for stays beyond 3 months. (**EL, LT** expressed support for **PT** proposal). **AT, CZ, ES, LT** suggested that a mobility system along the lines of the Blue Card Directive could be envisaged. **BE** emphasised that although the Blue Card Directive could serve as an example the context of this Directive is different. **CZ** asked who would be responsible for the translation of relevant documents in case of applications to different MS. **EL** suggested that the first MS of entry should be responsible for issuing the permit and managing the whole procedure regardless of the length of stay there and proposed the following definition of the first MS: "first Member State' means the Member State in which the third-country national first enters and which for the first time grants an intra-corporate transferee permit on the basis of the Directive". **SE** entered a scrutiny reservation on the appeals procedure and asked about the consequences of a rejection of application by the second Member State. **ES** stressed that a clear, concise and attractive system is needed. **Cion** pointed to the different context in which mobility takes place in the case of this Directive when compared to the Blue Card Directive.

Where the expected duration of work is the same as in the first and the second Member State(s), the application is lodged in the Member State where the activity first takes place.¹⁰⁸

2. The third-country national who has been granted an intra-corporate transferee permit and who intends to work in a second Member State other than the Member State(s) covered by the intra-corporate transferee permit shall, when the expected duration of work in that Member State is shorter than or the same as in the first Member State and does not exceed 12 months, lodge the application for modification to the competent authority of the first Member State.

This provision shall also apply when such an application, at the same time, aims at extending the validity period of the intra-corporate transferee permit.¹⁰⁹

[...]

3. The third-country national who has been granted an intra-corporate transferee permit and who intends to work in a **second** Member State other than the Member State(s) covered by the intra-corporate transferee permit, shall, when the duration of work in that Member State is longer than in the first Member State or exceeds twelve months, lodge an application for a subsequent intra-corporate transferee permit to the authorities of the second Member State.

¹⁰⁸ **PT** found the proposed procedure burdensome and not necessarily simpler for third-country workers. **PT** stated that the consequences of a negative decision by one MS for another MS as well as details related to appeals would need to be clarified and pointed out that in the model it had proposed, the second MS would not adopt a decision but an assessment / opinion on the basis of which the first MS takes a decision.

¹⁰⁹ New Recital: "**Application for modification may include an application for the right to work and reside in a Member State not concerned by the intra-corporate transfer before as well as an application for renewal of the positive decision by the Member State covered by the intra-corporate transfer.**"

This provision shall also apply when such an application, at the same time, aims at extending the validity period of the intra-corporate transferee permit.¹¹⁰

- 4. In determining the Member State where the application for renewal is to be lodged the complete intended period of transfer shall be taken into account.¹¹¹**
5. The **second** Member State may request applicants, as provided for in article 12A, to pay fees for handling applications, in accordance with this Directive.
6. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for graduate trainees.

¹¹⁰ **PL** stated that combining the renewal procedure with modifications and the issuance of a subsequent permit in paragraphs 2 and 3 further complicates the procedures. **Pres** explained that in these cases the extension of a geographical scope is combined with the extension of the validity period of a permit. **AT** noted that in this case it would be a first application/permit in the second MS and not an extension. **PL** expressed similar concerns inquiring whether the original permit would be extended while a subsequent permit would only concern the second MS and would no longer cover the first one. **Pres** explained that the final decision would be a result of several sub-decisions and would cover all the previous positive decisions. **SI** noted that a new permit would need to be issued in case of extension and inquired which MS would be responsible for that. **Pres** clarified that the new permit would be issued either by the first or the second MS, depending on which is the main MS. **DE** noted that the envisaged procedure is too complicated and it might be difficult to cover all the possible scenarios, for example a case where a stay in one MS ends up being longer than originally foreseen. **DE** would prefer a simple system where a person applies for a second permit in the MS he/she wants to work in. **Pres** pointed out that this would not be in line with the idea of a single ICT permit.

¹¹¹ **PL** wanted to know whether the past period is also included in "the complete intended period". **Pres** confirmed that the intention is to cover a period from the very beginning to the end.

Article 16A

[...] Provisions governing mobility¹¹²

1. **The competent authorities of the first Member State shall without delay transmit the relevant documents submitted by the applicant to the competent authorities of the second Member State(s) concerned.**¹¹³
2. **The second Member State(s) may decide not to verify certain criteria for admission when they are being or have already been examined by the first Member State.**

The competent authorities of the second Member State shall adopt a decision in accordance with Articles 5, [...] 6 **and** 7 and notify the competent authority of the first Member State [...] as soon as possible but not later than 60 days of the complete [...] **application** submitted by the applicant.¹¹⁴

3. [...] ¹¹⁵

¹¹² **FR:** scrutiny reservation.

¹¹³ **PL**, preferring the previous version in doc. 5077/11, found the proposed procedure unnecessarily complicated and raised the issue of the translation of documents. **AT** wanted to know whether the second MS would have to turn to the first MS in case there are some documents missing and raised issues related to the language the documents would have to be submitted in to the second MS and deadlines. **Pres** confirmed that the additional documents would have to be submitted via the first MS.

¹¹⁴ **PT** could support the procedure set out in paragraphs 1-2 for transfers up to 3 months but suggested that the second MS could issue an opinion instead of a decision whereas the absence of response would constitute a negative response. In this case a deadline for the opinion of the second MS would have to be established. The second MS would only check two admission criteria: a possible threat to security and whether the person works for the same group of undertakings. **DE** noted that it would be procedurally easier if an applicant applied to the first MS and directly to the second MS.

¹¹⁵ **AT, DE, NL** would like to have the deleted sentence reinserted as it should be clearly stated that the decision of the second MS would be binding on the first MS. **PT** inquired about the scope of bindedness wondering whether the first MS would still issue a permit even if the response by the second MS is negative.

By way of derogation from the provisions of Article 12 (1), the competent authorities of the first Member State shall adopt a decision on the application for an intra-corporate transferee permit, a modification 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 first Member State concerned, as soon as possible but not later than 90 days of the complete application being lodged.

4. The intra-corporate transferee permit issued by the first Member State entitles the intra-corporate transferee to work and reside, in accordance with Articles 13 and 14, in the first and in the second Member State(s) that have taken a positive decision.

In cases specified under Article 16 (2) and (3), the second Member State may, before taking a decision, allow the intra-corporate transferee to work until a positive decision on the application has been taken by its competent authority.¹¹⁶

5. [...] **A decision of the second Member State on refusal, non-renewal or withdrawal shall be communicated in accordance with Article 12 (3).**¹¹⁷
6. [...] **Without prejudice to the provisions of Article 12 (4), the decision of the second Member State referred to in paragraph 5 of this Article shall be open to a legal challenge only in that second Member State.**¹¹⁸

¹¹⁶ **NL** pointed out that the possibility to work before it is certain that all requirements are met could be open to abuse and suggested adding the following paragraph: "The second Member State may require a notification from the employer that the applicant meets all the requirements before the intra-corporate transferee is allowed to work during the application procedure."

¹¹⁷ **AT** wanted to know who would be responsible for notifying the applicant if the second MS takes a negative decision.

¹¹⁸ **SI** inquired whether the decision referred to here and in paragraph 5 is the one taken in accordance with Article 16A (2) or 16A(3). **Pres.** clarified that there are two kinds of decisions - the one referred to in Article 16A(2) is taken by the second MS and the one referred to in Article 16A(3) is taken by the first MS. **ES** asked whether the person should be issued a permit to come and challenge the decision in the second MS. **Pres.** replied that this should be left for the national law to regulate.

7. **A decision on** withdrawal shall be communicated to **all the [...] Member States concerned [...]**. Decisions withdrawing the positive decision of the second Member State, subject to legal challenge in accordance with national law, shall have suspensive effect on exercising rights to work and reside in the second Member State concerned, in accordance with Articles 13 and 14.

The first Member State shall accordingly introduce the necessary modifications on the intra-corporate transferee permit.

Without prejudice to Article 12 (3), the decision of the first Member State withdrawing the intra-corporate transferee permit shall be communicated to the second Member State(s) [...].

In this case the intra-corporate transferee may lodge an application for a subsequent intra-corporate transferee permit to the authorities of the Member State having competence within the meaning of Article 16 (1). Until a decision has been taken by that Member State, those second Member States which had taken a positive decision previously shall issue a document referred to in Article 12 (6) upon request of the intra-corporate transferee¹¹⁹.

¹¹⁹ **NL** would like to add the following at the end of this paragraph: "... unless the withdrawal was on grounds of posing a threat to public policy, public security or public health." **AT** asked how MS would keep track of the situation and know about the whereabouts of the transferee at any given moment. **Pres** clarified that the first MS would act as a contact point keeping all the other relevant MS informed. **PT** pointed to practical issues that can emerge when applying such a scheme, referring to an example where, in case of a withdrawal of a positive decision by a second MS, the first MS would have to modify the permit accordingly while the ICT may already be working in another second MS and has no intention of returning to the first MS.

CHAPTER VI
FINAL PROVISIONS

Article 17

Statistics¹²⁰

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 862/2007¹²¹.
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 [...].

¹²⁰ **AT** reservation and **DE, EE, ES, PT, SI**: scrutiny reservations on Article 17. **DE** considers that collection of this data is disproportionate for the purpose of this proposal, cannot provide data for withdrawal of residence permits, nor data based on gender criteria, nor on the period of validity of the permit, it can provide data only for residence permits issued for the first time or renewed, **EE** wants more coherent provisions like in the Blue Card Directive. **ES** has a scrutiny reservation until it gets a report on these statistics from the competent services, **PT** and **AT** consider that it duplicate rules already existing in the context of the 862/2007 Statistics Regulation. **AT** wants to delete reference to the transferee position basis, the length of validity of the permit (**SI** has a scrutiny reservation on it) and (along with **SI**) the economic sector (*the latter was also deleted in the case for the Seasonal Workers proposal*), or make their collection optional, because it keeps no relevant data.
Cion: statistics are very important to monitor the implementation of the Directive, to gauge its impact on manifold issues such as gender equality, external relations, etc. The collection of data for withdrawals of permits is optional. It also recalled that Regulation 862/2007 is just the basis which is implemented in the form of guidelines tailored for each legal instrument.

¹²¹ OJ L 199, 31.7.2007, p. 23.

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.¹²²

Article 19

Cooperation on information¹²³

1. Member States shall appoint designated authorities which shall perform the tasks relating to Articles 16 and 16A, and shall be responsible for receiving and transmitting the information relating to it. **Member States shall give preference to exchange of information via electronic means.**¹²⁴¹²⁵
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.

¹²² **DE:** delete the wording “including any necessary proposal” as it is unclear. **Cion:** it is standard language and **Cion** has the right of initiative.

¹²³ **AT, IT:** reservations. **RO:** scrutiny reservation. **SI** expressed concerns regarding the legal basis for the exchange of personal data and suggested to consult the European Data Protection Supervisor.

¹²⁴ New Recital: "**In order to facilitate the fast processing of applications, Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.**"

¹²⁵ **EE, PT** could support the **Pres** suggestions. **AT** pointed out that in MS that are federally organised there is a large number of authorities that are competent for these matters and the appointment of one competent authority would lead to an extremely lengthy procedure. **DE:** scrutiny reservation (in conjunction with Articles 16 and 16A). **DE** pointed out that issues related to data protection and coordination between several levels of authorities would need to be resolved and asked whether the applicant should submit the data in an electronic form or whether it is the responsibility of the authorities.

3. **Member States shall provide each other detailed information on how they apply Articles 16 and 16A, including on the possibilities provided for under Article 16A (2) and (4)."**¹²⁶

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.¹²⁷

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.¹²⁸

¹²⁶ **FR:** scrutiny reservation. **IT** inquired about the meaning of "detailed information" and the Pres referred to detailed rules of implementation as set out in Article 16A (2) and (4). **DE** queried about the legal consequences of information exchange not taking place properly.

¹²⁷ **CY, DE:** the transposition period should be three years (**DE** at least three) instead of two. **AT:** scrutiny reservation on the two-year period, considering it too short.

CY, DE, ES, IT, LV, AT, PT, SI: reservations on the obligation to draw a correlation table; **PT** this obligation does not arise from the Treaties nor from the Interinstitutional Agreement on Better Regulation, it could be converted into an optional provision. It entails an extra work and use of financial resources. **Cion:** the correlation table is very important to compare from the outset, in a clear way, the future Directive with the relevant national legislation and the administrative work is not out of proportion.

¹²⁸ **PT** has concerns about this provision.

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