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on: 13 September 2011

No. Cion prop.: 12211/10 MIGR 67 SOC 462 DRS 27 CODEC 691

Subject: Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

At the meeting of the Working Party on Integration, Migration and Expulsion held on 13 September, Presidency compromise suggestions for Articles 2, 3, 5, 5A, 10-16 and the related Recitals of the above proposal were discussed. The results of the discussions at the above meeting have been incorporated in the text of the previous outcome 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ **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. **MT, LT, PL, SE:** Parliamentary scrutiny reservations on the proposal. **DE, LT, SE:** language reservations on the proposal.

² OJ C , , p. .

³ OJ C , , p. .

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.⁴
- (2) The Treaty provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, as well as the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.
- (3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth⁵ sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists or graduate trainees to enter the Union in the framework of an intra-corporate transfer should be seen in this broader context.
- (4) The Stockholm Programme, adopted by the European Council at its meeting of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. It thus invites the Commission and the Council to continue to implement the 2005 Policy Plan on Legal Migration⁶.

⁴ AT: scrutiny reservations on Recitals 1-8.

⁵ COM(2010) 2020.

⁶ COM(2005)669.

- (5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational corporations, in recent years movements of managerial and technical employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.
- (6) These intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host companies, thus advancing the knowledge-based economy in Europe while fostering investment flows across the Union. Well-managed transfers from third countries also have the potential to facilitate transfers from Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best.
- (7) The set of rules established by this Directive is also beneficial to the migrants' countries of origin as this temporary migration fosters transfers of skills, knowledge, technology and know-how.
- (8) This Directive should be applied without prejudice to the principle of Union preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. According to that principle, the Member States should, during any period when national measures or those resulting from bilateral agreements are applied, give preference to workers who are nationals of the Member States over workers who are nationals of third-countries as regards access to their labour market.
- (8a) This Directive should be without prejudice to the right of Member States to issue residence permits other than an intra-corporate transferee permit for any purpose of employment if a third-country national does not meet the conditions to be admitted as an intra-corporate transferee under the terms and conditions of this Directive or does not fall under the scope of this Directive.**

- (9) This Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria. These set of rules should be applied without prejudice to Member States having the right to decide upon the technical formalities relating to the application, such as requesting that the address of the third-country national be provided.
- (10) For the purpose of this Directive, intra-corporate transferees encompass managers, specialists and graduate trainees with a higher education qualification. Their definition builds on specific commitments of the Union under the General Agreement on Trade in Services⁷ (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and facilitates the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive is broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement. The criteria set out in the definition of specialists is in line with the definition of professional qualifications in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.
- (10a) For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference may be made to ISCED (International Standard Classification of Education) 1997 levels 5a and 6.**

⁷ WTO Doc. S/L/286 and S/C/W/273 Suppl. 1 of 18 December 2006.

- (11) Intra-corporate transferees should benefit⁸ from the same working conditions as posted workers whose employer is established on the territory of the European Union, as defined by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services⁹. That requirement is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.
- (12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, [...] the transferee [...] **should** have been employed within the same group of undertakings for [...] **6 months prior to the transfer in the case of managers and specialists and 3 months in the case of employees in training.**
- (13) As intra-corporate transfers consist of temporary migration, the applicant should provide evidence that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. That evidence may consist of the relevant provisions under the work contract. An assignment letter should be produced providing evidence that the third-country national manager or specialist possesses the professional qualifications needed in the Member State to which they have been admitted to occupy the post or the regulated profession.
- (14) Third-country nationals who apply to be admitted as graduate trainees should provide evidence of the higher education qualifications required, namely of any diploma, certificate or other evidence of formal qualifications attesting the successful completion of a post-secondary higher education programme of at least three years. In addition, they must present a training agreement, including a description of the training programme, its duration and the conditions in which the trainees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.

⁸ AT (scrutiny reservation on the recital), SE: insert "*at least*".

⁹ OJ L 18, 21.1.1997, p. 1.

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

- (21) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, the third-country national should receive a specific residence permit (an intra-corporate transferee permit) allowing the holder to carry out, under certain conditions, their assignment in diverse entities belonging to the same transnational corporation, including entities located in another Member State.
- (21a) Member States should decide on the form and detailed content of the **additional information** [...]. Such [...] **information should** not [...] constitute an additional permit in any sense.
- (22) This Directive should not affect conditions for the provision of services in the framework of Article 56 of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. As a result, third-country nationals holding an intra-corporate transferee permit cannot avail themselves of the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.
- (22a) Third-country nationals who are in possession of a valid travel document and an intra-corporate transferee permit issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months **in any six-month period** in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Article 21 of the Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention)

(23) Equal treatment should be granted under national law in respect of those branches of social security defined in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems¹⁰. **The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. The right to equal treatment in the field of social security pursuant to Article 14 of the Directive is limited to third-country nationals who fulfil the objective conditions laid down by the legislation of the host Member State with regard to affiliation and entitlement to social security benefits.** Since this Directive is without prejudice to provisions included in bilateral agreements, the social security rights enjoyed by third country national intra-corporate transferees on the basis of a bilateral agreement concluded between the Member State to which the person has been admitted and his or her country of origin could be strengthened compared to the social security rights which would be granted to the transferee under national law. This Directive should not confer more rights than those already provided for in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. It should be granted without prejudice to posting provisions on national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin.

(23a) This Directive should not grant rights in relation to situations which lie outside the scope of EU legislation, in particular as regards the payment of family benefits to family members residing in a third country. This should not affect however the right of survivors, who derive rights from the intra-corporate transferee, to receive survivor's pensions when residing in a third country.

¹⁰ OJ L 166, 30.4.2004, p. 1.

- (24) In order to make the specific set of rules put in place by this Directive more attractive and to allow it to produce all expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification in the Member State which first grants the residence permit on the basis of this Directive. This right would indeed remove an important obstacle to potential intra-corporate transferees for accepting an assignment. In order to preserve family unity, family members should be able to join the intra-corporate transferee in another Member State under the conditions determined by the national law of such Member State.
- (24a)** In order to facilitate the fast processing of application Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.
- (24b)** The collection and transmission of files and data should be carried out in compliance with the relevant data protection and security rules.
- (25) This Directive should not apply to third country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research¹¹.
- (26) Since the objectives of a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals cannot be achieved sufficiently by Member States and, therefore, by reason of the scale and effects of the action, can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

¹¹ OJ L 289, 3.11.2005, p. 15.

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

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

This Directive determines:

- (a) the conditions of entry to and residence for more than three months in the territory of the Member States, and the rights, of third-country nationals and of their family members in the framework of an intra-corporate transfer;

- (b) the conditions of entry to and residence, and the rights, of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national a residence permit on the basis of this Directive.¹²

*Article 2*¹³

*Scope*¹⁴

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.¹⁵
2. This Directive shall not apply to third-country nationals:¹⁶
 - (a) who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;
 - (b) who, under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of citizens of the Union or are employed by an undertaking established in those third countries;

¹² **AT, SI:** scrutiny reservations in relation to the mobility scheme.

¹³ **Recital (8a): "This Directive should be without prejudice to the right of Member States to issue residence permits other than an intra-corporate transferee permit for any purpose of employment if a third-country national does not meet the conditions to be admitted as an intra-corporate transferee under the terms and conditions of this Directive or does not fall under the scope of this Directive."**

SE welcomed the text of the recital but stated that it should be integrated in Article 2. **DE, NL** supported **Pres** suggestion for the recital. **Cion:** it is not clear what is meant by the recital but it seems to provide for a parallel system at national level which runs counter to the objective of this Directive. **CY:** scrutiny reservation following the explanation given by **Cion**.

¹⁴ **AT, NL:** scrutiny reservations on the Article.

¹⁵ **SE:** reservation on the link with Article 10.2. **DE, EL, NL, SE:** third-country nationals legally staying in the territory of a MS should also be able to apply for an ICT permit.

¹⁶ **EL:** scrutiny reservation. **AT** considered that more grounds of exclusion should be added in the scope of the provision.

- (c) who are [...] posted in the framework of the provision of services, irrespective of whether the undertaking is established in a Member State [...], as long as they are posted;¹⁷
- (d) working for and being assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking.¹⁸

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;

¹⁷ **DE, ES:** scrutiny reservations. **DE:** the wording is not sufficiently clear. **AT, FI** queried as to whether ICTs could also be considered posted workers if they provide services in another Member State. **SE** would prefer an explicit reference to Directive 96/71 in order to make a clear distinction between the two instruments and suggested the following wording: “*who are posted under the scope of the Posted of Workers Directive*”. **Cion:** in order to make a clear distinction references should be made to Directive 96/71 and Article 56 of TFEU.

¹⁸ **AT, CZ, ES, FI, NL, SE, SI:** scrutiny reservations. **SE:** there is no need for such a provision since an ICT would never come through an agency. **DE, NL:** while TWAs should be excluded from the scope of the Directive, this should not apply to regularly employed members of management of TWAs. **AT** would prefer the paragraph to remain unaltered pointing out that **NL** concern should be covered by Recital 8a). **FI** wanted to know whether subcontracting falls under the scope of the Directive.

- (b) ‘intra-corporate transfer’ means the temporary secondment of a third-country national from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;¹⁹
- (c) ‘intra-corporate transferee’ means any third-country national subject to an intra-corporate transfer;²⁰
- (d) ‘host entity’ means the entity, regardless of its legal form, established, in accordance with national law, in the territory of a Member State to which the third-country national is transferred;
- (e) ‘manager’ means [...] **an intra-corporate transferee**²¹ 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;²²

¹⁹ **AT, EL, ES:** scrutiny reservations. **EL** suggested to align the definition with the definition of a worker in the Posting of Workers Directive thus referring to the law of the MS. **DE:** scrutiny reservation in relation to the Posting of Workers Directive (Article 2.2 c) and d) of this Directive). **FR, PT, SE** supported **Pres** suggestion for this paragraph. **FI** stated that this concept should be defined more precisely and should be in line with Directive 96/71/EC on Posted Workers thus suggesting to add the following text 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.

²⁰ **DE:** scrutiny reservation.

²¹ **NL:** preferred "any person" since one becomes an intra-corporate transferee only once one has been granted the ICT permit.

²² **DE, EL, ES, IT** (which suggested simplifying it and including middle-management, etc.), **PT** (considered the definition too detailed): scrutiny reservations. **NL:** reservation on the implementability of this provision. **BE:** include a salary criterion to make sure that someone is actually working as a manager.

- (f) ‘specialist’ means [...] **an intra-corporate transferee** possessing [...] **specific** knowledge essential [...] to the host entity, taking also account of whether the person has a high level of formal qualification and/or professional experience referring to a type of work or trade requiring specific technical knowledge;²³
- (g) ‘employee in training’ means [...] **an intra-corporate transferee** with a higher education qualification who is transferred to broaden his/her knowledge of and experience in a company in preparation for a managerial or a specialist position within the company;²⁴
- (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;^{25 26}

²³ **AT, EL, ES, IT, PL:** scrutiny reservations. **IT, CZ, HU, RO, SE** supported **Pres** suggestion regarding term "specific". **AT, BE, DE, EL, FI, SK** preferred the term "uncommon knowledge" used in the previous version as it is also used in GATS and stated that similarly to GATS there should be a requirement for formal qualifications (replace "and/or professional experience" with "*and* professional experience"). **AT** suggested adding at the end of the definition: "*including membership of an accredited profession*" like in the GATS text.

²⁴ **DE, EL, ES, FI, IT:** scrutiny reservations, **BE:** reservation. **AT, BE, DE, FI, SK:** preferred “graduate trainee”, which is in line with GATS' wording. **SK** supported "employee in training". **FR** supported "employee in training" as it is important to stress the employment relationship, it also wanted to revert to the reference to "employment relationship" used in the previous version. **AT, BE, SK:** reference should be made to a university qualification instead of a higher education qualification. **SE** suggested deleting the last part of the sentence "in preparation for a managerial position within the company" in order to make the definition more flexible. **AT:** delete "or a specialist". **IT** suggested deleting the part of the sentence starting with “in preparation for ... ”.

²⁵ **New Recital 10a):** "For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference may be made to ISCED (International Standard Classification of Education) 1997 levels 5a and 6."

SE: a more direct reference to ICTs should be made in the recital. **CZ** supported **Pres** suggestion for the recital.

²⁶ **DE, IT, AT:** scrutiny reservations. **SE** would prefer the same wording as in the Blue Card Directive.

- (i) ‘family members’ means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC²⁷;
- (j) ‘intra-corporate transferee²⁸ 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;²⁹
- (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;³⁰
- (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;³¹

²⁷ OJ L 251, 3.10.2003, p. 12.

²⁸ **IT**: add "residence". **FR** queried whether the indication "ICT" could be put in the permit.

²⁹ **DE, AT, PT**: scrutiny reservations.

³⁰ **AT**: scrutiny reservation.

³¹ **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 as only certain links between groups are covered in the definition, would prefer a broader wording.

RO: reservation as the link between undertakings should be clearly defined, the current definition is open to abuse as the notion of a group of undertakings may vary considerably among MS. **DE**: reservation querying whether companies with contractual rather than corporate links are included in the scope of the provision. **ES, IT**: scrutiny reservations suggesting including in the scope of the definition undertakings which have commercial rather than legal links. **AT, SK**: scrutiny reservations. **Cion**: MS, under their national law, 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.

- (m) ‘first Member State’ means the host Member State which first grants a third-country national an intra-corporate transferee permit on the basis of this Directive;³²
- (n) ‘second Member State’ means any host Member State in which the intra-corporate transferee intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;³³

[...] ³⁴

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

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:
 - (a) Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other;³⁵
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.³⁶

³² **LV, SI:** scrutiny reservations; **LV** in relation with the mobility conditions under this proposal.

³³ **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.

³⁴ **DE, NL, PT:** scrutiny reservations on the deletion.

³⁵ **CZ** queried as to whether the EU preference concept includes a TCN resident in a MS.

³⁶ **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 provisions³⁷ for persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15.³⁸

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CHAPTER II CONDITIONS OF ADMISSION

Article 5

*Criteria for admission*⁴⁰

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:⁴¹

³⁷ **SE:** insert: "... *or of social partners to conclude more favourable collective agreements...*".

³⁸ **IT:** reservation, querying about the inclusion of Article 11 enabling the application of more favourable provisions on the maximum duration of an the ICT permit. **FI:** reference to Article 13 of the proposal could be included.

³⁹ **ES, FI** suggested adding a new point whereby a TCN who does not fall under the scope of this Directive could benefit from the mobility scheme while, as **ES** wanted to clarify, national legislation would apply to them.

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.

⁴⁰ **CY** considered that "*Conditions of admission*" as the title of the Article would better reflect its contents. **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. **SE:** this Article should become optional; MS may require these conditions to be fulfilled if provided for by their national legislation. **AT** questioned the legal basis of the proposal, arguing that is more closely linked to labour market issues than immigration. **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 bases.

⁴¹ **DE** suggested amending this introductory phrase as follows: "A third-country national who applies to be admitted under the terms of this Directive *may be granted admission if he/she fulfils the following conditions.*" in order to clarify that this Directive is not intended to create a right for admission. **Cion** clarified that no obligation for admission, even if all the criteria are met is imposed on MS, as MS have the discretion to regulate volumes of entries of TCN under this Directive.

- (a) Provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;
- (b) present, **in the language of the member State concerned**⁴², an assignment letter from the employer and/or a work contract, from the employer including:⁴³
 - (i) evidence of employment with the undertaking established in a third country;
 - (ii) the duration of the transfer and the location of the host entity or entities of each Member State concerned;
 - (iii) evidence that the third-country national is taking a position as a manager, specialist or employee in training in the host entity or entities in the Member State concerned;
 - (iv) the remuneration and the relevant terms and conditions of employment granted during the transfer;⁴⁴

⁴² **FI, LV, PT, SE:** it should be up to MS to decide whether they set such a requirement. **AT, DE** supported the **Pres** suggestion provided a simple translation is considered sufficient (**DE**).

⁴³ **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) is exhaustive or not. **Cion:** it is an exhaustive list with a specific limited number of conditions.

⁴⁴ **BE:** add "... as provided for in Article 14(1)". **SE** pointed out that this should also be a criterion for admission. **Cion** preferred the original version as the proposed wording would give rise to a long list of conditions of employment and it would cause legal uncertainty since the terms and conditions of employment are not defined. Article 6 should be sufficient as it provides for a possibility to reject an application on these grounds.

- (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.⁴⁵
- (c) provide evidence that the third-country national has the professional qualifications needed in the [...] **host entity at which he or she is employed as manager or specialist** or, in the case of employee in training, the higher education qualifications required;⁴⁶
- (d) present documentation certifying that the third-country national fulfils the conditions laid down under national legislation **of the Member State in which the host entity is established** for citizens of the Union to exercise the regulated profession which the transferee is applying to work in;⁴⁷
- (e) present a valid travel document of the third-country national, as determined by national law, and an application for a visa or a visa, if required; Member States may⁴⁸ require the period of validity of the travel document to cover at least the initial duration of the residence permit;

⁴⁵ **SE:** this element could not be added in the assignment letter and the provision should become optional for MS.

⁴⁶ **DE** supported **Pres** suggestion. **SE:** reservation as this should be optional for MS. **SE** pointed out that reference should be made to the Member State rather than the host entity. **AT:** scrutiny reservation.

⁴⁷ **SE:** this provision should become optional.

⁴⁸ **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.

- (f) without prejudice to existing bilateral agreements, present evidence of having or being entitled to have by virtue of the application of national law, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in the Member State concerned;⁴⁹

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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).⁵¹

⁴⁹ **BG, FI, LV:** scrutiny reservations. **CZ** pointed out that this paragraph should be read together with Article 14(2)c). **FI:** insert: "*irrespective of the right to equal treatment set out in Article 14.2.c)...*" in order to clarify the link between the two Articles. **Cion** considered it sufficient to require that an ICT has applied for sickness insurance as it provides more flexibility. **AT** stated that it should be clarified at least in a recital that this does not prevent MS from obliging employers to register workers at social insurance institutions according to national rules.

⁵⁰ **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. **CZ** suggested that the TCN should provide evidence of prior employment in the third country and that the transfer will not last for more 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** pointed out that a permanent address cannot often be produced at the moment of application, so this requirement would be difficult to meet.

⁵¹ **AT, DE:** scrutiny reservations. **BE, DE:** add "... that the remuneration *and the relevant terms and conditions of employment* which..." **SE:** "... during the transfer is *at least* in line with...".

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.⁵²
4. Any modification that affects the conditions for admission set out in this Article shall be notified by the host entity⁵³ 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.⁵⁴
6. Member States [...] **shall** require the third-country national to provide evidence of employment within the same group of undertakings, for [...] **6 months** immediately preceding the date of the intra-corporate transfer **in the case of managers and specialists, and for 3 months in the case of employees in training.**^{55 56}

⁵² **EL, AT:** scrutiny reservations. **AT:** "...any third-country national who applies to be admitted as a graduate trainee or the host entity concerned shall...".

⁵³ **SE:** add that the ICT could also notify the modification to the competent authorities.

⁵⁴ **DE:** add at the end of the provision: "... or any other significant interests of the host MS." **NL** pointed out that the provision is worded as a ground for refusal. Instead, a formulation similar to then one in Article 5.1.f) of the Blue Card Directive could be used: "*Third-country nationals who are not considered to pose a threat...*". **HU** enquired whether this provision covers all the cases where a TCN is subject to expulsion, entry ban, warning in SIS etc.

⁵⁵ Recital 12: "In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, [...] the transferee [...] **should** have been employed within the same group of undertakings for [...] **6 months** prior to the transfer **in the case of managers and specialists and 3 months in the case of employees in training.**"

⁵⁶ **DE, EL:** reservations. **HU:** scrutiny reservation. **AT, BE, ES, FI, NL, SI, SK** (which argued for maintaining the GATS' approach): suggested reverting to a 12-month period in the case of managers and specialists. **AT:** "*at least 12 months*" in the case of graduate trainees. **DE:** it should be optional for Member States to decide whether they require prior employment and if so then for how long. **EL** (supported by **DE, ES, NL, PT**) suggested using GATS' approach with some flexibility: "*for a period up to 12 months*" in all cases. **CY, CZ:** "*for at least 6 months*". **FR, SE:** "*for up to 6 months*". **CZ** supported **Pres** suggestion of 6 months and enquired about the consequences in the case of mobility if different MS set different requirements in this respect. **Cion** supported a degree of flexibility for MS here and pointed out that once an ICT exercises his/her right to mobility he/she will have acquired additional experience in the first MS.

7. Member States may, if provided for by national law, require the host entity to provide a statement of financial responsibility to ensure that:
- (a) The intra-corporate transferee will be guaranteed the required level of remuneration and rights as specified under Article 14, in particular that she/he will not have recourse to [...] **social benefits including social assistance;**⁵⁷
 - (b) All expenses that could be related to the return of the ICT in case of illegal stay are covered.⁵⁸ The financial responsibility of the host entity shall end at the latest six months after the termination of the assignment in the Member State concerned.⁵⁹

⁵⁷ **EL:** scrutiny reservation. **FR:** scrutiny reservation as the proposed wording expands the meaning; the previous wording was preferable. **FI:** positive scrutiny reservation. **DE, RO, SE** supported **Pres** suggestion. **SE** suggested that the requirement should be directed to workers rather than the host entity. **HU** also pointed out that the employer cannot be expected to ensure what is required here, and suggested a reference to "special non-contributory benefits" instead. **DE, EL** could support **HU** suggestion. **Cion** preferred the previous wording as the suggested one seems to refer to social security benefits which is in conflict with Article 14. If an ICT pays contributions, he/she should be entitled to social security benefits.

⁵⁸ **Cion** expressed doubts about the added value of the provision as Article 8 already addresses this issue.

⁵⁹ **RO:** reservation as the period of financial responsibility. **PT:** scrutiny reservation on the paragraph as the proposed period is too short. **NL, PT, RO** suggested extending the period of financial responsibility to 12 months.

Article 5A
Volumes of admission

1. This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory. ⁶⁰
2. **An application for admission to a Member State for the purposes of this Directive may be considered inadmissible on the grounds set out in paragraph 1.** ⁶¹

Article 6
Grounds for refusal

1. Member States shall reject an application in the following cases: ⁶²
 - (a) where the conditions ⁶³ set out in Article 5 are not met;
 - or

⁶⁰ **AT, DE, EL, CY, NL:** add a clarification that MS retain the possibility to set a 0-quota in general or for certain sectors or regions. **EL** wanted to know whether this paragraph enables a MS to set a 0-quota for workers coming from a specific third country. **HU** pointed out that the wording in this paragraph diverges from that of Article 79(5) of TFEU and wanted to know whether volumes of admission apply to the first admission only or to cases of mobility as well. **AT:** Recital 17 should be worded along the lines of Recital 8 in the Blue Card Directive and noted that it would like to apply the quota unreservedly, thus also in cases of mobility. **DE:** it should be made clear in the Directive that Article 79(5) covers both types of mobility as well as initial entry. **BE:** scrutiny reservation stating that a different procedure for short-term and long-term mobility would further complicate the procedure. **CLS:** setting and defining of quotas falls under the competence of individual Member States and should thus not be regulated in a Directive. Whereas Article 79(5) of TFEU refers to volumes of admission of third-country nationals coming from third countries to the territory of a Member State, it would in principle be possible to go further in this Directive and make volumes of admission applicable to third-country nationals coming from another Member State. However, in that case Article 79(5) would not apply and the text of the Directive would have to provide for such a possibility explicitly. **Cion:** the Directive should follow Article 79(5) of TFEU as closely as possible.

⁶¹ **AT, DE, EL, RO** welcomed **Pres** suggestion for this paragraph.

⁶² **DE** suggested a non-exhaustive list of grounds for refusal. **CZ:** add a new ground for refusal in case an ICT has no sufficient funds and needs social services support.

⁶³ **NL:** replace with "*criteria*".

- (b) where the documents presented have been fraudulently acquired, falsified or tampered with;
 - or
- (c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees;
 - or
- (d) where the maximum duration of stay as defined in Article 11(2) has been reached.⁶⁴

2. Member States may reject an application if the employer or the host entity: ⁶⁵

- (a) has been sanctioned in conformity with national law for undeclared work and/or illegal employment;

⁶⁴ **LT**: move to paragraph 2 as this ground for refusal should not be obligatory for MS. **LT** enquired whether the person could reapply when the maximum duration of stay has been reached. **DE** considered this a very important provision as it ensures that ICTs come for a limited period of time only. On the other hand, a period of interruption could be provided for after which a person could reapply. **NL**: some flexibility should be shown towards these much needed highly qualified migrants and a possibility reapply should be given. **Cion** clarified that a third-country national cannot hold an ICT status for more than 3 years. After this period the ICT returns to the sending company located in a third country unless he qualifies for another status under national law. No specific provision prevents the ICT from returning to the EU provided he/she meets the conditions of admission. However, the relevance of an ICT (temporary) status may be questioned in this case.

⁶⁵ **ES** suggested to add the following ground for refusal: "*... within the 12 months immediately preceding the date of the application, has eliminated, by means of a null or unfair dismissal, the positions he is trying to fill through the new application, or has terminated a contract on which a work permit was based on a date prior to the expiry of this work permit.*" **AT**: add an additional ground for refusal where the intention / effect is to interfere with the outcome of labour-related negotiations/disputes.

DE/SE suggestion (supported by **CY, CZ, FI, NL**) for Article 6(2): "Member States may reject an application if:

a) *the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment or does not meet the legal obligations regarding social security or taxation;* or

b) *terms of employment according to applicable laws, collective agreements or practices in the relevant occupational branches in the Member State where the host entity is established are not met.*" **AT**: positive scrutiny reservation on the suggestion.

or

(b) does not meet the legal obligations regarding social security, taxation and/or working conditions, set out in national law. ⁶⁶

3. Member States may reject an application for admission to a Member State for the purposes of this Directive on the ground set out in Article 5a. ⁶⁷

Article 7

Withdrawal or non-renewal of the permit ⁶⁸

1. Member States shall withdraw an intra-corporate transferee permit⁶⁹ 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.

⁶⁶ **Cion** considered this provision excessive and stated that Article 8 should meet the concerns of MS regarding abuse.

⁶⁷ **AT:** scrutiny reservation suggesting to add the labour market test as a new ground for refusal, at least as a "may-clause", provided that the Directive goes beyond GATS' commitments.

⁶⁸ **CZ, AT, SK:** add a new ground if the ICT has no sufficient funds and needs social services support.

⁶⁹ **DE** suggested adding "in particular" in order to emphasise that this would be an indicative list of grounds.

2. Member States shall refuse to renew an intra-corporate transferee permit in the following cases:⁷⁰
- (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
 - (b) where the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment;
or

⁷⁰ ES: scrutiny reservation.

- (c) does not meet the legal obligations regarding social security, taxation and/or working conditions, set out in national law.⁷¹

Article 8

Penalties

Member States may, if provided for in national law, hold the host entity responsible and provide for penalties for failure to comply with the conditions of admission and stay or to comply with administrative and information requirements. Those penalties shall be effective, proportionate and dissuasive.⁷²

CHAPTER III
PROCEDURE AND PERMIT⁷³

Article 9

*Access to information*⁷⁴

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.

⁷¹ **SE:** the same remark as concerning Article 6(2).

⁷² **RO:** more clarity is needed regarding the type of penalties enquiring whether MS can impose sanctions as set out in Directive 2009/52 or also other ones.

⁷³ **ES:** general scrutiny reservation on Chapter III for its interaction with the Single Permit proposal.

⁷⁴ **DE:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle.

Article 10
*Applications for admission*⁷⁵

1. Member States shall determine whether an application is to be made by the third-country national and/or by the host entity.⁷⁶
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. [...] ⁷⁷
3. Member States shall designate the authority competent to receive the application and to issue the intra-corporate transferee permit.⁷⁸
4. The application shall be submitted in a single application procedure.⁷⁹
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.

⁷⁵ **AT, IT:** scrutiny reservations.

⁷⁶ **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.*”

⁷⁷ **EL, FR:** scrutiny reservations. **FR, LV, PT** preferred the previous wording giving MS the option to consider applications submitted by an ICT legally staying in its territory. **HU** would like to keep the possibility to allow applications to be submitted in the territory of a MS but for certain categories only (eg those who do not need an entry visa). **PT:** scrutiny reservation on **HU** suggestion. **Cion:** the provision is in line with the scope of the Directive.

⁷⁸ **DE, AT, SI:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle. **ES:** in line with the Single Permit proposal the provision should also appear in this proposal. **Cion:** this paragraph serves the transparency principle (similarly to para.1).

⁷⁹ **AT:** reservation.

Article 11

Intra-corporate transferee permit⁸⁰

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member States concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for employees in training.⁸¹
3. The intra-corporate transferee permit shall be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002^{82 83}.

⁸⁰ **IT**: reservation on the Article; should add in the title a 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.

⁸¹ **AT** wanted to know whether the extension of the permit is obligatory or whether this could be at the discretion of MS. **Cion** replied that the extension of the permit can only be refused when the conditions for refusal as laid down in Article 7 are met or if the maximum duration has been reached. **DE** enquired as to whether a TCN could submit a new application and return to the EU after a 3-year stay. **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.*"

⁸² OJ L 157, 15.6.2002, p. 1.

⁸³ **AT** suggested to merge Articles 11(3) and 11(6). **FI** wished to have the reference to the Regulation mentioned including the biometrics element.

4. Under the heading ‘type of permit’, the Member States shall enter ‘intra-corporate transferee’.⁸⁴
5. Member States shall not issue any additional permits, in particular work permits of any kind.⁸⁵
6. Member States [...] **may indicate additional information related to the employment relationship of the third-country national (such as the name and address of the host entity, place of work, name and address of the client, type of work, working hours, remuneration) in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and point 16 of its Annex I as amended by Regulation (EC) 380/2008.**^{86 87}
7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility⁸⁸ 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).⁸⁹

⁸⁴ **LV:** scrutiny reservation related to mobility . **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*".

⁸⁵ **AT:** scrutiny reservation. **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”.

⁸⁶ Recital 21a): "Member States should decide on the form and detailed content of the **additional information** [...] Such [...] **information should** not [...] constitute an additional permit in any sense." **AT:** scrutiny reservation on the recital.

⁸⁷ **FR, HU, RO** supported **Pres** suggestion for the paragraph.

⁸⁸ **NL:** delete the term "every facility" as it is too broad and vague.

⁸⁹ **FR:** scrutiny reservation as the link with Article 10(2) is not clear. **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. 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 notify⁹⁰ 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.⁹¹

National law of the relevant Member State shall determine any consequence of a decision not having been taken by the end of the period provided for in this paragraph.⁹²

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.

⁹⁰ **IT** suggested replacing “notify” with “communicate” or “inform”. **BE** suggested that MS could also inform the employer. **Cion**: either the employer or the ICT can be the applicant; nothing prevents MS from informing the employer as well.

⁹¹ **AT**: reservation on the 60-day deadline which is too short. **DE** was opposed to the 60-day deadline and would prefer no deadline at all or a more appropriate one. **EL, ES** suggested the wording “as soon as possible, but no later than 90 days”. **SE** suggested “as soon as possible.” **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.

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.

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

⁹² **DE**: should be a “may-clause”.

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 transferee ⁹³ and, when the application for the intra-corporate transferee permit was lodged by the host entity, to the applicant. ⁹⁴
4. Any decision rejecting the application, refusing renewal, [...] or withdrawing an intra-corporate transferee permit shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court and/or administrative authority where an appeal may be lodged and the time-limit for lodging the appeal. ⁹⁵
5. Within the period referred to in Article 11(2) an applicant shall be allowed to lodge an application for renewal before the expiry of the intra-corporate transferee permit. Member States may set a maximum deadline of ⁹⁶ 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.

⁹³ **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.

⁹⁴ **DE:** reservation, considering that this provision infringes the subsidiarity principle.

⁹⁵ **CZ:** the last sentence pertains to issues of national competence which should not be addressed in a Directive.

⁹⁶ **ES:** "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.⁹⁷

Article 12A

*Fees*⁹⁸

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.

⁹⁷ **SK**: scrutiny reservation.

⁹⁸ **EL**: the outcome of negotiations on the Single Permit proposal should be taken into consideration here. **NL** has concerns about including such a provision in the proposal. **EE**, **AT**: scrutiny reservations on the wording.

CHAPTER IV

RIGHTS

*Article 13*⁹⁹

*Rights on the basis of the intra-corporate transferee permit*¹⁰⁰

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 covered by the authorisation of the intra-corporate transferee permit;
2. free access to the entire territory of the Member States covered by the authorisation of the intra-corporate transferee permit, within the limits provided for by national law;¹⁰¹
3. the right to exercise the specific employment activity authorised under the permit in accordance with national law in any entity belonging to the group of undertakings in accordance with Article 16;¹⁰²

⁹⁹ Recital (22a): "Third-country nationals who are in possession of a valid travel document and an intra-corporate transferee permit issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months **in any six-month period** in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Article 21 of the Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention)"

¹⁰⁰ **SE** pointed out that negotiations on Regulation (EC) No 562/2006 are still ongoing.

¹⁰⁰ **CZ**: reservation on the Article, particularly on points 1 and 2. **AT**: scrutiny reservation on the Article. **LT** expressed concerns that this provision might restrain the right of movement in the Schengen area.

¹⁰¹ **AT** (scrutiny reservation), **DE** opposed points 1 and 2 to the extent that they refer to mobility. **FR** questioned the appropriateness of the term "authorisation" in points 1 and 2.

¹⁰² **AT** scrutiny reservation to the extent that it refers to mobility.

4. the right to carry out his/her assignment at the sites of clients of the entities belonging to the group of undertakings in the Member State where the entity covered by the authorisation of the intra-corporate transferee permit is located **and in accordance with Article 16**, as long as the employment relationship is maintained with the undertaking established in a third country.¹⁰³

¹⁰³ **FI:** the link with Article 2.2.c) and subcontracting is not clear stating that if all cases of posting are excluded then there seems to be no need for such a provision. **AT:** scrutiny reservation as the provision puts into question the core meaning of intra-corporate transfer which is to cover the relationship between two or more entities belonging to the same group of undertakings but not the one with a client. **FR:** scrutiny reservation as this provision could give rise to illicit use of labour. **DE:** the meaning of the paragraph is unclear asking whether an undertaking established in a third country can invoke the right to provide services. **Cion:** in order to avoid overlaps with Directive 96/71/EC, an ICT is allowed to provide services only on the sites of clients situated in those MS to which he/she is admitted to. Since the employer of an ICT is in a third country, the ICT moving to another MS cannot invoke the right to freedom to provide services.

Article 14

Rights¹⁰⁴

1. Whatever the law applicable to the employment relationship **and without prejudice to Article 4 of this Directive**, intra-corporate transferees [...] shall enjoy equal treatment with persons covered by Directive 96/71/EC with regard to the terms and conditions of employment applicable to posted workers in a similar situation in accordance with Article 3 of Directive 96/71/EC in the Member State where the work is carried out;^{105 106}

¹⁰⁴ **BG, CY, CZ, DE, EL, FI, LV:** reservations, **AT, LT, PL:** scrutiny reservations on the Article. **AT** would like to add the following paragraph in Article 14: "*Member States may retain restrictions on access to regulated professions, in cases where, in accordance with existing national or Union law, these activities are reserved to nationals, Union citizens or EEA citizens.*" (Reasoning: More specific Union law exists (Directive 77/249/EEC and 98/5/EC) with regard to the admissibility of temporary provision of services as well as the establishment of lawyers in other MS). **LT:** the principle of equal treatment should not apply to non-contributory benefits, especially child benefits.

¹⁰⁵ Recital 23: "Equal treatment should be granted under national law in respect of those branches of social security defined in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. **The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. The right to equal treatment in the field of social security pursuant to Article 14 of the Directive is limited to third-country nationals who fulfil the objective conditions laid down by the legislation of the host Member State with regard to affiliation and entitlement to social security benefits.** Since this Directive is without prejudice to provisions included in bilateral agreements, the social security rights enjoyed by third country national intra-corporate transferees on the basis of a bilateral agreement concluded between the Member State to which the person has been admitted and his or her country of origin could be strengthened compared to the social security rights which would be granted to the transferee under national law. This Directive should not confer more rights than those already provided for in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. It should be granted without prejudice to posting provisions on national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin."

SE pointed out that the recital relates to paragraph 2 rather than paragraph 1. **Cion:** It should be stated more clearly in the recital that those third-country nationals who are affiliated to the social security system of a MS are entitled to equal treatment with the nationals of that MS.

¹⁰⁶ **AT, FI:** positive scrutiny reservations on **Pres** suggestion for the paragraph. **ES:** reservation as considered it important that ICTs be granted equal treatment with nationals regarding the terms and conditions of employment. **PT:** scrutiny reservation on the paragraph. **BE, CZ, FR, SE:** supported **Pres** suggestion in this paragraph. **DE** could support **Pres** suggestion for this paragraph but would like to add a clarifying recital: **Cion:** the reference to Article 4 is redundant since it is stating the obvious.

2. [...] **Intra-corporate transferees shall enjoy equal treatment with nationals of the host Member State**¹⁰⁷ **as regards:**¹⁰⁸
- (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;¹⁰⁹

¹⁰⁷ **EE** queried why reference is made to "host MS" whereas in paragraph 1 a different term is being used.

¹⁰⁸ **BE, PT:** scrutiny reservations on the paragraph. **BE** noted that there should be no obligation for TCNs to be affiliated with the social security system of a host MS.

¹⁰⁹ **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 3¹¹⁰ of Regulation (EC) No 883/04 **unless the legislation of the country of origin applies by virtue of bilateral agreements or national legislation of the host Member State.** In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No [...] **1231/2010** shall apply accordingly;¹¹¹
- (d) without prejudice to Regulation (EC) [...] **1231/2010** and to existing bilateral agreements, payment of statutory pensions¹¹² based on the worker's previous employment when moving to a third country;¹¹³

¹¹⁰ **DE:** "Article 3(1)".

¹¹¹ **BG:** reservation. **CZ:** scrutiny reservation. **FI** supported **Pres** suggestion as it solves the issue of double insurance. **ES:** scrutiny reservation on the **Pres** suggestion in this paragraph, especially regarding the reference to "national legislation of the host Member State". **DE** supported the reference to national legislation in **Pres** suggestion. **FR** sought further clarification as to the meaning of **Pres** suggestion in this paragraph. **CZ:** the added wording is redundant as it repeats what is already stated at the beginning of the paragraph. **AT, CZ, DE, LT:** equal treatment with nationals should not be granted with respect to family benefits (concerns Recital 23 as well). **EL:** it should be made more clear where the limits of equal treatment lie. **BE:** there should be no obligation for an ICT to be affiliated with the social security system of a host MS. **Cion:** it could be clarified in the Directive that there is no obligation for ICTs to be affiliated to the social security system of a MS. However, it is not possible for a national legislation to deem a third country's legislation applicable. The exclusion of family benefits is not acceptable since it introduces an arbitrary distinction between different categories of persons.

¹¹² **FI, SE, LT:** replace with "*income-related pensions*". **Cion** could not agree with the proposed term.

¹¹³ **BG:** reservation. **LT:** scrutiny reservation. **DE** maintained that MS should be able to make equal treatment regarding the transfer of pensions conditional upon the existence of relevant bilateral agreements. **CZ** suggested to delete this point as it interferes with national law on social security.

- (e) access to goods and services and the supply of goods and services made available to the public, except public housing¹¹⁴ and services afforded by employment services.¹¹⁵

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.

3. The Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the intra-corporate transferee, or that of the family member for whom benefits are claimed, lies within its territory.^{116 117}

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¹¹⁴ **MT**: delete "public". **SI**: scrutiny reservation on the reference to public housing.

¹¹⁵ **ES**: scrutiny reservation. **IT**: reservation. **FI** supported the paragraph. **DE**: services in the social sphere should also be excluded; counselling services ought not to be mentioned under the employment framework.

¹¹⁶ **New Recital 23a**): **"This Directive should not grant rights in relation to situations which lie outside the scope of EU legislation, in particular as regards the payment of family benefits to family members residing in a third country. This should not affect however the right of survivors, who derive rights from the intra-corporate transferee, to receive survivor's pensions when residing in a third country."**

PT: scrutiny reservation on the recital. **FI**: the recital and its link with the Article should be clarified. **SE** welcomed the recital but suggested to insert "who derive rights from the intra-corporate transferee's *employment*...".

¹¹⁷ **BE, CZ, PT**: scrutiny reservations. **FI** suggested "*habitual*" place of residence and noted that it should be clear from the wording that the paragraph is linked to Article 14.2. c). **HU**: the term "registered or usual place of residence" is unclear. **ES**: scrutiny reservation on the paragraph, especially on the restriction to the principle of equal treatment. **EL, FR, IT** found the paragraph unclear, especially in connection with Recital 23a). **Cion**: the intention of the paragraph is not clear and it does not seem to link with Recital 23a). **SE**: the intention of the paragraph is to state that the right to equal treatment applies to accompanying family members and not those staying in third countries.

¹¹⁸ **DE** suggested to add a new paragraph stating that Member States may restrict equal treatment with respect to study and maintenance grants or loans or other grants and loans.

Article 15
Family members ¹¹⁹

1. Council Directive 2003/86/EC shall apply **in the Member States which issued the intra-corporate transferee permit**, subject to the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification in the Member State shall not be made dependent on the requirement that the holder of the permit issued **by that Member State** on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.
3. By way of derogation from the last subparagraph of Article 4(1) and from Article 7(2) of Directive 2003/86/EC, the integration measures referred to therein may be applied by the Member State only after the persons concerned have been granted family reunification.¹²⁰
4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the [...] Member State, if the conditions for family reunification are fulfilled, at the latest within two months from the date on which the **complete** application was lodged **and not before the ICT permit is issued**. **Article 12 applies accordingly.**¹²¹

¹¹⁹ **DE, AT:** scrutiny reservations on the Article.

¹²⁰ **AT:** delete this paragraph (will be counter to its upcoming legislation).

¹²¹ **IT:** reservation on the deadline of 2 months. **LT:** 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). **SE:** the reference to Article 12 in **Pres** suggestion is misleading. **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.

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.¹²²
6. **By way of derogation from Article 14(1) b of Directive 2003/86/EC the sponsor's family members¹²³ shall be entitled to have access to employment and self-employed activity, in the territory of the Member State which issued the residence permit.¹²⁴**
7. **Article 14(2) of Directive 2003/86/EC shall not apply.¹²⁵**

¹²² **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. **NL:** it should be a "shall-clause" similarly to the Blue Card Directive.

¹²³ **NL, SE:** replace with "*family members of the intra-corporate transferee*".

¹²⁴ **BE, NL:** use the wording of Article 15.6 of the Blue Card Directive instead. **AT, CY, CZ, EL, FR, HU:** scrutiny reservations related to access to the labour market. **AT:** this provision gives more favourable treatment to the family members of ICTs compared to family members of long-term migrants.

¹²⁵ **AT, CY, CZ, EL, FR, HU:** scrutiny reservations related to access to the labour market.

CHAPTER V
MOBILITY BETWEEN MEMBER STATES

Article 16

*Provisions governing short-term mobility*¹²⁶

1. When the intra-corporate transferee intends to work in a second Member State for a period of up to three months in any six-month period, the transfer may take place on the basis of the intra-corporate transferee permit issued by the first Member State during its validity, provided that there is a host entity in the second Member State concerned, **the transfer covers the same position**, and the intra-corporate transferee is not considered to pose a threat to public policy, public security or public health in that second Member State and **as long as the working conditions in the second Member State are fulfilled**.¹²⁷

¹²⁶ **AT, BE, CZ, DE, EE, ES, FI, IT, PT, SE**: scrutiny reservations on the Article. **SI**: scrutiny reservation on mobility. **CY, EL, ES, FR, IT, LV, PL, PT, RO, SI** could support the simplified procedure proposed in this Article. **DE** was opposed to the procedure proposed in this Article as there needs to be a balance between simplification and the right of MS to exercise control over admission. There should be at least an option for the second MS to agree with the admission of a TCN. **AT** continued to support the "Blue Card model" for all transfers thus insisting on the possibility for the second MS to check all the admission criteria, including volumes of admission, and to refuse admission.

¹²⁷ **ES, IT**: scrutiny reservations. **CZ, FR, SK** could support **Pres** suggestions. **FR**: insert a reference to Article 14.1. **BE**, suggesting making a reference to Article 5.1.b), also noted that working conditions should be further specified. **Cion** emphasised the importance of specifying what is meant by working conditions. **BE**: the second MS should be able to take a decision on ICT's admission and therefore consultation procedure should be envisaged at least as an option. **NL** supported **Pres** proposal but warned against too rigid an interpretation of "the same position" as the person could have been promoted in the meantime. **Pres** responded that short-term mobility should be restricted to the same position.

2. When lodging the application for an intra-corporate transferee permit the applicant shall notify the competent authorities of the first Member State and the host entity shall notify the competent authorities of the second Member State about the transfer intended to take place in that second Member State **by sending to that second Member State the documents specified in Article 5 (1) a), b), d), f) and Article 5 (3).** ¹²⁸

3. 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 Members State(s), except where the criteria set out in paragraph 1 are not fulfilled.

¹²⁸ **CZ:** opposed the paragraph as it prefers simple notification without excessive bureaucracy and the need to notify the authorities of the first MS; documents should be sent only upon request. **FR:** scrutiny reservation as more flexibility should be allowed so that the authorities of the first MS should be notified only if the legislation of that MS requires it. **ES, FI, SK:** the fact that the role of the second MS has not been defined raises concerns about the implementability of the provision. The authorities of the second MS should be involved in the process of issuing the permit. **EL, PT:** the second MS should be able to intervene in the process of issuing the permit. **LT** enquired what measures the second MS could take if it does not agree with the decision of the first MS to issue or renew the permit. **RO** sought further details on how the notification of the first MS should take place and, suggesting to insert a reference to Article 5A, enquired whether the second MS has a possibility to reject an application on the basis of volumes of admission. **Pres** clarified that there would be no communication between the authorities of the first and second MS and that the host entity informs the second MS. **Pres** suggested that it would have to be discussed whether volumes should be applied to short-term mobility. **NL:** add a reference to Article 5.1.e) (valid travel document) to the documents to be sent. **HU:** the fact that a number of documents need to be sent to the second MS contradicts the principle of a simple procedure. **LT** pointed out that it is important to agree on the way notification is carried out. For this purpose, a standard form could be used and clear deadlines should be set. In case a TCN cannot be admitted, there must be a way of notifying him/her. **CLS:** public policy and security fall within the competence of MS and, subsequently, the second MS may always deny entry to or expel a TCN on these grounds. If MS wish to apply volumes of admission in the case of short-term mobility, the text of the Directive would have to provide for such a possibility explicitly as Article 79(5) of TFEU would not apply.

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

4. If the intra-corporate transferee intends to exercise the right of short-term mobility in a second Member State other than the Member State(s) notified during the application procedure, the host entity shall notify the competent authorities of the first and of the second Member State about this intention before the transfer takes place in that second Member State **in accordance with paragraph 2. The transfer may take place to that second Member State in accordance with paragraph 3.**
5. The second Member State may require registrations to be carried out in accordance with national law when the intra-corporate transferee enters the territory of the second Member State with the purpose of work. The second Member State may **indicate [...]** additional **information [...]** specified under Article 11 (6) as a proof of such registration.¹²⁹
6. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for employees in training¹³⁰.

In case the intra-corporate transferee permit is renewed by the first Member State within the maximum duration, the renewed intra-corporate transferee permit continues to authorise its holder to work in the second Member State(s) notified **as long as the criteria set out in paragraph 1 are fulfilled.**¹³¹

¹²⁹ **FI, FR** enquired about the meaning of registration as referred to in this paragraph.

¹³⁰ **AT, DE:** return to the original version of "graduate trainees". **EL:** scrutiny reservation on "employees in training".

¹³¹ **FR:** scrutiny reservation on the renewal of the permit. **FI:** the second MS(s) should be informed of the renewed permit. **PT, SE:** add to the end of the paragraph: "... *within the 3 months set out in paragraph 1.*" **AT, DE** suggested to delete the second sentence of paragraph 6.

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

Article 16A

*Provisions governing long-term mobility*¹³²

1. If the third-country national who intends to work in a second Member State for more than 3 months within any 6-month period¹³³, an application for a new intra-corporate transferee permit shall be lodged to the authorities of the second Member State and present all the documents proving the fulfilment of the conditions set out in Article 5.

The application may be presented to the competent authorities of the second Member State outside the territories of the European Union or while residing in the territory of the first or the second Member State.¹³⁴

2. If the third-country national has already been granted an intra-corporate transferee permit the second Member State may decide not to verify certain criteria for admission and/or may allow the intra-corporate transferee to work until a positive decision on the application has been taken by its competent authority.
3. The provisions set out in Article 16 shall apply in a way that "the first Member State" shall be understood as the second Member States in which the application for a new intra-corporate permit is lodged and "the second Member State" as the Member State in which short-term mobility right is intended to be exercised.¹³⁵

¹³² **AT, FR:** scrutiny reservations on the Article. **NL** could not support the proposed scheme since it involves additional administrative work. **DE** supported this model for all types of mobility. **EL** noted that a provision should be added that sets out deadlines and necessary communication between MS.

¹³³ **CZ:** delete "within any 6-month period".

¹³⁴ **CZ** stated that it should be possible for an ICT to submit an application only while already in the EU.

¹³⁵ **IT:** reservation. **EL:** scrutiny reservation. **FR** found this paragraph unnecessary.

4. The second Member State issuing or withdrawing a new intra-corporate transferee permit shall inform the first Member State about it, in case the intra-corporate transferee permit issued by the first Member State is still valid.¹³⁶

CHAPTER VI FINAL PROVISIONS

Article 17

*Statistics*¹³⁷

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 862/2007¹³⁸.

¹³⁶ **CZ** stated that MS should also inform one another when an application is rejected and wanted to know what happens if a MS does not decide within the period of validity of the first permit. **Pres** replied that a transitional permit as set out in Article 12.6 could be used in that case.

¹³⁷ **AT** reservation and **DE, EE, ES, PT, SI**: scrutiny reservations on Article 17. **DE** considered the collection of this data 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** would prefer 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** considered that it duplicate rules already existing in the context of the 862/2007 Statistics Regulation. **AT**: delete reference to the transferee position, the length of validity of the permit (**SI** has a scrutiny reservation on it) and (along with **SI**) the economic sector, or make their collection optional.

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.

¹³⁸ OJ L 199, 31.7.2007, p. 23.

3. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission within six months of the end of the reference year. The first reference year shall be [...].

Article 18

Reports

By [three years after the date of transposition of this Directive] at the latest and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive in the Member States including any necessary proposal.¹³⁹

Article 19

*Cooperation on information*¹⁴⁰

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

¹³⁹ **DE:** delete the wording “including any necessary proposal” as it is unclear. **Cion:** it is standard language and **Cion** has the right of initiative.

¹⁴⁰ **AT, DE:** scrutiny reservations on the Article in relation to Article 16. **ES:** scrutiny reservation related to the application of the Article in practice. **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. **LT** could support the Article in principle although administrative burden could be minimised even further.

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.¹⁴¹

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.¹⁴²

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*.

¹⁴¹ **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.
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.

¹⁴² **PT** has concerns about this provision.

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
