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

Counsellors will find attached a table that includes the amendments by the European Parliament as they result from the LIBE orientation vote held on 26 January 2012. The text in the Council's column is the one endorsed by COREPER on 30 May 2012 (doc. 10618/12).

At the meeting on 30 January Counsellors are asked to express their views on the amendments of the European Parliament for Articles 8-20, with the exception of Articles 16 and 16A, being guided by the comments and questions in the fourth column. These comments result from the first trilogue with the European Parliament on 13 November as well as subsequent technical meetings. The Presidency seeks the views of Member States on these issues in preparation for future negotiations with the European Parliament.

ANNEX

2010/0209 (COD) 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

COM(2010) 0378	**Parliament Position** (orientation vote 26.01.2012)	**Council Position** (COREPER 30 May 2012)	**Comment**
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		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 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,		Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national Parliaments,		After transmission of the draft legislative act to the national Parliaments,	
Having regard to the opinion of the European Economic and Social Committee ,		Having regard to the opinion of the European Economic and Social Committee[1],	
Having regard to the opinion of the Committee of the Regions ,		Having regard to the opinion of the Committee of the Regions[2],	

[1] OJ C , , p. .
[2] OJ C , , p. .

	AM 1		
	– Having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 15(3), 27, 28, 31 and 33 thereof,		
Acting in accordance with the ordinary legislative procedure,		Acting in accordance with the ordinary legislative procedure,	
Whereas:		Whereas:	
	AM 2		
(1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.	(1) 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 ***and will help to prevent illegal immigration and all forms of illegal employment of third-country nationals and their exploitation in the Union***.	(1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.	
(2) The Treaty provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member		(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.		States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence, and standards on the issue by Member States of long-stay visas and residence permits, as well as the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.	
	AM 39		
(3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth 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-	(3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth 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-	(3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth[3] sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-	

[3] COM(2010)2020.

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.	country managers, specialists or ***trainee employees*** to enter the Union in the framework of an intra-corporate transfer should be seen in this broader context.	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 Migration.		(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 Migration[4].	

[4] COM(2005) 669.

	AM 3		
(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.	(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 ***and specialists*** of branches and subsidiaries of multinationals temporarily relocated for short assignments to other units of the company, have gained momentum.	(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.	
	AM 4		
	(5a) Third-country nationals who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.		
	AM 5		
(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	(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	(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.	fostering investment flows across the Union. [...] 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.	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.	
	AM 6		
(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.	(7) The set of rules established by this Directive ***might*** also ***be*** beneficial to the migrants' countries of origin as this temporary migration ***could under well-established conditions foster*** transfers of skills, knowledge, technology and know-how.	(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.	
	AM 7 + AM 39		
(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	(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	(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	*joint LIBE-EMPL competence*

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.	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. ***In particular, as regards access to the labour market for young third-country trainee employees employed by the host entity or by host entities of a Member State, the number of such trainees should not be greater than that of trainee employees who are nationals of the Member States. In the process, there should be mandatory compliance benefitting both citizens of the Union and third-country nationals, with national minimum pay levels and the minimum standards of the State of employment (place-of-employment principle). While the principle of Union preference should be***	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.	

	safeguarded, it may not be used to deviate from the principle of equal pay for equal work, as regards Union and third-country workers. This Directive should be applied in full respect of the principle of freedom of movement for workers within the Union, eradicating any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment.		
	AM 8		
	(8a) This Directive should set conditions and rights for third-country workers in the framework of an intra-corporate transfer in full respect of the relevant conventions of the International Labour Organisation (ILO).		
		(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.	
	AM 9		
(9) This Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria.	(9) This Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria ***and ensures legal certainty, legality and fair and equal treatment of third-country workers***.	(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.**	
		(9a) This Directive and the permits that are issued on its basis should not affect or prevent the application of Member States' labour law provisions having - in accordance with Union law - as their objective the control of compliance with the working conditions as set out in Article 14(1).	

		(9b) **The possibility for a Member State to impose, on the basis of national law (in conformity with Union law), sanctions against an ICT's employer established in a third country in the case of non-compliance with the terms and conditions of employment within the meaning of Article 14(1) of this Directive should remain unaffected.**	
	AM 10 + AM 39		
(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 Services (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and	(10) For the purpose of this Directive, intra-corporate transferees encompass managers, specialists and ***trainee employees*** with a higher education qualification ***and higher professional qualifications***. ***Intra-corporate transferees are to be employed in highly-qualified employment***. Their definition ***is linked to the European Qualifications Framework, which sets out a European reference framework to assess qualifications in a comparable and transparent manner while being***	(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 Services (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and	*joint LIBE-EMPL competence*

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.	***compatible with*** the General Agreement on Trade in Services (GATS) and bilateral trade agreements.	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 criterion 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.**	
	AM 11		
	(10a) ***To assess the qualification of intra-corporate transferees, Member States should make use of their national coordination points set up pursuant to the European Qualifications Framework which establishes a European reference framework for the***		

	assessment of qualifications in a comparable and transparent manner.		
		(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) 2011 level 6.	
	AM 12		
(11) Intra-corporate transferees should benefit from the same working conditions as posted workers whose employer is established on the territory of the European Union, as defined by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services . That requirement is intended to protect workers and guarantee fair competition between undertakings	(11) Intra-corporate transferees should benefit from the same working conditions as ***local*** workers***. Intra-corporate transferees should be given equal treatment at the same workplace with nationals of the host Member State or the permanent staff in all terms and conditions of employment.*** That requirement is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in	(11) Intra-corporate transferees should benefit from the same working conditions as posted workers whose employer is established on the territory of the European Union, as defined by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services[5]. That requirement is intended to protect workers and guarantee fair competition between undertakings	*exclusive EMPL competence*

[5] OJ L 18, 21.1.1997, p. 1.

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.	a third country, ***and in particular to avoid social dumping***. ***Particular attention should be paid to consistency with relevant Union legislation***.	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.	
	AM 13		
	(11a) Member States should ensure that appropriate checks and effective inspections are carried out in order to guarantee the proper enforcement of this Directive. To that end, it is necessary for Member States to grant their competent authorities sufficient powers and resources. The results of such inspections should be collated in a report and should be used to improve enforcement of this Directive.	*(cf Council Recital 9a)*	
	AM 14		
	(11b) The term "working conditions" in this Directive is to be understood as including pay and dismissal, health and safety at the workplace, working time and leave, family and professional life, taking into		

	account any collective agreements in force.		
	AM 15		
(12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, Member States may require the transferee to have been employed within the same group of undertakings for at least 12 months prior to the transfer.	(12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, Member States ***should*** require the transferee to have been employed within the same group of undertakings for at least ***nine uninterrupted*** months ***for managers and specialists and for at least three uninterrupted months for trainee employees,*** prior to the transfer.	(12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, **[...]** the transferee **should have been** employed within the same group of undertakings **from at least 6 months up to** 12 months prior to the transfer **in the case of managers and specialists and from at least 3 months up to 12 months in the case of graduate trainees**.	
		(12a) As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the European Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for graduate trainees after which they should return to a third country unless they obtain a residence permit on another basis in accordance with national or	

		Union legislation. The duration of the intra-corporate transferee permits reflects the duration of the transfer irrespective of the periods of absence of the holder from the territory of the Member States. A subsequent transfer to the European Union might take place after the return of the third-country national to a third country.	
		(12b) In order to ensure the temporary character of an intra-corporate transfer and prevent the perpetual transfer of third-country nationals Member States should be able to require a certain period of time to pass between the end of one transfer and another application concerning the same third-country national for the purposes of this Directive.	

	AM 16		
(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.	(13) As intra-corporate transfers ***are linked to a limited residence and work permit in a particular Member State***, the applicant should provide evidence that the third-country national will transfer back to an entity belonging to the same group and established in a third country at the end of the assignment***, in accordance with that person's contract with the group***. That evidence ***must*** consist of the relevant provisions under the work contract. An assignment letter ***must*** be produced providing evidence that the third-country national manager or specialist possesses the ***higher education qualification***, ***higher*** professional qualifications ***and the professional experience*** needed in the Member State to which they have been admitted to occupy the post or the regulated profession.	(13) As intra-corporate transfers consist of temporary secondment, the applicant should provide evidence that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. That evidence may consist of the relevant provisions under the work contract. An assignment letter should be produced providing evidence that the third-country national manager or specialist possesses the professional qualifications needed in the Member State to which they have been admitted to occupy the post or the regulated profession.	*second and third sentences: joint LIBE-EMPL competence*

	AM 17 + AM 39		
(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.	(14) Third-country nationals who apply to be admitted as ***trainee employees*** should provide evidence of the higher education qualifications required, namely of ***a*** diploma, certificate or ***[...]*** 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 ***trainee employees*** will be supervised, proving that they will benefit from genuine training and not be used as normal workers.	(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 **[...] bachelor's degree or equivalent tertiary education.** In addition, they **[...] should, if required**, present a training agreement, including a description of the training programme, its duration and the conditions in which the **graduate** trainees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.	
		(14a) Graduate trainee, as referred to in this Directive, is an employee in training for career development purposes or in order to obtain training in business techniques or methods. This directive does, therefore,	

		not cover third-country nationals who are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies.	
	AM 18		
(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.	(15) Unless this condition conflicts with the principle of Union preference ***[...]***, no labour market test should be required ***[...]***.	**deleted**	*joint LIBE-EMPL competence*
		(15) Member States should be able to 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.	

(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.		(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.	
	AM 19		
(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 and not to grant residence permits for employment in general or for certain professions, economic sectors or regions.	(17) ***Pursuant to Article 79(5) TFEU,*** this Directive ***is*** 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 and not to grant residence permits for employment in general or for certain professions, economic sectors or regions.	(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**.	
	cf AM 22 on Recital 20a	**(17a) Member States should have the opportunity to avoid and oppose the abuse of this Directive by refusing, withdrawing or non-renewing a residence permit when the host entity was established for the sole purpose of facilitating the**	

		entry of intra-corporate transferees. A group of undertakings within which a third-country national may be temporarily transferred should have a genuine activity and should not serve only the purpose of transferring workers.	
		(17b) Where intra-corporate transferees have exercised their right to short-term mobility, the second Member State should under the requirements of Article 16(4) be in a position to take steps against the intra-corporate transferee's activities if it turns out that the permit is used for purposes other than that for which it was issued. This should for instance be possible if it is proven that the intra-corporate transferee is not a manager, specialist or graduate trainee or that the host entity was only set up to make the transfer possible.	

	AM 20		
(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.	(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 ***or of the falsification of evidence or documents***. The penalties could be imposed on the host entity.	(18) Member States should provide for **[...] effective, proportionate and dissuasive sanctions**, such as financial penalties, to be imposed in the event of failure to comply with the conditions laid down in this Directive. The **[...] sanctions** could be imposed on the host entity.	
(19) Provision for a single procedure leading to one combined title, encompassing both residence and work permit, should contribute to simplifying the rules currently applicable in Member States.		(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.	
	AM 21		
(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	(20) A fast-track procedure may be set up for groups of undertakings which have been recognised for that purpose ***in accordance with Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-***	(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.	***scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (recast)***[1]. Recognition ***shall*** 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	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.	

	financial sanctions, the possibility of withdrawing recognition, and rejections of future applications for permit should be provided for. --- [1] ***OJ L 122, 16.5.2009, p. 28.***		
	AM 22 ***(20a) A group of undertakings within which a third-country national may be temporarily transferred should have a genuine activity and should not serve only for the purpose of transferring workers.***	*(cf Council Recital 17a)*	
	AM 23		
(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.	(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***, provided that this***	(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.	

	***Member State does not reject the application on grounds that the employer or the host entity has been sanctioned in conformity with national law for undeclared work, illegal employment and/or non-observance of obligations of an employer by the national labour and social regulations, or on grounds of volumes of admission of third-country nationals*.**		
		(21a) This Directive should be applied without prejudice to the relevant Schengen acquis instruments, such as the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (the Schengen Convention), Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006	

		establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and, when necessary, the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Member States outside the Schengen area are entitled to perform the necessary checks at their borders and deny intra-corporate transferees the entry should there be a reason to do so.	
		(21b) The provisions of this Directive should not prevent Member States from issuing an additional paper document in order to be able to give more precise information on the employment activity during the intra-corporate transfer, such as the name and address of the host entity, place of work, name	

		and address of the client, type of work, working hours, remuneration for which the format of the residence permit leaves insufficient space. Such documents should not prevent intra-corporate transferees from exercising specific employment activities at the sites of clients within the same Member State as the host entity but can serve to prevent the exploitation of third-country nationals and combat illegal employment. The issuance of such documents should be optional for Member States and should not serve as a substitute for a work permit thereby compromising the concept of the single application procedure. Technical possibilities offered by Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto can also be used to store such information in an electronic	

		format.	
	AM 24		
(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.	***deleted***	(22) This Directive should not affect conditions for the provision of services in the framework of Article 56 of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. Third-country nationals holding an intra-corporate transferee permit cannot avail themselves of the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.	*EMPL competence for exclusions linked to labour market and social security, LIBE competence for exclusions linked to admission and civil rights*

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.		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.	
	AM 25		
	(22a) Member States may require the employers of intra-corporate transferees to pay for the cost of travel from their place of origin to their place of work in the Member State concerned and the return journey; the visa fee and, if applicable, any service fees related to the visa and the cost of sickness insurance referred to in this Directive.		
		(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 90 days in any 180-day 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 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) subject to restrictions set out notably in Article 25 of this Convention.	

	AM 26		
(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. 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	(23) ***Adequate social security coverage for intra-corporate transferees and their family members is a key element of this Directive and is important for ensuring decent working and living conditions while staying in the Union.*** Equal treatment should be granted ***to intra-corporate transferees. Particular attention should be paid to ensuring equal treatment as regards social security*** under national law in respect of those branches of social security defined in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. ***Without*** prejudice to bilateral agreements ***providing better*** social security ***coverage, this Directive should establish mechanisms which ensure the effective coverage under social security during the***	(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[6]. **The Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling under its personal scope. The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective and non-discriminatory conditions laid down by the legislation of the host Member State with regard to affiliation and entitlement to social security benefits. In many Member States the right to**	*EMPL exclusive competence*

[6] OJ L 166, 30.4.2004, p. 1.

the field of social security for third-country nationals who have cross-border interests between Member States.	***stay and the mechanisms for exporting acquired rights where applicable.*** ***Any restrictions to the equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred in application of Regulation (EU) No1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 on nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality[1]*** ***[1] OJ L 344, 29.12.2010, p.1.***	**family benefits is conditional upon a certain attachment to that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive does not affect the right of Member States to restrict equal treatment in respect of family benefits as the intra-corporate transferee and the accompanying family are staying temporarily in a Member State.** 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 provisions in national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin. This Directive does not grant rights in relation to situations which lie outside the scope of EU legislation such as, for example, to family members residing in a third country. This should not, however, affect the right of survivors who derive rights from the intra-corporate transferee to receive survivor's pensions when residing in a third country.**	

	AM 27		
	(23a Within the principle of equal treatment as regards social security provisions, cases of double coverage of intra-corporate transferees should be avoided and Member States should ensure that this occurs in compliance with the relevant Union law.		*EMPL exclusive competence*
	AM 28		
(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	(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	(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.	transferee in another Member State under the conditions determined by the national law of such Member State***, and their access to the labour market should be facilitated***.	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		(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 research.		2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research[7].	
(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.		(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.	

7 OJ L 289, 3.11.2005, p. 15.

	AM 29		
(27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.	(27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union***, the European Social Charter adopted by the Council of Europe on 18 October 1961 and revised on 3 May 1996, and the relevant ILO Conventions, such as Convention 102 on Social Security (Minimum Standards), Convention 118 on Equality of treatment (Social Security), Convention 143 on Migrant Workers and Convention 97 on Migration for Employment of the International Labour Organisation***.	(27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.	
		(27a) [In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their	

		transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.]	
(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.]		(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		(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,		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:		HAVE ADOPTED THIS DIRECTIVE:	
CHAPTER I		CHAPTER I	
GENERAL PROVISIONS		GENERAL PROVISIONS	
Article 1 *Subject-matter*		*Article 1* *Subject-matter*	
This Directive determines:		This Directive determines:	
(a) the conditions of entry to and residence for more than three months in the territory of the Member States of third-country nationals and of their family members in the framework of an intra-corporate transfer;		(a) the conditions of entry to and residence for more than **[...] 90 days** in the territory of the Member States, **and the rights**, of third-country nationals and of their family members in the framework of an intra-corporate transfer;	*EP can agree to the Council text.*
	AM 30		
(b) the conditions of entry to and residence for more than three months 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.	(b) the conditions of entry to and residence for more than three months of third-country ***national workers***, referred to in point (a), in Member States other than the Member State which first grants the third-country national ***worker*** a residence permit on the basis	(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.	*For further discussion with EP.*

	of this Directive.		
Article 2 *Scope*		*Article 2* *Scope*	
1. This Directive shall apply to third-country nationals who reside outside the territory of a Member State and apply to be admitted to the territory of a Member State in the framework of an intra-corporate transfer.		1. This Directive shall apply to third-country nationals who reside outside the territory of a Member State and apply to be admitted **or who have been admitted** to the territory of a Member State**, under the terms of this Directive,** in the framework of an intra-corporate transfer.	*EP can agree to the Council text subject to the following change: "... who reside outside the territory <u>of the Member States</u>... ".*
2. This Directive shall not apply to:		2. This Directive shall not apply to **third-country nationals**:	*EP can agree to the Council text.*
(a) third-country nationals who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;		(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;	*EP can agree to the Council text.*
(b) third-country nationals who, under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of citizens of the Union or are employed by an undertaking established		(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	*EP can agree to the Council text.*

in those third countries;		in those third countries;	
	AM 31		
(c) third-country nationals carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC.	***deleted***	(c) **[...] who are posted in the framework of** Directive 96/71/EC;	*EMPL competence for exclusions linked to labour market and social security, LIBE competence for exclusions linked to admission and civil rights* *EP is against linking the ICT Directive to Directive 96/71/EC. EP finds that the latter should be reviewed as it has been interpreted to provide for minimum rules of protection only. In light of the Laval case, MS would not be able to require working conditions going beyond the minimum protection provided in Directive 96/71/EC. However, EP is not against excluding EU posted workers from the scope of the ICT Directive and is considering the Council text for this provision.*
	AM 32		
	(ca) third-country nationals carrying out activities as self-employed workers;		*Could Council accept the EP amendment to explicitly exclude self-employed workers from the scope of the Directive?*
	AM 33		
	(cb third-country nationals working for and being assigned by employment agencies,	**(d) being assigned by temporary work agencies or any other undertakings engaged**	*EP excludes also those* <u>*working for*</u> *employment agencies, etc.*

	temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking except regularly employed members of the management.	**in making available labour to work under the supervision and direction of another undertaking.**	*Presidency suggests to insist on the Council text.*
		3. This Directive shall be without prejudice to the right of Member States to issue residence permits other than the intra-corporate transferee permit regulated by this Directive for any purpose of employment for third-country nationals who fall outside the scope of the Directive or do not apply for admission under this Directive or do not meet the criteria set out in this Directive.	*EP could not support Council's amendment as it goes against harmonisation at EU level.* *By way of a compromise, Presidency suggests the deletion of the end of the paragraph "... or do not apply for admission under this Directive or do not meet the criteria set out in this Directive".*
Article 3 *Definitions*		*Article 3* *Definitions*	
For the purposes of this Directive, the following definitions shall apply:		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;		(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;	
	AM 34		
(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, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;	(b) 'intra-corporate transfer' means the temporary secondment ***for occupational or training purposes*** of a third-country national ***who is not resident within the territory of the Member States*** from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract, to an entity belonging to the undertaking or to the same group of undertakings which is established ***in that Member State***;	(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;	*joint LIBE-EMPL competence* *EP's aim is to avoid abuse by referring to those not being residents within a MS. EP has proposed to clarify the wording in the following manner:* 'intra-corporate transfer' means the temporary secondment ***for occupational or training purposes*** of a third-country national ***<u>who resides outside the territory of the Member States at the time of application</u>*** from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract, to an entity belonging to the undertaking or to the same group of undertakings which is established ***in that Member State***; *EP asked whether "during the*

			transfer" in the Council's text could be deleted as there should be a work contract prior to the transfer as well.
	AM 35		
(c) 'intra-corporate transferee' means any third-country national subject to an intra-corporate transfer;	(c) 'intra-corporate transferee' means any third-country national ***worker who is not resident within the territory of the Member States and who is*** subject to an intra-corporate transfer;	(c) 'intra-corporate transferee' means any third-country national subject to an intra-corporate transfer;	*joint LIBE-EMPL competence* *EP has proposed to clarify the wording in the following manner:* (c) 'intra-corporate transferee' means any third-country national ***who resides outside the territory of the Member States at the time of application and who is*** subject to an intra-corporate transfer;
	AM 36		
(d) 'host entity' means the entity, regardless of its legal form, established in the territory of a Member State to which the third-country national is transferred;	(d) 'host entity' means the entity ***to which the third-country national is transferred****,* regardless of its legal form, established in the territory of a Member State, ***and which has a genuine activity, justified by appropriate human or financial resources;***	(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;	*Presidency suggests that Council accepts the first part of EP's amendment. However, Presidency recommends not to accept the last part of the amendment as the concept of genuine activity is better placed among the admission criteria. Furthermore, adding a reference to genuine activity in the definition renders it vague and open to different interpretations in different MS.*

	AM 37		
(e) 'manager' means any person working in a senior position, who principally directs the management of the host entity, receiving general supervision or direction principally from the board of directors or stockholders of the business or equivalent; this position includes: directing the host entity or a department or sub-division of the host entity, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and dismiss or recommend hiring, dismissing or other personnel actions;	(e) 'manager' means any person ***holding, in the hierarchy of the undertaking,*** a senior position, who ***primarily*** directs the management of the host entity ***or the establishment***, receiving general supervision or ***guidance*** 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 work of other supervisory, professional or managerial employees ***or being responsible for a project of significant size and, in that capacity, having appropriate human or financial resources at his or her disposal***;	(e) 'manager' means **[...] a** person working in a senior position, who principally directs the management of the host entity, receiving general supervision or direction principally from the board of directors or stockholders of the business or equivalent; this position includes: directing the host entity or a department or sub-division of the host entity, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and dismiss or recommend hiring, dismissing or other personnel actions;	*joint LIBE-EMPL competence* *Presidency seeks the views of MS on including project managers in the scope of the Directive.*
	AM 38		
(f) 'specialist' means any person possessing uncommon knowledge essential and specific to the host entity, taking account not only of knowledge specific to the	(f) 'specialist' means any person ***who is transferred for highly qualified employment,*** possessing ***specific*** knowledge ***and technical, professional or scientific***	(f) 'specialist' means **[...] a** person possessing uncommon knowledge essential and specific to the host **entity's areas of activity, techniques or management,** taking **also**	*joint LIBE-EMPL competence* *Presidency would like to know whether there are any elements in the EP amendment that could be acceptable to Council.*

host entity, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge;	***skills*** essential to the host entity, ***having higher professional qualifications or adequate professional experience, including, where relevant, membership of an accredited profession***;	account of **[...]** whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, **including membership of an accredited profession**;	
	AM 39		
(g) 'graduate trainee' means any person with a higher education qualification who is transferred to broaden his/her knowledge of and experience in a company in preparation for a managerial position within the company;	(g) 'trainee ***employee***' means any person with a higher education qualification***, who is bound to the company by a contract for at least one year and*** transferred ***to a host entity*** to broaden his/her knowledge in preparation for a managerial position ***and to carry out paid work*** within ***that*** company; *(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*	(g) 'graduate trainee means **[...] a** person with a higher education qualification who is transferred **[...] for career development purposes or in order to obtain training in business techniques or methods**. **This definition does not cover third-country nationals who are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies;**	*joint LIBE-EMPL competence* *Presidency believes that the EP text complicates Article 10A and recommends to keep the Council text.* *EP asked whether full-time students and interns could not be excluded from the scope of the Directive instead as such a reference seems inappropriate in a definition.*

	AM 40		
	(ga) 'highly qualified employment' means the employment of a person who: ***(i) in the Member State concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else,*** ***(ii) is paid, and,*** ***(iii) has the required adequate and specific competence, as proven by higher professional qualifications;***		*Related to the definition of a specialist*

	AM 41		
	(gb) 'higher professional qualifications' means qualifications attested by evidence of higher education qualifications or, by way of derogation, when provided for by national law, attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;		*Related to the definition of a specialist*
	AM 42		
	(gc) 'professional experience' means the actual and lawful pursuit of the profession concerned;		*Related to the definition of a specialist*
(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		(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 **[...] bachelor's degree or equivalent tertiary** education **[...]**, namely a set of courses provided by an	*EP will consider Council text.*

educational establishment recognised as a higher education institution by the State in which it is situated;		educational establishment recognised as a higher education institution by the State in which it is situated;	
(i) 'family members' means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC;		(i) 'family members' means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC[8];	
(j) 'intra-corporate transferee permit' means any authorisation bearing the words 'intra-corporate transferee' entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;		(j) 'intra-corporate transferee permit' means any authorisation bearing the words 'intra-corporate transferee' entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;	
	AM 43		
(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 the application;	(k) 'single application procedure' means the procedure leading, on the basis of one application ***made by a third-country national, or by the host entity,*** for the authorisation of residence and work in the territory of a Member State, to a decision ***ruling*** on ***that*** application ***for an intra- corporate***	(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;	*Presidency suggests that Council accepts the EP amendment which is based on Article 2(d) of the Single Permit Directive.*

[8] OJ L 251, 3.10.2003, p. 12.

	transferee permit;		
	AM 44		
(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;	(l) 'group of undertakings' for the purposes of this Directive means two or more undertakings recognised as linked [...] under national law ***where*** an undertaking, in relation to another undertaking, ***holds a further 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; can appoint more than half of the members of that undertaking's administrative, management or supervisory body; ***or, in case of undertakings controlled jointly by two or more undertakings, where the control is given by contracts which assign the possibility to exercise a decisive influence on the activities of a controlled undertaking***;	(l) 'group of undertakings' for the purposes of this Directive means two or more undertakings recognised as linked in the following ways under national law: an undertaking, in relation to another undertaking directly or indirectly: holds a majority of that undertaking's subscribed capital; or controls a majority of the votes attached to that undertaking's issued share capital; or can appoint more than half of the members of that undertaking's administrative, management or supervisory body; **or both undertakings are managed on a unified basis by the parent undertaking;**	*Presidency is awaiting further clarification (with practical examples) from EP on their amendment.*

(m) ‘first Member State’ means the Member State which first grants a third-country national a residence permit on the basis of this Directive;		(m) ‘first Member State’ means the host Member State which first grants a third-country national an intra-corporate transferee permit on the basis of this Directive;	
		(n) ‘second Member State’ means any host Member State in which the intra-corporate transferee intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;	*Related to the mobility scheme.*
	AM 45		
(n) ‘universally applicable collective agreement’ means a collective agreement which must be observed by all undertakings in the geographical area and in the profession or industry concerned. In the absence of a system for declaring collective agreements of universal application, Member States may base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the	***deleted***	***deleted***	*EMPL exclusive competence*

profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers and labour organisations at national level and which are applied throughout national territory.			
		(o) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.	*EP can agree to the Council text.*
Article 4 *More favourable provisions*		*Article 4* *More favourable provisions*	
1. This Directive shall apply without prejudice to more favourable provisions of:		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;		(a) Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other;	
(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.		(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.	

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15.		2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15.	*joint LIBE-EMPL competence*
CHAPTER II CONDITIONS OF ADMISSION		CHAPTER II CONDITIONS OF ADMISSION	
Article 5 *Criteria for admission*		*Article 5* *Criteria for admission*	
	AM 46		
1. Without prejudice to Article 10, a third-country national who applies to be admitted under the terms of this Directive shall:	1. ***[...]*** A third-country national who applies to be admitted under the terms of this Directive ***may be granted admission, if he or she and/or his or her employer fulfils the following conditions***:	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:	*EP will revert with further clarification.*
	AM 47		
(a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;	(a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings ***and have a genuine activity***;	(a) Provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;	*Council has included the idea of genuine activity in Article 6(1)(c) as a ground for rejection thus putting the burden of proof on the authorities. EP's aim was to put the burden of proof on enterprises. Presidency is of the view that this might be difficult to apply in practice but seeks the views of MS on this issue.*

	AM 48		
(b) provide evidence of employment within the same group of undertakings, for at least 12 months immediately preceding the date of the intra-corporate transfer, if required by national legislation, and that he or she will be able to transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment;	(b) provide evidence of ***a*** employment ***contract*** within the same group of undertakings for at least ***nine uninterrupted*** months ***for managers and specialists and for at least three uninterrupted months for trainee employees*** immediately preceding the date of the intra-corporate transfer ***[...]*** and that he or she will transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment;	*In Article 5(6) and Article 5(1)(b)(v)*	*EP strongly insists on the requirement for a previous work experience of at least 9 and 3 uninterrupted months respectively. Presidency seeks the views of MS on the matter.*
(c) present an assignment letter from the employer including:		(b) present an assignment letter from the employer **and/or a work contract, from the employer** including:	*EP regards a work contract as something which was already concluded before the transfer and not specifically for the transfer.*
		(i) evidence of employment with the undertaking established in a	*Presidency asks whether MS can give examples of the kind of evidence that could be presented. In EP's view the work contract in itself is sufficient proof of previous*

		third country;	*employment.*
(i) the duration of the transfer and the location of the host entity or entities of the Member State concerned;		(ii) the duration of the transfer and the location of the host entity **[...]**;	
	AM 39		
(ii) evidence that he or she is taking a position as a manager, specialist or graduate trainee in the host entity or entities in the Member State concerned;	(ii) evidence that he or she is taking a position as a manager, specialist or ***trainee employee*** in the host entity or entities in the Member State concerned;	(iii) evidence that **[...] the third-country national** is taking a position as a manager, specialist or graduate trainee in the host entity or entities in the Member State concerned;	*Presidency suggests the deletion of "or entities" in line with the previous point ii).*
	AM 49		
(iii) the remuneration granted during the transfer;	(iii) the remuneration ***and all other terms and conditions of employment, including benefits, as laid down by collective agreements, and*** granted during	(iv) the remuneration **[...] as well as other terms and conditions of employment**;	*Council is of the opinion that workers posted from third-countries should be treated in the same manner as workers posted within the EU. EP, on the other hand, is opposed to linking the ICT Directive and Directive 96/71/EC.* *EP: Why did Council delete "granted during the transfer"?*

	the transfer, ***which shall correspond to those attributed for equivalent activities in the host Member State;***		
	cf AM 48 on Article 5(1)(b) and AM 54 on Article 5(1)(ha)	**(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.	*Presidency recommends to keep the Council text.*
	AM 50 + AM 39		
(d) provide evidence that he or she has the professional qualifications needed in the Member State to which he or she has been admitted for the position of manager or specialist or, for graduate trainees, the higher education	(d) provide evidence that he or she has the professional qualifications ***and experience*** needed in the Member State to which he or she has been admitted for the position of manager or specialist or, for ***trainee employees***, the higher	(c) provide evidence that the third-country national has the professional qualifications needed in the **[...] host entity** to which he or she **[...] is to be transferred as** manager or specialist or, **in the case of a** graduate trainee, the	*joint LIBE-EMPL competence* *Presidency recommends to keep the Council text.*

qualifications required;	education qualifications required;	higher education qualifications required;	
	AM 51		
(e) present documentation certifying that he or she fulfils the conditions laid down under national legislation for citizens of the Union to exercise the regulated profession which the transferee will work in;	(e) present documentation certifying that he or she fulfils the conditions laid down under national legislation for citizens of the Union to exercise the regulated profession which the transferee will work in***, and as set out in the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications[1];***	(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 **[...] intra-corporate transferee is applying to** work in;	*Council and EP agree in principle. Council has included a definition of a regulated profession.* *Presidency recommends to keep the Council text.*
(f) present a valid travel document, as determined by national law, and an application for a visa or a visa, if required;		(e) present a valid travel document **of the third-country national**, as determined by national law, and an application for a visa or a visa, if required; **Member States may require the period of validity of the travel document to cover at least the initial duration of the residence permit;**	*Presidency suggests to improve the text in the following manner: "... the initial duration of the <u>ICT permit</u>"*

	AM 52		
(g) without prejudice to existing bilateral agreements, present evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work contract;	(g) without prejudice to existing bilateral agreements ***and notwithstanding the provisions of Article 14(2)(e) in regard to sickness benefits***, present evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work contract;	(f) without prejudice to existing bilateral agreements, present evidence **[...] that the third-country national has or is entitled to have by virtue of the application of national law**, a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work **[...] carried out in the Member State concerned;**	*Presidency recommends to keep the Council text.*
	AM 53		
(h) be considered not to pose a threat to public policy, public security or public health.	(h) be considered not to pose a threat to public policy, public security, public health ***or other valid interests of the host Member States, if provided for in national law***.		*Presidency recommends to keep the Council text.*
	AM 54		
	(ha) provide a declaration undertaking to leave the Union at the end of the intra-corporate transfer.	*Cf Article 5(1)(b)(v)*	*Presidency recommends to keep the Council text.*

		1a. Member States may require the applicant to present the documents listed in paragraphs 1 (a)-(d) and (f) in the language of the Member State concerned.	*Presidency recommends to keep the Council text.*
		1b. Member States may require the applicant to provide the address of the third-country national concerned in the territory of the Member State.	*EP expressed doubts regarding this provision as the person concerned is unlikely to know his/her address beforehand. Presidency requests clarification on the practicalities of this requirement.*
	AM 55		
2. Member States shall require that all conditions in the law, regulations or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met with regard to the remuneration granted during the transfer.	2. Member States shall require that all ***terms and*** conditions in the law, regulations or administrative provisions and ***[...]*** applicable collective agreements applicable ***[...]*** in the relevant occupational branches are met ***[...]*** during the transfer.	2. Member States shall require that **[...] the terms and conditions of employment set out in Article 5 (1)(b)(iv) which will be granted to the third-country national during the transfer are in line with the provisions of Article 3 of Directive 96/71/EC.**	*joint LIBE-EMPL competence* *Council is of the opinion that workers posted from third-countries should be treated in the same manner as workers posted within the EU. EP, on the other hand, is opposed to linking the ICT Directive and Directive 96/71/EC.*
	AM 56		
	Member States may require that the remuneration granted during the transfer and other terms and conditions of employment are not worse than for comparable employees of the Member States.	**2a. Member States may require that the remuneration which will be granted to the third-country national during the transfer is not less favourable than the remuneration granted for**	*EP correction: it should be a <u>shall-clause.</u>* *The same comments apply as for the previous provision.*

		employees in the host Member State concerned occupying comparable positions.	
		2b. Member States may require that the intra-corporate transferee will have sufficient resources during his/her stay to maintain him/herself and his/her family members without having recourse to social benefits including the social assistance system of the Member State concerned.	*Presidency requests clarification of the meaning of "social benefits including the social assistance system".*
	AM 57		
In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.	***deleted***	***deleted***	*Council and EP agree.*

	AM 39		
3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as a graduate trainee shall present a training agreement, including a description of the training programme, its duration and the conditions under which the applicant is supervised during the programme.	3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as a ***trainee employee*** shall present a training agreement, including a description of the training programme, its duration and the conditions under which the applicant is supervised during the programme.	3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as **[...] an employee in training may be required to** present a training agreement, **related to the preparation for his/her future position within the group of undertakings,** including a description of the training programme, **which demonstrates that the purpose of stay is to train the employee for career development purposes in order to obtain training in business techniques or methods,** its duration and the conditions under which the applicant is supervised during the programme.	*Presidency recommends to keep the Council text. However, the text should be improved by replacing "an employee in training" with "a graduate trainee" and by inserting "or" in "career development purposes or in order to obtain..." to align the text with the definition of a graduate trainee.*
4. Where the transfer concerns host entities located in several Member States, any third-country national who applies to be admitted under the terms of this Directive shall present evidence of the notification required pursuant to Article 16(1)(b).		***deleted***	*mobility-related provision*

	AM 58		
5. Any modification that affects the conditions for admission set out in this Article shall be notified to the competent authorities of the Member State concerned.	5. Any modification ***during the stay*** that affects the conditions for admission set out in this Article shall be notified to the competent authorities of the Member State concerned ***and shall be in compliance with Article 5 (1) to (4) and Article 14.***	4. Any modification that affects the conditions for admission set out in this Article shall be notified **by the host entity** to the competent authorities of the Member State concerned.	*Presidency asks MS to consider the EP amendment.*
	cf AM 53 on Article 5(1)(h)	**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.**	*Presidency recommends to keep the Council text.*
	cf AM 48 on Article 5(1)(b)	**6. Member States shall require the third-country national to** provide evidence of employment within the same group of undertakings, from at least **6 months up to** 12 months immediately preceding the date of the intra-corporate transfer **[...] in the case of managers and specialists, and from at least 3 up to 12 months in the case of graduate trainees.**	*Cf comments regarding AM 48.*

		7. Member States may, if provided for by national law, require the host entity to provide a statement of financial responsibility to ensure that:	*Presidency seeks clarification on what constitutes the statement of financial responsibility?* *EP regards this requirement as an additional burden and considers it unnecessary in view of all the other admission conditions set out in this Article.*
		(a) The intra-corporate transferee will be guaranteed the required level of remuneration and rights as specified under Article 14, in particular that she/he and his/her family members will not have recourse to the social assistance system of the Member States concerned;	*Presidency seeks clarification on how the host entity would prove this in practice.*
		(b) All expenses that could be related to the return of the intra-corporate transferee in case of illegal stay are covered. The financial responsibility of the host entity shall end at the latest 12 months after the	

		termination of the assignment in the Member State concerned.	
		Article 5A **Volumes of admission**	
	cf AM 60 on Article 6(3)	**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.**	*Presidency recommends to keep the Council text but suggests that it could be improved by aligning the wording with Article 5a of the Seasonal Workers Directive which reads as follows*: "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 for the purpose of seasonal work. On this basis and for the purposes of this Directive, an application for authorisation for the purpose of seasonal work may be considered inadmissible."
		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.	*Presidency, however, seeks clarification on whether it is feasible to keep this both as a ground for inadmissibility and as a ground for rejection.*

Article 6 *Grounds for refusal*		*Article 6* *Grounds for refusal*	
1. Member States shall reject an application where the conditions set out in Article 5 are not met or where the documents presented have been fraudulently acquired, falsified or tampered with.		1. Member States shall reject an application **[...] in the following cases:**	
		(a) where the **[...] criteria** set out in Article 5 are not met;	
		or	
		(b) where the documents presented have been fraudulently acquired, falsified or tampered with;	
		or	
	cf AM 47 on Article 5(1)(a)	**(c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees;**	*EP proposes to check genuine activity at the admission level placing the burden of proof on the host entity. Presidency seeks the views of MS on which approach they prefer.*
		or	
		(d) where the maximum duration of stay as defined in Article 10A has been reached.	*To be considered in the context of discussions on Article 10A.*

	AM 59		
2. Member States shall reject an application if the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment.	2. Member States shall reject an application if the employer or the host entity has been sanctioned in conformity with national law for undeclared work**,** illegal employment ***and/or non observance of obligations laid down in the national labour or social law or collective agreements***.	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 and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place;**	*EP considers this as a serious ground that should give rise to rejection.* *Presidency suggests that this should not be an automatic ground for rejection but rather something that should be considered on a case by case basis.*
		or	
		(b) **the terms and conditions of employment according to applicable laws, collective agreements or practices in the Member State where the host entity is established are not met;**	*Presidency seeks clarification on how this provision relates to Article 5(2) which is a shall-clause and where reference is made to Art 3 of Directive 96/71/EC through Article 14(1).*

		or	
		(c) the intent or effect of temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation;	*Presidency seeks clarification of the meaning of this provision.*
		(d) the host entity within the 12 months immediately preceding the date of the application, has eliminated, by means of a null or unfair dismissal, the positions he/she is trying to fill through the new application.	*Presidency seeks clarification on how this would work in practice.*
	AM 60		
3. Member States may reject an application on the grounds of volumes of admission of third-country nationals.	3. ***This Directive shall not affect the right of*** Member States ***to set limits on the number of intra-corporate transferees in general and or for certain professions, economic sectors or regions. Member States may use such limits to entirely rule out the***	(3) Member States may reject an application **for admission to a Member State for the purposes of this Directive** on the ground **[...] set out in Article 5A(1) or Article 10A(2).**	*Presidency recommends to keep the Council text but seeks the views of MS on the EP amendment.*

	possibility of admitting third-country nationals ***as intra-corporate transferees***. ***When appropriate alternatives for trainee employees can be found nationally, they have preference.***		
4. Where the transfer concerns host entities located in several Member States, the Member State where the application is lodged shall limit the geographical scope of validity of the permit to the Member States where the conditions set out in Article 5 are met.		**deleted**	*Mobility-related provision*
Article 7 *Withdrawal or non-renewal of the permit*		*Article 7* *Withdrawal or non-renewal of the permit*	
1. Member States shall withdraw or refuse to renew an intra-corporate transferee permit in the following cases:		1. Member States shall withdraw **[...]** an intra-corporate transferee permit in the following cases:	
(a) where it has been fraudulently acquired, or has been falsified, or tampered with;		(a) where it has been fraudulently acquired, or has been falsified, or tampered with;	

or		or	
(b) where the holder is residing for purposes other than those for which he/she was authorised to reside.		(b) where the **[...] intra-corporate transferee** is residing for purposes other than those for which he/she was authorised to reside.	
		or	
		(c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees.	*Presidency recommends to keep the Council text.*
		2. Member States shall refuse to renew an intra-corporate transferee permit in the following cases:	
		(a) where it has been fraudulently acquired, or has been falsified, or tampered with;	
		or	
		(b) where the intra-corporate transferee is residing for purposes other than those for which he/she was authorised to reside;	

		or	
		(c) where the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees;	
		or	
		(d) where the maximum duration of stay as defined in Article 10A has been reached.	*Presidency recommends to keep the Council text.*
2. Member States may withdraw or refuse to renew an intra-corporate transferee permit in the following cases;		**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;		(a) wherever the **[...] criteria** laid down in Article 5 were not met or are no longer met;	
or		or	
(b) for reasons of public policy, public security or public health.		***deleted*** *(as it is covered by Article 5)*	
		(b) where 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	*Could Council accept the EP suggestion to say "... or has been declared bankrupt" instead?*

		obligations regarding social security and/or taxation set out in national law or has filed for bankruptcy or is otherwise insolvent or if no economic activity is taking place;	
		or	
		(c) where the terms and conditions of the employment according to applicable laws, collective agreements or practices in the Member State where the host entity is established are not met;	*(See comments on Article 6(2)(b)).*
		or	
		(d) where the intra-corporate transferee has abused the short-term mobility rules set out in Article 16;	*Could Council accept the EP suggestion to say "... has not complied with the short-term mobility rules..." instead?.*
		or	
		(e) when the intra-corporate transferee applies for social assistance, provided that the appropriate	*Presidency suggests to keep the Council text.*

		written information concerning this consequence has been provided to him/her in advance by the Member State concerned.	
Article 8 *Penalties*		*Article 8* ***Sanctions***	*Presidency suggests to keep the Council text.*
	AM 61		
Member States may hold the host entity responsible and provide for penalties for failure to comply with the conditions of admission. Those penalties shall be effective, proportionate and dissuasive.	Member States may hold the host entity responsible and provide for penalties for failure to comply with the conditions of admission ***laid down in this Directive and the obligations arising out of the work contract***. Those penalties shall be effective, proportionate and dissuasive ***and shall be consistent with the provisions foreseen in Article 7 of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals[1]. Member States shall lay down monitoring, assessment and periodic inspection procedures to prevent and penalise possible abuses.***	Member States may**, if provided for in national law,** hold the host entity responsible and provide for **[...] sanctions** for failure to comply with the conditions of admission **and stay or to comply with administrative and information requirements**. Those **[...] sanctions** shall be effective, proportionate and dissuasive.	*Presidency suggests to keep the Council text but seeks the views of MS on the EP amendment.* *See Recitals 9a and 9b of the Council text.*

CHAPTER III PROCEDURE AND PERMIT		CHAPTER III PROCEDURE AND PERMIT	
Article 9 *Access to information*		*Article 9* *Access to information*	
	AM 62		
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.	Member States shall take the necessary measures ***to ensure access to*** information on entry and residence, including ***the*** rights ***of the intra-corporate transferee and of his/her family members*** and all documentary evidence needed for an application***, as well as rights regarding working conditions, social security and enforcement and complaints procedures to all applicants and admitted intra-corporate transferees in the host country***.	1. Member States shall **[...]** make available information on entry and residence, including rights, and all documentary evidence needed for an application.	*Presidency seeks the views of MS on the EP amendment bearing in mind that the reference to family members is of particular importance to EP.*
		2. The first Member State makes available information to the host entity on the right of Member States to impose sanctions in accordance with Article 8 and/or Article 16(5).	*EP suggested the following wording: "…shall make available information..".*

Article 10 *Applications for admission*		*Article 10* *Applications for admission*	
1. Member States shall determine whether an application is to be made by the third-country national or by the host entity.		1. Member States shall determine whether an application is to be made by the third-country national **and/**or by the host entity.	*EP can agree to the Council text.*
2. The application shall be considered and examined only when the third-country national is residing outside the territory of the Member State to which admission is sought.		2. The application shall be **[...] submitted** when the third-country national is residing outside the territory of the Member State to which admission is sought.	*EP will consider the Council text.*
	AM 63		
3. The application shall be lodged to the authorities of the Member State where the intra-corporate transfer mainly takes place.	3. The application shall be lodged to the ***competent*** authorities of the Member State where the intra-corporate transfer mainly takes place. ***In the circumstances governed by Article 16, the competent authority, as referred to in paragraph 4 of this Article, shall be that of the Member State in which the host entity where the intra-corporate transferee carries out his/her work is situated. Where it is impossible to anticipate with certainty in which Member State the intra-corporate***	***deleted***	*mobility-related*

	transferee will mainly be located, the application shall be lodged to the competent authorities of the first Member State of entry.		
	AM 64		
4. Member States shall designate the authority competent to receive the application and to issue the intra-corporate transferee permit.	4. Member States shall designate the authority competent to receive the application and to issue the intra-corporate transferee permit, ***and shall notify the Commission and the Member States thereof***.	3. Member States shall designate the **authorities** competent to receive the application and to issue the intra-corporate transferee permit.	*Presidency seeks the views of MS on the EP amendment.*
5. The application shall be submitted in a single application procedure.		4. The application shall be submitted in a single application procedure.	
	AM 65		
6. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.	6. The Member State concerned shall grant ***the*** third-country ***national*** whose application for admission has been accepted ***[...]*** the requisite visa***, provided that all necessary conditions under national and Union law are met***.	*In Article 11(7)*	*Presidency believes that the provision fits better in Article 11 since it is directly related to the issuance of the ICT permit. Presidency seeks the views of MS on the EP amendment.*

7. Simplified procedures may be made available to groups of undertakings that have been recognised for that purpose by Member States in accordance with their national legislation or administrative practice.		5. Simplified procedures **related to the issuance of intra-corporate transferee permits, and permits granted to family members of an intra-corporate transferee 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.**	
Recognition shall be granted for a maximum of three years on the basis of the following information:		***deleted***	*EP asked whether the deletion of all the details relating to the recognition for the purpose of simplified procedure means that Council foresees no harmonisation of this procedure at EU level. EP attaches great importance to this issue.*
	AM 66		
(a) information relating to the financial standing of the group of undertakings aiming to	(a) information relating to the financial standing of the group of undertakings aiming to	***deleted***	

ensure that the intra-corporate transferee will be guaranteed the required level of remuneration and rights as provided for in Article 14;	ensure that the intra-corporate transferee will be guaranteed ***at least*** the level of remuneration and rights as provided for in Article 14;		
	AM 67		
(b) evidence that the conditions of admission regarding prior transfers have been complied with;	(b) evidence ***provided by the competent authority*** that the conditions of admission regarding prior transfers have been complied with;	***deleted***	
(c) evidence that tax law and regulations have been complied with in the host country;		***deleted***	
	AM 68		
(d) information related to forthcoming transfers.	(d) information, ***provided in a timely manner,*** *relating* to forthcoming transfers.	***deleted***	
8. The simplified procedures provided for in paragraph 7 shall consist of:		***deleted***	
(a) exempting the applicant from presenting the documents referred to in Article 5 where they have been previously provided and are still		***deleted***	

valid;			
	AM 69		
(b) a fast-track admission procedure allowing intra-corporate transferee permits to be issued within a shorter time than specified in Article 12(1);	(b) a fast-track admission procedure allowing intra-corporate transferee permits to be issued within ***half the*** time specified in Article 12(1);	***deleted***	
or		***deleted***	
(c) specific facilitations for visas.		***deleted***	
	AM 70		
9. A group of undertakings that has been recognised in accordance with paragraph 7 shall notify to the relevant authority any modification affecting the conditions for recognition.	9. A group of undertakings that has been recognised in accordance with paragraph 7 shall notify to the relevant authority any modification affecting the conditions for recognition, ***in a timely manner and, in any event, within no more than 30 days.***	***deleted***	
	AM 71		
10. Member States shall provide for appropriate penalties, including revocation of recognition, in the event of failure to provide the evidence and information referred to in paragraph 7.	10. Member States shall provide for appropriate penalties, including revocation of recognition, in the event of failure to provide the evidence and information referred to in paragraph 7***, or in the event of failure to notify the authority, as laid down in paragraph 9***.	***deleted***	

		Article 10A ***Duration of an intra-corporate transfer***	
Cf Article 16(3).	*Cf AM 39 on Article 16(3).*	**1. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for graduate trainees after which they shall return to a third country unless they obtain a residence permit on another basis in accordance with national or Union legislation.**	*EP could accept to add the last part of the Council's text.*
		2. Member States may require a certain time period of up to 3 years to pass between the end of a transfer and another application concerning the same third-country national for the purposes of this Directive in the same Member State.	*EP asked whether "the end of a transfer" refers to the end of a maximum period of a transfer or to the end of the period of validity of one ICT permit pointing out that, for example, after the end of a 6-month transfer an ICT may wish to return to the EU on the basis of a new permit sooner than in 3 years time.*
		3. An application for admission to a Member State for the purposes of this Directive may be considered inadmissible if the time period set in accordance with paragraph	

		2 has not passed.	
Article 11 *Intra-corporate transferee permit*		*Article 11* *Intra-corporate transferee permit*	
1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.		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.	
	AM 39		
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for graduate trainees.	2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for ***trainee employees***.	2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member States concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for graduate trainees.	
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 . In		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[9] . **[...]** *(moved*	

[9] OJ L 157, 15.6.2002, p. 1.

accordance with point (a) 7.5-9 of the Annex to that Regulation, Member States shall indicate on the residence permit information related to the permission to work under the conditions laid down in Article 13.		*to point 6)*	
	AM 72		
4. Under the heading ‘type of permit’, the Member States shall enter ‘intra-corporate transferee’ and the name of the group of undertakings concerned. Member States shall issue to the holder of an intra-corporate transferee permit an additional document containing a list of the entities authorised to host the third-country national and revise it whenever that list is modified.	4. ***The residence title must indicate that it is a residence*** permit ***for*** intra-corporate ***transferees***. Member States ***may*** issue to the holder of an intra-corporate transferee permit an additional document containing a list of the entities authorised to host the third-country national and revise it whenever that list is modified.	4. Under the heading **[...]** **‘remarks’, in accordance with point (a) 7.5-9 of the Annex to Regulation (EC) No 1030/2002,** the Member States shall enter ‘intra-corporate transferee’ **[...]**.	*Presidency awaits clarification by EP regarding a reference to "the residence title" in their amendment which is confusing considering the fact that an ICT permit is a single permit.* *Since Cion has pointed out that, in the context of the SWD, that the heading "remarks" is not legible in other MS, Presidency would like to ask MS whether the provision should be reconsidered in light of mobility.*
	AM 73		
5. Member States shall not issue any additional permits, in particular work permits of any kind.	5. ***The residence permit for intra-corporate transfers shall be a single document.*** Member States ***may issue additional documents***.	5. Member States shall not issue any additional permits, in particular work permits of any kind.	*Presidency awaits clarification by EP regarding a reference to "the residence permit" in their amendment.*

		6. Member States may indicate additional information related to the employment activity during intra-corporate transfer of the third-country national (such as the name and address of the host entity, place of work, name and address of the client, type of work, working hours, remuneration) in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) 1030/2002 and point (a)16 of its Annex thereto.	
		7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.	*Article 10(6) in EP and Cion text.*
Article 12 *Procedural safeguards*		*Article 12* *Procedural safeguards*	
	AM 74		
1. The competent authorities of the Member State concerned shall adopt a decision on the application for admission to a Member State as an intra-corporate transferee or for	1. The competent authorities of the Member State concerned shall adopt a decision on the application for admission to a Member State as an intra-corporate transferee or for	1. The competent authorities of the Member State concerned shall adopt a decision on the application for **[...] an intra-corporate transferee permit or a renewal of it** and notify	*EP cannot accept the deadline of 90 days suggested by Council. This deadline is particularly long in the context of mobility. The issue is a red line for EP. Presidency would like to know whether MS could*

revision of the additional document provided for in Article 11(4) and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, within 30 days of the complete application being lodged. In exceptional cases involving complex applications including applications concerning host entities in several Member States, the deadline may be extended for a maximum of a further 60 days.	revision of the additional document provided for in Article 11(4) and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, within 30 days of the complete application being lodged*.* In exceptional cases involving complex applications including applications concerning host entities in several Member States, the deadline may be extended for a maximum of a further ***30 days***.	the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, **[...] as soon as possible but no later than 90 days** of the complete application being lodged. **[...]**	*accept any elements of EP amendments 74 or 75.*
	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.	**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.**	*Council and EP agree.*
	AM 75		
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	2. Where the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant within ***30 days*** of the additional information that is required and set a reasonable deadline	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	*EP would like to provide for a specific period rather than leave it open.*

deadline for providing it.	for providing it.	deadline for providing it.	
	In the circumstances referred to in the first paragraph, the competent authorities shall make a decision within 30 days of receipt of the requested supplementary information.	**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.**	*EP could accept the last sentence of the Council text.*
		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 and, when the application for the intra-corporate transferee permit was lodged by the host entity, to the applicant.	*Since EP pointed out that "modification" does not appear anywhere else in the text, Presidency would like to know whether MS can agree to delete it.* *In addition, the last sentence should be clarified. Presidency suggests the following: "Reasons for a decision withdrawing an intra-corporate transferee permit shall be given in writing to the intra-corporate transferee and, when the application for the intra-corporate transferee permit was lodged by the host entity, both to the intra-corporate transferee and the host entity."*

	AM 76		
3. Any decision rejecting an application or any decision not to renew or to withdraw intra-corporate transferee permits, shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned, in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.	3. Any decision rejecting an application or any decision not to renew or to withdraw intra-corporate transferee permits, shall be notified in writing to the applicant and shall be open to a [...] challenge ***by means of administrative or judicial redress*** in the Member State concerned, in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.	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.**	*EP and Council share the same idea. Presidency suggests to keep the Council text which is in line with Article 8(2) of the Single Permit Directive.*
		5. Within the period referred to in Article 11(2) an applicant shall be allowed to lodge an application for renewal before the expiry of the intra-corporate transferee permit. Member States may set a maximum deadline of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.	*EP pointed out that the deadline for deciding on renewal should be shorter than for the initial application.*

		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.	*EP wanted to know which cases are being thought of here since MS may set a deadline for submitting an application for renewal prior to the expiry of the ICT permit.*
		Article 12A ***Fees***	
	cf AM 25 on Recital 22a	**Member States may require applicants to pay fees for handling applications in accordance with this Directive. The level of such fees shall be proportionate and may be based on the services actually provided for the processing of applications and the issuance of permits.**	*Presidency seeks the views of MS on EP amendment 25.*
CHAPTER IV RIGHTS		CHAPTER IV RIGHTS	
Article 13 *Rights on the basis of the intra-corporate transferee permit*		*Article 13* *Rights on the basis of the intra-corporate transferee permit*	
During the period of validity of an intra-corporate transferee permit, the holder shall enjoy at least the		During the period of validity of an intra-corporate transferee permit, the holder shall enjoy at least the	

following rights:		following rights:	
1. the right to enter and stay in the territory of the Member State issuing the permit;		1. the right to enter and stay in the territory of the Member State issuing the permit;	
2. free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;		2. free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;	
3. the right to exercise the specific employment activity authorised under the permit in accordance with national law in any other entity belonging to the group of undertakings listed in the additional document provided for in Article 11(4) in accordance with Article 16;		3. the right to exercise the specific employment activity authorised under the permit in accordance with national law in any host entity belonging to the group of undertakings **[...] in the Member State issuing the permit and in second Member States** in accordance with Article 16 **as long as the employment relationship is maintained with an undertaking established in a third country.**	
	AM 77		
4. the right to carry out his/her assignment at the sites of clients of the entities belonging to the group of undertakings listed in the additional document provided for in Article 11 (4), as long	4. the right to carry out his/her assignment at the sites of clients ***and potential business partners*** of the entities belonging to the group of undertakings listed in the additional document provided	***deleted*** *See Recital 21b in the Council text.*	*Presidency recommends to keep the Council text as the EP amendment seems to enlarge the scope.*

as the employment relationship is maintained with the undertaking established in a third country.	for in Article 11 (4), as long as the employment relationship is maintained with the undertaking established in a third country.		
Article 14 *Rights*		*Article 14* *Right to equal treatment*	*exclusive EMPL competence on whole Article (except last paragraph)*
	AM 78		
Whatever the law applicable to the employment relationship, intra-corporate transferees shall be entitled to: 1. the terms and conditions of employment applicable to posted workers in a similar situation, as laid down by law, regulation or administrative provision and/or universally applicable collective agreements in the Member State to which they have been admitted pursuant to this Directive.	Whatever the law applicable to the employment relationship, intra-corporate transferees shall be entitled to ***equal treatment with nationals of the host Member State as regards***: 1. the terms and conditions of employment [...] as laid down by law, regulation or administrative provision and/or ***arbitration awards and*** collective agreements ***applicable at the workplace*** in the Member State ***in*** which they ***are currently working***.	1. Whatever the law applicable to the employment relationship, intra-corporate transferees **[...] admitted under this Directive 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;**	*EP insists on equal treatment with nationals of the host MS. This is a highly important political issue for EP. Council, on the other hand, finds that workers posted from third-countries should be treated in the same manner as workers posted within the EU.*
In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are	***[...]***	***deleted***	

generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.			
2. equal treatment with nationals of the host Member State as regards:	***[...]***	2. **Intra-corporate transferees shall enjoy** equal treatment with nationals of the host Member State as regards:	
(a) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;	***2.*** freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits ***and rights*** conferred by such organisations, without prejudice to the national provisions on public policy and public security;	(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;	*Presidency seeks the views of MS on the EP amendment.* *EP has included a similar amendment in SWD where it adds a clarification of what is meant by "rights": "... inter alia the right to negotiate and conclude collective agreements and the right to strike and take industrial action, in accordance with the host Member State's national law and practices...".*

(b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;	***3.*** recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.	(b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;	
(c) without prejudice to existing bilateral agreements, provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No 859/2003 shall apply accordingly;	***4. branches of social security as defined in Article 3 of Regulation (EC) No 883/2004*** without prejudice to existing bilateral agreements ***providing for better conditions. Each Member State remains responsible, in the absence of harmonisation at Union level, for laying down in its legislation, in compliance with Union law, the non-discriminatory rules governing the granting of social security benefits, as well as the amount and duration of such benefits***. In the event of mobility between Member States ***Regulation (EC) No 1231/2010 or, where still applicable,*** Council Regulation (EC) No 859/2003 *of 14 May 2003 extending the provisions of Regulation (EEC) No*	(c) **[...]** provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04, **with the exception of family benefits, unless the legislation of the country of origin applies by virtue of bilateral agreements or the national legislation of the host Member State, ensuring that the intra-corporate transferee is covered by the social security legislation in one of these countries**. In the event of mobility between Member States **[...]** Council Regulation (EC) No **[...] 1231/2010** shall apply accordingly;	*EP cannot support the exclusion of family benefits from the scope of this Article.*

	1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality[1] shall apply accordingly, ***without prejudice to existing bilateral agreements providing for better conditions***;		
(d) without prejudice to Regulation (EC) No 859/2003 and to existing bilateral agreements, payment of statutory pensions based on the worker's previous employment when moving to a third country;	***Third-country workers moving to a third country, or the survivors of such workers residing in a third-country deriving rights from the worker, shall receive, in relation to old-age, invalidity and death,*** statutory pensions based on the ***workers'*** previous employment ***and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned*** when ***they move*** to a third country***;***	(d) without prejudice to **[...] Council Regulation (EC) 1231/2010** and to existing bilateral agreements, payment of statutory pensions based on the worker's previous employment **and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and the same rates as the nationals of the Member States concerned** when moving to a third country;	*Council makes reference to survivor's pensions in Recital 23. Presidency would like to know whether MS could agree to the EP's suggestion to move this to the text of the Article.*

(e) access to goods and services and the supply of goods and services made available to the public, except public housing and counselling services afforded by employment services.	***5.*** access to goods and services and the supply of goods and services made available to the public, except public housing and ***public*** employment services.	(e) access to goods and services and the supply of goods and services made available to the public, except **[...] procedures for obtaining** housing **as provided for by national law, without prejudice to the freedom of contract in accordance with Union and national law,** and **[...]** services afforded by employment offices.	*Presidency seeks the views of MS on the EP amendment.*
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.	The right to equal treatment ***laid down in this Article*** shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.	3. **[...] This Article** shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.	*exclusive competence LIBE*
	[1] OJ L 124, 20.5.2003, p. 1.		
Article 15 *Family members*		*Article 15* *Family members*	
1. Council Directive 2003/86/EC shall apply, subject to the derogations laid down in this Article.		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.	

	AM 79		
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification in the first Member State shall not be made dependent on the requirement that the holder of the permit issued on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.	2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification ***[...]*** shall not be made dependent on the requirement that the holder of the permit issued on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.	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.	*In the view of EP family reunification should be possible in any of the MS to which the ICT is transferred. The issue is linked to different mobility schemes proposed by each of the Institutions.*
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 first Member State only after the persons concerned have been granted family reunification.		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.	
	AM 80		
4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the first	4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the first	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	*EP will clarify its wording since it gives the impression that the sponsor and his/her family members have to apply at the same time whereas the idea is to state that the applications should be*

Member State, if the conditions for family reunification are fulfilled, at the latest within two months from the date on which the application was lodged.	Member State, if the conditions for family reunification are fulfilled. ***The competent authority of the first Member State shall process the residence permit application for the intra-corporate transferee's family members at the same time as the intra-corporate transferee permit application. In more complex cases, the procedure shall be completed*** at the latest within two months from the date on which the application was lodged.	Member State, if the conditions for family reunification are fulfilled, **[...]** within **[...] 90 days** from the date on which the complete application was lodged. **The procedural safeguards laid down in Article 12 apply accordingly.**	*processed within the same deadline. EP and Council thus seem to agree in principle.*
5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members in the first Member State shall be the same as that of the intra-corporate transferee permit, insofar as the period of validity of their travel documents allows.		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 **[...]**.	*EP would like to know why this is a "may-clause" in the Council text asking whether the purpose is to issue permits to family members with the duration shorter than those of ICT permits. Does the deletion of a reference to Article 13(3) of Directive 2003/86/EC in the Council text mean that the duration of the permits of family members can go beyond the date of expiry of the sponsor's permit?*

	AM 81		
	5a. By way of derogation from Article 14(2) of Directive 2003/86/EC and without prejudice to the principle of Union preference, the family members of an intra-corporate transferee who have been granted family reunification shall be entitled to take up employment or self-employment in the territory of the Member State which issued the intra-corporate transferee permit for the same duration as the transferee *.*	**6. By way of derogation from Article 14(1)(b) of Directive 2003/86/EC the family members of the intra-corporate transferee who have been granted family reunification shall be entitled to have access to employment and self-employed activity, in the territory of the Member State which issued the intra-corporate transferee permit.**	*EP insists on the derogation from Article 14(2) of Directive 2003/86/EC which allows MS to impose a time limit before access to the labour market is granted to family members.*
CHAPTER V MOBILITY BETWEEN MEMBER STATES		CHAPTER V MOBILITY BETWEEN MEMBER STATES	
Article 16 *Mobility between Member States*		*Article 16* ***Provisions governing short-term*** *mobility*	*EP cannot support the scheme proposed by the Council which it finds overly complex. It encourages the Council to agree on a simpler solution that is based on mutual trust between MS. Presidency seeks the views of MS on the scheme proposed by EP.*

	AM 82		
1. Third-country nationals who have been granted an intra-corporate transferee permit in a first Member State, who fulfil the criteria for admission as set out in Article 5 and who apply for an intra-corporate transferee permit in another Member State shall be allowed to work in any other entity established in that Member State and belonging to the same group of undertakings and at the sites of clients of that host entity if the conditions set out in Article 13(4) are fulfilled, on the basis of the residence permit issued by the first Member State and the additional document provided for in Article 11(4), provided that:	1. Third-country nationals who have been granted an intra-corporate transferee permit in a first Member State [...] shall be allowed to work in any other entity established in ***another*** Member State and belonging to the same group of undertakings and at the sites of clients of that host entity if the conditions set out in Article 13(4) are fulfilled, on the basis of the residence permit issued by the first Member State and the additional document provided for in Article 11(4) ***[...]***.	***deleted***	*(Correction in EP text: "… if the conditions set out in Article 13(3) are fulfilled…").*
(a) the duration of the transfer in the other Member State(s) does not exceed twelve months;	***2.*** The duration of the transfer in the other Member State(s) does not exceed ***half of the overall duration of the intra-corporate transferee permit.***		
(b) the applicant has submitted to the competent authority of the other Member State,	***3. The intra-corporate transferee shall notify the competent authority of the first Member State and the***	***deleted***	

before his or her transfer to that Member State, the documents referred to in Article 5(1) (2) and (3) relating to the transfer to that Member State and has provided evidence of such submission to the first Member State.	***host entity in the other Member State shall notify the competent authority of that other Member States.***		
2. If the duration of the transfer in the other Member State exceeds twelve months-, the other Member State may require a new application for a residence permit as an intra-corporate transferee in that Member State.	***4. Within 30 days of notification, that other Member State may refuse mobility in addition to the provisions referred to in Article 6(3), if the host entity was established for the sole purpose of facilitating the entry of intra-corporate transferees, if the intra-corporate transferee has committed a serious breach of legal provisions or a crime, or if the intra-corporate transferee is considered to pose a threat to public policy, public security or public health.***	***deleted***	*Clarification by EP: the ICT can move straight after notification but the MS concerned has 30 days to refuse mobility.*

Where the relevant legislation requires a visa or residence permit for exercising mobility, such visas or permits shall be granted in a timely manner within a period that does not hamper pursuit of the assignment, whilst leaving the competent authorities sufficient time to process the applications.	***5. In the event of mobility of the intra-corporate transferee in accordance with this Article, the host country principle shall be applied.***	***deleted***	*Clarification by EP: "the host country principle" means that the legislation of the host MS applies.*
Member States shall not require intra-corporate transferees to leave their territory in order to submit applications for visas or residence permits.		***deleted***	
	AM 39		
3. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for graduate trainees.	3. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for ***trainee employees***.	*Cf Article 10A(1)*	
		1. When the intra-corporate transferee intends to work in the same group of undertakings and in the same position in a second Member State for a period of up to 90 days in any 180-day period, the transfer may take place on the basis of the intra-corporate transferee permit issued by the first Member State	

		during its validity under the conditions set out in paragraphs 2 and 3.	
		2. The host entity of the second Member State shall notify the competent authorities of the first Member State and the second Member State before the transfer. This notification shall take place at least 20 days prior to the intended transfer by sending in the documentation required by the second Member State if paragraph 3(b) is applicable. The second Member State may determine which documents have to be presented proving the fulfilment of the criteria set out in paragraph 3(b).	
		3. The second Member State shall choose either to:	
		a) decide in accordance with national law that the transfer can be initiated immediately after the notification has taken place or;	

		b) based on the notification, examine the documentation within 20 days from having received it. If the second Member State does not react within that time period, the transfer may be initiated. The second Member State may reject the transfer in accordance with national law by informing the host entity within 20 days from having received the documentation if:	
		i. the intra-corporate transferee is considered to pose a threat to public policy, public security or public health in the second Member State,	
		ii. the terms and conditions of employment set out in Article	

		5(1)(a), 5(2) and (2a) in the second Member State are not fulfilled,	
		iii. where the documents presented have been fraudulently acquired, falsified or tampered with;	
		iv. the time period, which a Member State may require in accordance with Article 10A(2), has not expired in the second Member State or,	
		v. the volumes of admission of third-country nationals entering the territory of the second Member State have been exhausted.	

		4. If the second Member State has not been notified in accordance with paragraph 2, or the grounds set out in paragraph 1 or 3(b) are no longer complied with, or if the intra-corporate transferee permit is used for purposes other than that for which it was issued, or the transfer has been initiated before the expiry of the notification period or in spite of the rejection from the second Member State, the second Member State may take the following measures:	
		(a) by national legislation require that the intra-corporate transferee and or the host entity in the second Member State has to apply for an intra-corporate transferee permit with the competent authorities of that second Member State, and that the employment activity must stop until a final decision has been	

		made in accordance with Article 16A and/or,	
		(b) impose effective, proportionate and dissuasive sanctions against the host entity and/or,	
		(c) inform the authorities of the first Member State accordingly.	
		5. 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.	
		6. The second Member State may require registrations to be carried out in accordance with national law when the intra-corporate transferee enters the territory of the second Member State with the purpose of work. The second Member State may indicate additional information specified under Article 11(6) as proof of	

		such registration.	
		7. 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.	
		8. 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 authorities of the first Member State host entity or the intra-corporate transferee immediately.	
		Article 16A ***Provisions governing long-term mobility***	
		1. If the third-country national who intends to work in a second Member State for more than 90 days within any 180-day period, an application for a new intra-corporate transferee permit shall be lodged to the authorities of the second	

		Member State and present all the documents proving the fulfilment of the criteria set out in Article 5.	
		The application may be presented to the competent authorities of the second Member State outside the territories of the European Union or while residing in the territory of the first or the second Member State.	
		2. If the third-country national has already been granted an intra-corporate transferee permit the second Member State may decide not to verify certain criteria for admission and/or may allow the intra-corporate transferee to work until a positive decision on the application has been taken by its competent authority.	
		3. In cases where long-term mobility in Article 16A has been initiated and the intra-corporate transferee subsequently intends to use the provisions of short-term mobility set out in Article 16 "the second Member	

		State" in accordance with Article 16A shall be understood as "the first Member State" in accordance with Article 16.	
		4. The second Member State issuing or withdrawing a new intra-corporate transferee permit shall inform the first Member State, in cases where the intra-corporate transferee permit issued by the first Member State is still valid.	
		5. Articles 5A, 6, 7, 8, 9, 10, 10A, 11, 12 and 12A shall apply accordingly.	
CHAPTER VI final provisions		CHAPTER VI final provisions	
Article 17 *Statistics*		Article 17 Statistics	
	AM 39		
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	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	1. Member States shall, **in accordance with Regulation (EC) No 862/2007,** communicate to the Commission statistics on the number of **[...] third-country nationals who have been granted an intra-corporate transferee permits and**, as far as possible, on the number of	*Presidency suggests to align the text with Article 18 of the SWD to read as follows:* "1. Member States shall communicate to the Commission statistics on the number of authorisations for the purpose of seasonal work issued for the first time and, as far as possible, on the

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.	nationals, disaggregated by citizenship, age and sex, by transferee position (manager, specialist and ***trainee employee***), by length of validity of the permit and by economic sector.	**[...] third-country nationals whose intra-corporate transferee permit has been renewed or** withdrawn, **[...] during the previous calendar year, indicating their nationality and, as far as possible, their** transferee position **according to this Directive.**	number of third-country nationals whose authorisation for the purpose of seasonal work has been extended/renewed or withdrawn. These statistics should be disaggregated by citizenship, the length of validity of the authorisation and, as far as possible, by the economic sector."
2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 .		**deleted**	*Presidency suggests to align the text with Article 18 of the SWD to read as follows:* "3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No. 862/2007 of the European Parliament and the Council."
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 [.......].		2. 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 **[two years after the date of transposition of this Directive].**	*Presidency suggests to align the text with Article 18 of the SWD to read as follows:* "2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the

			reference year. The first reference year shall be [*the year following the point of time referred to in Article 20(1)*]." *EP also finds that the first reference year should one year after the date of transposition. Otherwise, Cion could not produce its report referred to in Article 18 three years after the date of transposition.*
Article 18 *Reports*		*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.		By [three years after the date of transposition of this Directive] at the latest and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive in the Member States including any necessary proposal.	
Article 19 *Contact points*		*Article 19* ***[...] Cooperation on information***	
1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Article 16.		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.		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.**	*EP enquired about the meaning of the reference to an application not having been lodged with the designated authorities. Presidency suggests that MS reconsider this in light of the current version of the mobility scheme.*
Article 20 *Transposition*		*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.		1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**[...] three** years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions **[...]**.	*EP insists on a transposition deadline of two years after the entry into force pointing to the Single Permit and the Blue Card Directives. Presidency seeks the views of MS on this matter.*

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.		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.		2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	
Article 21 *Entry into force*		*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.		This Directive shall enter into force on the […] day following that of its publication in the *Official Journal of the European Union*.	
Article 22 *Addressees*		*Article 22* *Addressees*	
This Directive is addressed to the Member States in accordance with the Treaty on the Functioning of the European Union.		This Directive is addressed to the Member States in accordance with the Treaty on the Functioning of the European Union.	
Done at Brussels, [...]		Done at Brussels, [...]	
For the European Parliament For the Council		For the European Parliament For the Council	
The President The President		The President The President	