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

At its meeting held on 4 and 5 November 2010, the Working Party on Integration, Migration and Expulsion continued and concluded the first reading of the above proposal.

The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes. Written contributions, which have been sent by delegations, have been taken into account / inserted in the text.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on conditions of entry and residence of third-country nationals in the framework
of an intra-corporate transfer¹

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject-matter

This Directive determines:

- (a) the conditions of entry to and residence for more than three months in the territory of the Member States of third-country nationals and of their family members in the framework of an intra-corporate transfer;
- (b) the conditions of entry to and residence for more than three months of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national a residence permit on the basis of this Directive.²

¹ **FI, AT:** general reservations on the proposal; (**AT** related mainly to subsidiarity, legal basis and implementation concerns). **CZ, DE, EE, EL, ES, HU, IT, LT, LV, MT, NL, PL, PT, SE, SI, SK:** general scrutiny reservations on the proposal. **HU, MT, LT, PL, SE:** parliamentary scrutiny reservations on the proposal. **DE, LT, SE:** language reservation on the proposal. **MT:** concerns about - among other issues - the fact that no labour market test is provided in the draft Directive. **SE:** would prefer a more ambitious and flexible system.

² **SI:** scrutiny reservation on this point in relation to the mobility regime based on ICT.

Article 2

Scope

1. This Directive shall apply to third-country nationals who reside outside the territory of a Member State and apply to be admitted to the territory of a Member State in the framework of an intra-corporate transfer.³
2. This Directive shall not apply to:
 - (a) third-country nationals who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;
 - (b) third-country nationals who, under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of citizens of the Union or are employed by an undertaking established in those third countries;⁴

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

SE: add in the scope the following: “This Directive shall also, if provided by national law, apply to third-country nationals (TCN) who are legally staying in the territory of a Member State (MS) and who apply for an ICT permit in that MS”.

In reply to **NL, LT, Cion** clarified that TCN "blue-card holders" (Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment) do not fall under the scope of this draft Directive.

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

DE: clarification should be added that with regard to social security rights this Directive would not affect any provisions in national law, bilateral agreements and EU law on the applicability of law (e.g. Council Regulation (EC) No 859/2003 and the subsequent legislation).

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

⁴ **Cion,** in reply to **DE** clarified that citizens of CH, NO, IS and LI who enjoy free movement rights in the EU fall outside the scope of this draft Directive.

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

Article 3
*Definitions*⁶

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

- (a) ‘third-country national’ means any person who is not a citizen of the Union, within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;
- (b) ‘intra-corporate transfer’ means the temporary secondment of a third-country national from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;⁷

⁵ In reply to queries by **DE, EL, EE, SE** and **AT**, **Cion** stressed that this Directive (in distinction from Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services) will only apply where the TCN resides outside the territory of a Member State (MS) at the time of his application for an ICT. The TCN who fall under Directive 96/71 are employed by an undertaking in the EU, whereas under this Directive they are employed in the third country and temporarily transferred to the host entity. In reply to **RO**, **Cion** pointed that issues of evidence of the relations between the host entity and the undertaking in the third country could be addressed by the definition of “group of undertakings”- in point (1) of Article 3 of the draft Directive.

⁶ **EL**: the definitions in the proposal should be as close as possible with their equivalent in the GATTS Agreement for interpretation purposes. **Cion**: it could be clarified that the GATTS framework is the point of departure for the definitions in this proposal, however, the legal consequences and the scope of each instrument are different for MS.

⁷ **ES**: scrutiny reservation on this point. In reply to **DE**, **Cion** clarified that the Directive shall apply irrespective of the legal status (mother company, branch, etc) of the legal entity in the third country. In reply to **EE**, **Cion** clarified that unlike the case of Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work, this draft Directive provides for mobility within one group of undertakings.

- (c) ‘intra-corporate transferee’ means any third-country national subject to an intra-corporate transfer;⁸
- (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;⁹
- (e) ‘manager’ means any person working in a senior position, who principally directs the management of the host entity, receiving general supervision or direction principally from the board of directors or stockholders of the business or equivalent; this position includes: directing the host entity or a department or sub-division of the host entity, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and dismiss or recommend hiring, dismissing or other personnel actions;¹⁰
- (f) ‘specialist’ means any person possessing uncommon¹¹ knowledge essential and specific to the host entity, taking account not only of knowledge specific to the 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;¹²
- (g) ‘graduate trainee’ means any person with a higher education qualification¹³ who is transferred to broaden his/her knowledge of and experience in a company in preparation for a managerial position within the company;¹⁴

⁸ **DE:** scrutiny reservation on this point.

⁹ In reply to **DE, EL, AT, Cion** confirmed that an entity would fall under this definition regardless of its status (including those entities without legal personality).

¹⁰ **DE, EL, ES, IT, PT** (the latter considered the definition too detailed): scrutiny reservations on this point. **Cion:** the purpose was to provide for the clearest possible criteria.

¹¹ **SE:** suggested deleting the word "uncommon" whereas **AT** suggested keeping it.

¹² **EL, IT:** scrutiny reservations on this point.

¹³ **AT:** make clear that a university degree would suffice. **Cion:** in this framework a higher qualification than a three-year university degree may be needed.

¹⁴ **EL, ES, IT:** scrutiny reservations on this point. **FR** thinks that the term is ambiguous and suggested something along "graduate salary worker on training". **NL:** training should not only be for managerial posts, adapt it as "*managerial or specialist position...*". **SE:** delete the last part of the sentence "*in preparation for a managerial position within the company*" in order to make the definition more flexible.

- (h) ‘higher education qualification’ means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme of at least three years, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated;¹⁵
- (i) ‘family members’ means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC¹⁶;
- (j) ‘intra-corporate transferee¹⁷ permit’ means any authorisation bearing the words ‘intra-corporate transferee’ entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;¹⁸
- (k) ‘single application procedure’ means the procedure leading, on the basis of one application for the authorisation of a third-country national’s residence and work in the territory of a Member State, to a decision on the application;¹⁹

¹⁵ **CZ, DE, IT:** scrutiny reservations on this point. In reply to **HU, Pres, Cion** pointed out that this definition is drawn upon the blue-card holders Directive.

¹⁶ OJ L 251, 3.10.2003, p. 12.

¹⁷ **IT:** add "residence".

¹⁸ **DE, AT, PT:** scrutiny reservations on this point.

¹⁹ **SE:** replace "to a decision on the application" with "to **such a decision**". **IT, AT** (scrutiny reservation on the point): clarify that the application can be made by the employer as well. **Cion** recalled that is provided for in Article 10(1) of the proposal.

- (l) 'group of undertakings' for the purposes of this Directive means two or more undertakings recognised as linked in the following ways under national law: an undertaking, in relation to another undertaking directly or indirectly: holds a majority of that undertaking's subscribed capital;²⁰ 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;²¹

²⁰ **NL:** it is very difficult to verify if the majority of the said capital is held; query about the concept of “indirect participation”. In order to avoid abuse (shell companies, etc) certain criteria may be set up, e.g. minimum turnout, or number of employees, or obligation for registration. **Cion:** checking the duties of the applicant in the third-country undertaking could also be useful in this sense. **EE:** in relation with Article 6 of the proposal, issues such as tax problems, bankruptcy, etc of the undertakings could be taken into account.

²¹ **PT:** reservation (only certain links between groups are covered in the definition), **CZ** (in relation to the recognition of the group in other MS, etc), **DE, ES, IT, AT:** scrutiny reservations on this point. **CY:** suggested defining this term under national law. **SE:** query why not reference to the relevant definition deriving from Company Law acquis. **Cion:** opted for drawing on the simpler-to-implement definition of European Company found in Directive 2009/38/EC on the establishment of a European Work Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. In reply to **FI**, **Cion** clarified that temporary employment agencies are not in the scope of this provision. **Cion:** could further examine whether MS, under their national law, would ascertain whether certain entities fall under this definition.

- (m) ‘first Member State’ means the Member State which first grants a third-country national a residence permit on the basis of this Directive;²²
- (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 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.²³

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²² **LV:** scrutiny reservation on the point, in relation with the mobility conditions under this proposal.

²³ **FI:** such a detailed definition ought not to be in the proposal; reference to the applicable labour law (including Directive 96/71/EC on the posting of workers) could suffice. **PT:** unlike **FI**, consider the definition comprehensive (although the second sentence is repeated in Article 14 para. 1); reference should also be made to decisions of arbitration tribunals, etc. scrutiny reservation on this point. **Cion:** Reference to arbitration applies only to specific sectors, does not necessarily cover the scope of this provision. **NL:** the second sentence of this paragraph is a substantive provision, which should better fit in Article 14 para.1 and deleted from this definition. **FR, AT:** scrutiny reservations on this provision, along with Article 14 (*see relevant footnotes*); **FI, FR, LV, AT RO:** these issues should be also addressed by the Social Questions WP.

²⁴ **DE:** a further definition should be added about “regulated professions” drawing on Article 2(j) of the Blue Card holders Directive.

Article 4
*More favourable provisions*²⁵

1. This Directive shall apply without prejudice to more favourable provisions of:
 - (a) Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other;²⁶
 - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.²⁷

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15.²⁸

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²⁵ **SE:** wants to apply national rules, because it considers the scope of the proposal too narrow and would like to be able to grant national permits to those TCN who will not meet the criteria of the Directive. In the same vein, **ES, FI** suggested adding a third point in para. 1, with reference to national legislation, whereby TCN not eligible under the Directive could benefit from the mobility frame, etc. **LT, LV** query whether a TCN being in a MS under this Article (e.g. the more favourable provisions in the WTO frame) could benefit from the mobility provisions of the proposal. **Cion:** if this Article is applied, the TCN will not be able to invoke the mobility rules of the proposal.

²⁶ **CZ:** query whether the EU preference concept includes a TCN resident in one MS.

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

²⁸ **IT:** reservation on the point. **FI:** reference to Article 13 of the proposal could be included.

²⁹ **SE:** add a new point, on the basis of Article 4(3) of the Blue Card holders Directive: “This Directive shall be without prejudice to the right of the MS to issue residence permits other than an ICT permit for any purpose of employment. Such residence permits shall not confer the right of mobility between MS as provided for in this Directive”.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

*Criteria for admission*³⁰

1. Without prejudice to Article 10, a third-country national who applies to be admitted under the terms of this Directive shall:

³⁰ **IT:** reservation on the Article, asking clarification that the host entity can lodge an application as well. **PL:** scrutiny reservation on the Article; query whether additional grounds for refusal of admission, such as figuring in the national list of alerts, or in the SIS for the purposes of refusing entry, should be added; query about the possibility to issue a residence permit to a TCN under this Directive if he/she has been previously returned from the MS concerned for reasons other than those set out in para.1(h) of this Article. **Cion:** recalled that MS may apply the entry ban mechanism provided under the Directive 2008/115//EC on common standards and procedures in MS for returning illegally staying third-country nationals. However, as **CLS** confirmed, if an entry ban has not been imposed pursuant to the above 2008/115 Directive, it would not be possible to refuse subsequently entry to an applicant under this proposal, on the sole ground that he/she had been previously returned. **AT:** (scrutiny reservation on the exhaustive nature of the list of criteria). In reply to **DE**, **Cion** clarified that no obligation for admission, even if all the criteria are met is imposed on MS, with which shall lie the discretion to regulate volumes of entries of TCN under this Directive. If however, a MS wishes to admit a TCN for the purposes of this Directive, he/she will be entitled to a residence permit. In this context, **DE** suggested the following wording for the introductory sentence of para.1: “ A TCN who applies to be admitted under the terms of this Directive **may be granted admission if he/she fulfils the following conditions.**” **NL:** provide additionally, for the host entity’s registration in the national trade registry. **LT:** additional criteria along the following wording could be added: “i) provide evidence that he/she has suitable accommodation for him/her and family member during the transfer (*supported by BG, AT*); j) provide a written undertaking of the employer to compensate the expenses related to the return of the ICT to the country of origin, in cases where he/she illegally remains in the territory of the MS after the expiry of the ICT permit.” In the same vein, **SK** suggested providing as a criterion that the host entity should comply with its social security obligations, **BG** and **AT** that the TCN should have sufficient financial means / monthly resources, to meet his / her expenses (and return travel costs), in accordance with the minimum amount published for that purpose by the MS, to not burden the MS welfare system (**AT** alternatively suggested that the TCN should present a statement of financial responsibility along the one provided for in Directive 2005/71/3C); **CZ** that the TCN should provide evidence of prior employment in the third country and that the transfer will not last more than 3 years. **SE:** no reference to minimum wages should be added in the list, instead the following wording could be considered: “MS shall require that the ICT will have sufficient resources during his/her stay to maintain him/herself without having recourse to the social assistance system of the MS concerned”. **BE** (which pointed out that the bona fide host entities could enjoy faster procedures), **Cion:** multiplication of the criteria for admission could make the prospect less attractive for possible ICT.

- (a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;³¹
- (b) provide evidence of employment within the same group of undertakings, for at least 12 months³² immediately preceding the date of the intra-corporate transfer, if required by national legislation, and that he or she will be able to transfer back³³ to an entity belonging to that group of undertakings and established in a third country at the end of the assignment;

³¹ **DE:** query about the appropriate timing for inspection for the purpose of this provision (e.g. whether it may take place after the admission of the TCN). **Cion:** subsequent checks can take place and permits may be withdrawn if the criteria are not met.

³² **FR** queried whether the three month time applicable under national legislation could be applicable under the more favourable provisions principle. In reply to **DE**, **Cion** clarified that the 12-month period is the maximum, MS may opt in for anything less than that. **HU:** concerns that this time limit could limit the number of trainees eligible only to those who have been trained for at least 12 months and suggested rendering this provision optional for the trainees. **AT:** scrutiny reservation on the suggestion by **HU**, because if this provision becomes optional some MS may become more attractive to apply. **Cion:** the **HU** suggestion needs further examination; as regards the **AT** concern, attractiveness of certain MS in the intra - EU mobility framework is inevitable. **SE:** the provision should be amended as follows: “**If required by national legislation**, provide evidence... the date of the IC transfer, **and / or** that he or she will be able...”

CZ: to clarify that the managers and specialists should prove that they have worked for 12 months in a similar job or position. **Cion:** this could amount to an extra restriction, at any rate the prospect ICT has to prove that he/she has the past experience.

³³ **LT** suggested a more affirmative wording: “... will be **transferred** back...”. **SE, SI:** the second part of the phrase should also be worded in an optional way. **CY:** it would be difficult for the entity, or the TCN, to prove that he/she would be transferred back.

- (c) present an assignment letter from the employer including³⁴:
- (i) the duration of the transfer and the location of the host entity or entities of the Member State³⁵ concerned;
 - (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;
 - (iii) the remuneration granted during the transfer;³⁶
- (d) provide evidence that he or she has the professional qualifications needed in the Member State³⁷ to which he or she has been admitted³⁸ for the position of manager or specialist or, for graduate trainees, the higher education qualifications required;

³⁴ **ES, AT:** reservations on the point, the assignment letter shall not replace the employment contract, as the basis for the decision on the application. **FI:** in the same sense, it is important to confirm necessary information through the work contract. **EL:** scrutiny reservation on this point; the assignment letter is not as binding for the host entity (to fight abuse) as an employment contract, where a detailed description of competence required, TCN qualifications, etc would have added value for MS to carry out checks and possibly impose sanctions. **Cion:** the assignment letter has sufficient legal bearing and will include working conditions.

³⁵ **LT:** query if information would be provided for more than the first MS in the assignment letter.

³⁶ **FI** (on this point in conjunction with para.2): reference shall be made to the relevant Article 3(1) list of employment terms and conditions of Directive 96/71/EC concerning the posting of workers, in order to avoid abuse. **FR:** a minimum wage serving as a threshold stipulated in this proposal might help undertakings in the targeting of TCN procedure. **CZ, SE:** support enhancing the list of employment conditions; **SE:** add at the end of the provision “**insurances and other terms of employment granted during the transfer**”; **SE:** against a minimum salary provision; **HU:** the equal treatment principle without an absolute threshold shall be applied in this case. **Cion:** wanted to avoid lengthy checks, but in any case, pursuant to para. 2 of this Article and Article 14, all seconded persons in a similar situation shall receive same remuneration.

³⁷ **DE:** delete the wording “needed in the MS”; also delete from this point reference to graduate trainees. In reply to **DE**, **Cion** clarified that the difference between points (d) and (e) lie in the status of the profession in the MS concerned.

³⁸ **NL:** admission has not yet taken place; it would be more precise to say “... he or she has **requested to be admitted...**”. **Cion:** this suggestion needs further examination.

- (e) present documentation certifying that he or she fulfils the conditions laid down under national legislation³⁹ for citizens of the Union to exercise the regulated profession which the transferee will work in;
- (f) present a valid travel document, as determined by national law, and an application for a visa or a visa, if required;⁴⁰
- (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;⁴¹

³⁹ **RO:** add "... under national legislation **of the MS in which the host entity is established** for citizens..." In reply to **HU, RO, Cion** confirmed that it the conditions shall be in accordance with the national legislation of the MS concerned and not of the third country.

⁴⁰ **LT:** by virtue of the Community Visa Code, add "MS may require the period of validity of the document to extend for at least three months after the intended date of departure from the territory of the MS". **BG, CY** (want validity longer than three months), **DE** (want a travel doc. valid for the entire stay), **HU:** same concerns. **Cion:** not necessary legally to repeat it; it is provided for in Article 12 of the Visa Code. In reply to **ES** (query about the wording "application for a visa or a visa", **Cion** recalled that this wording was taken from the Blue-Card holders Directive and will check if it is necessary for this proposal as well. **PT:** the wording seems fitting to this proposal.

⁴¹ **PL:** scrutiny reservation on the point. **DE, AT:** the wording is not clear; could rather say "shall have to present evidence of having sufficient sickness insurance". **NL, Cion:** the current standard language provides for legal certainty.

(h) be considered not to pose a threat to public policy, public security or public health.⁴²
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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.⁴⁵

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.

⁴² In reply to **BG, CY, PT** query about access to criminal records data from the third country / first MS, **Cion** pointed out that MS shall be able to have such access, but it does not consider it necessary to refer it to explicitly in this provision. **DE**: the provision is too narrowly drafted, it should include further grounds for rejection, eg. terrorism. **Cion**: this ground is covered by the reference to the threat to public security. In this context, **DE** suggested adding at the end of the provision: "... **or any other important interests of the host MS.**" in order to cover foreign policy - related grounds.

⁴³ **RO** suggested adding a new paragraph: "provide proof, if the MS so requests, that he/she has paid the fee for processing the application".

⁴⁴ **AT** suggested adding a new paragraph: "The MS concerned may require to provide evidence concerning an accommodation regarded as normal for a comparable situation in the same region and which meets the general health and safety standards in force in the MS concerned" or alternatively: "MS may require the applicant to provide his address in the territory of the MS concerned".

⁴⁵ **DE, FI, AT** (which entered a scrutiny reservation on para. 2): query why the second sentence of Article 3(f) of Directive 96/71/EC concerning the posting of workers (providing for guarantees for equal treatment) has not been included in this proposal. **Cion**: the wording in this proposal aims to be simplified. **FI, SE**: to add that remuneration / all employment conditions have to comply with other existing agreements or national practice; **SE** suggested referring at the end of the provision to: "... remuneration, **insurances and other terms of employment granted during the transfer.**" **NL**: it shall be clarified that the remuneration shall be in keeping with the labour market situation. Also, the reference to collective agreements is too broad, it shall be limited to the core provisions of the collective agreements following the example of the Directive 96/71/EC concerning the posting of workers.

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 agreement⁴⁶, including a description of the training programme, its duration and the conditions under which the applicant is supervised during the programme.
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).⁴⁷
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.⁴⁸

⁴⁶ **LT** suggested adding "... a training agreement **which will be related to his/her preparation for a managerial position within the company**, including a description...". **Cion:** Article 5(1)(c)(ii) covers this concern. **EL:** scrutiny reservation on the point, it is not clear what this programme is supposed to include and which are to be the parties in it. **Cion:** the ICT, the host entity and the employer in the third country are to be involved in this programme

⁴⁷ **DE:** the provision is not clear; **EE:** reservation on the point; **SE** notification of evidence for a MS which has no file yet on the application could be very difficult to implement in practice; **HU:** it would be too cumbersome for the ICT before arriving in the first MS to provide all this evidence. **Cion:** all the notification under this provision has to take place and evidence thereof should be appended to the application to the first MS.

⁴⁸ In reply to **HU**, **Cion** pointed out that this paragraph does not provide specifically about the person(s) who will have the obligation to notify any modification. The purpose thereof is to enable MS to check if the criteria are met. **NL:** this provision should not be considered as a condition for application.

Article 6
*Grounds for refusal*⁴⁹

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.
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.⁵⁰
3. Member States may reject an application on the grounds of volumes of admission of third-country nationals.⁵¹

⁴⁹ **EE:** suggested adding a new ground for refusal whereby MS may refuse to issue a permit in case where the host entity is facing serious financial problems, is not paying taxes, etc., or has no economic activities at all. In this vein, **CZ, SK** suggested adding grounds concerning non-compliance with national legislation of social security and welfare issues. **Cion:** addition of new grounds should be very carefully checked to avoid rendering the proposal overly strict. **DE:** query (related to the evidence procedure) if not meeting the criteria for admission is considered a refusal and vice versa. **Cion:** in principle certain grounds such as public policy, security and health serve for both cases. **CZ:** the last part of Recital 17 ("... and not to grant residence permits for employment in general or for certain professions, economic sectors, or regions." shall be reflected in this Article as well.

⁵⁰ **NL, SE:** make this provision optional in order to have flexibility regarding this further sanction to the employer / host entity. **Cion:** this suggestion will be further examined. **IT:** scrutiny reservation on the paragraph.

⁵¹ **IT:** scrutiny reservation on the paragraph. **ES:** seek clarification that refusal on the grounds of volumes of admission depends on national labour market situation; otherwise it would run counter to Recital 15 of the proposal. **MT:** similar concerns about the interplay between the labour market tests and the admission volumes. **Cion:** the work test in the labour market is a different concept from the volumes of admission, which lie with MS discretion; irrespective of the fulfillment of the criteria, if the relevant quotas are reached the application may be rejected.

AT: prefer a wording coherent to the Blue-Card holders Directive 2009/50/EC "MS may consider an application inadmissible on the grounds of volumes of admission of TCN". **CZ, EL:** query how to check the admission quotas if the ICT is to be transferred to more than one MS. **FI, MT:** query how does this paragraph relate to the Community preference principle; **MT** same query about the WTO bilateral agreements.

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.⁵²

⁵² **LT, PT:** scrutiny reservations on the provision, query about the geographical limitation provided for in it and considering it unacceptable to prejudge the decision of other MS about which TCN could work in their labour market. **CZ, DE, EE, FI, HU, PL, RO:** similar concerns about how it would be possible to limit in practice the geographical scope of the residence permit, and have the first MS monitoring the second MS for compliance with the relevant conditions. **ES, AT** (have concerns about its compatibility with the Schengen-related framework), **PL, SE:** query about how the checks if conditions are met in the other MS could be carried out in practice - even with longer deadlines and the use of national contact points. **HU, NL, PT:** it is a provision very difficult to implement; does not constitute a ground for refusal therefore it should be inserted in Article 16. In reply to a query of **PT** about which MS is entitled to collect the fees for the administrative work in the second MS, **Cion** pointed out that the proposal could not enter into such details. In reply to **CZ**, **Cion** stressed that any MS can refuse entry on the basis of filled quotas. **DE:** has concerns that this co-operation among MS could generated a lot of problems. **Cion:** co-operation and mutual confidence are necessary for intra EU mobility. **FI:** query about the possibility for the MS to exchange information regarding positive decisions that have granted the residence permit. **Cion:** this issue might be addressed by ex ante checks drawing on Directive 96/71. The final decision which grants the permit has to be communicated to the MS involved. **Cion:** each MS retains fully the control of admission in its territory; the first MS asks the second one (which has the necessary documents) and the latter takes a decision. All the relevant details about the geographical scope are spelt out in the additional document; there is no contradiction with the Schengen acquis - the residence permit is of standard nature under Article 21 of the Schengen Convention. If there is a need to amend the original additional document, the immigration authorities of the MS which received the application would be responsible to do it. National contact points should have already some experience from their work under the Long Term Residents Directive.

Article 7

*Withdrawal or non-renewal of the permit*⁵³

1. Member States shall withdraw or refuse to renew an intra-corporate transferee permit in the following cases:
 - (a) where it has been fraudulently acquired, or has been falsified, or tampered with;

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

2. 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,⁵⁴

or
 - (b) for reasons of public policy, public security or public health.

⁵³ **LT:** suggested adding a new ground for the withdrawal of a residence permit “If the TCN obtains an ICT permit in another MS according to Article 16, the first MS may withdraw the previous ICT permit.” **DE:** seek clarification that MS maintain their discretion for granting the residence permit. **AT:** add a new ground if the ICT has no sufficient funds and needs social services support. **Cion:** adding too many grounds should be avoided.

⁵⁴ **CZ, EE, LT, LV:** these two cases should provide for mandatory withdrawal/non-renewal. **LT:** add “whenever the conditions laid down in Articles 5 or 11(2) were not met are no longer met”. **Cion** recalled that the optional wording was preferred because the consequences of withdrawal/non-renewal may be heavier than rejection for the TCN since he/she will be living in a MS.

⁵⁵ **AT:** suggested adding a new ground of refusal: (c) when the ICT applies for social assistance.

Article 8
*Penalties*⁵⁶

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.

CHAPTER III
PROCEDURE AND PERMIT⁵⁷

Article 9
*Access to information*⁵⁸

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.

⁵⁶ **NL:** scrutiny reservation on the Article because it considers it too restrictive. **FR:** query if these penalties can also be of criminal nature. **Cion:** pursuant to recital 18, besides administrative and financial sanctions, in very serious cases, criminal penalties may be imposed **HU:** it is important to state how the penalties shall be implemented, e.g. identify who is responsible from the host entity to face the penalties. **EL:** concern about the responsibility of the host entity if the TCN is not linked with it via a work contract. **Cion:** the host entity is not an employer for the TCN.

⁵⁷ **ES:** general scrutiny reservation on Chapter III for its interaction with the proposal for a Directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State ("Single permit" proposal).

Cion: the two proposals, being under negotiation in parallel might not tally absolutely.

⁵⁸ **DE:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle. **Cion:** MS may ask a fee for dealing with the application.

Article 10
*Applications for admission*⁵⁹

1. Member States shall determine whether an application is to be made by the third-country national or by the host entity.⁶⁰
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.⁶¹

⁵⁹ **IT:** scrutiny reservation on Article 10.

⁶⁰ **LT:** amend the provision as follows: “MS may determine that an application can be made by the TCN, by the host entity, **by the employer, or by the undertaking established in a third country.**” In the same vein with **LT**, **AT** suggested adding “made by the third country **and/or** the host entity.” **Cion:** agree with the **AT** suggestion.

⁶¹ **PT:** has a concern about the lack of provision for submitting an application from the territory of the MS concerned. **LT:** suggested amending the provision as follows: "Except for cases provided for in Article 16, the application shall be considered and examined only when the TCN is residing in the territory of a third country." **ES, LV, NL, PL, PT, SE:** prefer an optional wording; the possibility of lodging an application from a MS, being there legally present, should be considered. **DE:** query whether Articles 2(1) - the TCN has to be outside EU and 10(2) - the TCN may be in another MS from that where the application is submitted, have a difference scope. **Cion:** there is no clash between the two provisions. **AT:** scrutiny reservation on the paragraph, mainly in relation to TCN temporarily residents in a MS; could draw for this issue on the Blue-Card holders Directive. **Cion:** took note of MS suggestions for flexibility; at any rate the TCN has - contrary to the Blue-Card holders Directive - to be primarily residing outside the EU.

3. The application shall be lodged to the authorities of the Member State where the intra-corporate transfer mainly takes place.⁶²
4. Member States shall designate the authority competent to receive the application and to issue the intra-corporate transferee permit.⁶³
5. The application shall be submitted in a single application procedure.⁶⁴

⁶² **DE:** query about the difficulty to determine the MS responsible to receive the application in cases where it would not be clear where the larger part of the assignment would be carried out. **ES, FI:** this provision needs to be clarified. **CZ, DE, EE, ES, AT, PL, PT:** Providing that this would be the MS where the applicant arrives first might be helpful to address the above concern. **DE, AT:** query about the legal consequences of having a MS not competent receiving the application.

LT (which stressed that each MS shall retain its right to decide whether a TCN could work in its territory. **PT:** specific criteria are needed for determining the appropriate MS. **Cion:** the whole system has to be based on co-operation, dialogue and confidence among MS. In case of wrong MS receiving the applicant, this MS could forward the file to the competent one. The latter has to be the MS which is mainly related (time-wise) with the ICT work. Very rarely there would be cases of genuine doubt and this could be solved with consultation between the MS concerned. There is no mechanism of sanctions for an erroneous examination of the application in one MS.

ES: it is difficult to know in advance that the ICT will spend more time in the second MS, when he/she applies to the first one. MS could not be obliged to be continuously in contact for this purpose. **DE:** this provision might provoke abuse; TCN might apply to MS where lenient criteria apply and after a brief time move to a second MS. Moreover, query about how the applicant could prove the amount of time to spend in the subsequent MS. **EL:** abuse would be very difficult to be proven under this provision. **Cion:** Abuse could be fought with mutual aid between MS; the assignment letter may give some indication for the time to be spent in the MS. **PL:** has doubts about the added value of using national contact points for this purpose.

⁶³ **DE, AT:** delete this provision, suggesting that it would be up to MS to take these measures under the subsidiarity principle. **ES:** cannot accept the above suggestion, if the provision is included in the Single Permit proposal, it should also appear in this one too. **Cion:** this paragraph serves the transparency principle (as para.1 does as well).

⁶⁴ **AT:** reservation on the point.

6. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.⁶⁵
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.⁶⁶

Recognition shall be granted for a maximum of three years on the basis of the following information:

- (a) information relating to the financial standing of the group of undertakings aiming to ensure that the intra-corporate transferee will be guaranteed the required level of remuneration and rights as provided for in Article 14;
- (b) evidence that the conditions of admission regarding prior transfers have been complied with;

⁶⁵ **EL, IT, AT, PT:** scrutiny reservations on the provision (the first three mainly in relation to the scope of the wording "every facility"). This concern was shared by **DE**, which suggested deletion of the point due to clash with the subsidiarity principle. **FI:** query about the objective of the provision and about the type of visas provided for in it. **Cion:** it is a standard-language (appearing in the Blue-Card holders Directive, etc), aiming at avoiding delays in the relevant procedures.

⁶⁶ **CZ, IT:** scrutiny reservation on the provision; **CZ:** MS shall have to register the undertakings eligible for these simplified procedures. In reply to **FR** comment that an agreement involving this group of undertakings has to precede its inclusion into this category, **Cion** agreed that a good record for the group of undertakings has to precede its status as eligible for simplified procedures.

LT: suggested maintaining only the first sentence of this paragraph and deleting all the rest of it, as well as para. 8-10. **DE:** also scrutiny reservations on para. 7-10. **NL:** instead of group of undertakings, reference shall be made to host entities. **Cion:** the whole group of undertakings will be involved in the simplified procedures. **AT** entered a scrutiny reservation paragraph 7 and suggested converting it to an optional wording apart from point 1(b) where the mandatory character should be maintained. **Cion:** if a MS opt for using this procedure, it has to respect certain criteria.

- (c) evidence that tax law and regulations have been complied with in the host country;
- (d) information related to forthcoming transfers.

⁶⁷

8. The simplified procedures provided for in paragraph 7 shall consist of:

- (a) exempting the applicant from presenting the documents referred to in Article 5 where they have been previously provided and are still valid;
- (b) a fast-track admission procedure allowing intra-corporate transferee permits to be issued within a shorter time than specified in Article 12(1);⁶⁸

or

- (c) specific facilitations for visas.⁶⁹

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.⁷⁰

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 7.⁷¹

⁶⁷ **NL:** a new point (e) should be added providing for conditions on specific sectors.

⁶⁸ **CZ:** considers not feasible to shorten this deadline.

⁶⁹ **LT:** suggested deleting the point; **DE:** scrutiny reservation on it. **RO:** concern due to the fact that there is no provision for confirming if docs provided for in Article 5 continue to be valid. **CZ:** considers it being covered by Article 6. **NL:** to add in the scope of the provision residence permits for the ICT and his/her family members. **Cion:** this suggestion could be further examined. **Cion** also pointed out that it wanted to grant all the necessary information for the transfer to those concerned.

⁷⁰ **LT:** suggested deleting the point; **DE:** scrutiny reservation on it.

⁷¹ **LT:** suggested deleting the point; **DE:** scrutiny reservation on it.

Article 11
*Intra-corporate transferee permit*⁷²

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for graduate trainees.⁷³
3. The intra-corporate transferee permit⁷⁴ shall be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002⁷⁵. In 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 13.⁷⁶

⁷² **IT:** reservation on the Article; should add in the title reference to Council Regulation/EC 1030/2002 laying down a uniform format for residence permits for TCN. **AT, PT:** scrutiny reservations on the Article, the latter in particular linked with the issue of residence permits for trainees. In reply to **LT, Cion** clarified that as long as the Directive allows it, a residence permit under this Directive can be issued more than once.

⁷³ **SE:** to amend the provision as follows, based on Article 7(2) of the Blue Card holders Directive in order to allow for more flexibility: “ MS shall set a standard period of validity of the ICT permit, which shall be comprised between one and four years. If the work contract covers a period less than this period, the ICT permit shall be issued or renewed for the duration of the work contract. The aggregated period of validity of the ICT permit shall not exceed four years”.

⁷⁴ **LT:** query whether a single issue with a life-long validity could be possible under the draft Directive.

⁷⁵ OJ L 157, 15.6.2002, p. 1. **FI:** want the correct reference for the Regulation including the biometrics element.

⁷⁶ **PL:** scrutiny reservation on the point.

4. Under the heading ‘type of permit’, the Member States shall enter ‘intra-corporate transferee’ and the name of the group of undertakings concerned.⁷⁷ 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.⁷⁸
5. Member States shall not issue any additional permits, in particular work permits of any kind.⁷⁹

⁷⁷ **LT:** delete the wording " and the name of the group of undertakings concerned".

⁷⁸ **FR, HU:** query about the added value of naming the group of undertakings and drawing such a list, prefer this provision optional. **PT, SE** (too much of administrative work is required): reservations, **FI** (query about the addressees of the list), **IT, LV, AT, PL, SI:** scrutiny reservations on the obligation to draw such a list and the difficulties in relation to its implementation. **NL:** MS shall put only the name of the host entity not of the group of undertakings. **DE, NL:** to decide upon the conditions in an entity in another MS will not be possible. A Europe-wide such list might be feasible for MS sake. **Cion** clarified that each MS will have to draw up its own list of entities in its own territory. In reply to **DE, Cion** pointed out that a part of the standard pattern provided for under Regulation 1030/2002 has been maintained for the purposes of this proposal. **HU:** query about practical issues such as the security features of this document, the writing of its legal basis and of the rights flowing from it, as well as an indication of the residence permit number on it, etc. **CZ, LT:** this provision is related to mobility and the recognition of the group of undertakings in the other MS. In the same vein, **EL** entered a scrutiny reservation.

⁷⁹ **SE:** suggested the following clarifying addition: “MS shall not, **for persons who have been granted an ICT permit** issue any additional permits, in particular work permits of any kind”.

Article 12
Procedural safeguards

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 revision of the additional document⁸⁰ provided for in Article 11(4) and notify⁸¹ 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.⁸²

⁸⁰ **EL:** query about the nature of the revision under this provision; there shall be a single procedure for drafting the additional document under Article 11(4), for the criteria of the revision, etc.

⁸¹ **IT:** suggesting replacing “notify” with “communicate” or “inform”. **BE:** suggested that MS could inform the employer as well. **Cion:** this can be done under the principle of more favourable provisions (in this sense, to notify also the employer in the third country).

⁸² **CY, DE** (which has concerns that this provision infringes the subsidiarity principle): reservations, **EE, EL, IT, MT, PL:** scrutiny reservations in relation with the time-limits of 30 and 60 days, due to the fact that there will not likely be enough time to have consultation with other MS on the residence permit application. **DE, AT:** query about the consequences for non-compliance with the deadline. **ES / Cion:** pointed out that these consequences should lie at MS discretion. **AT:** to add the following wording in paragraph 1: "National law of the relevant MS shall determine any consequence of a decision not having being taken by the end of the period provided for in the first subparagraph."

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

CY, SE: suggested replacing the 30-day time-limit with “as soon as possible”.

CZ, LT (suggested the wording “as soon / speedily as possible, but no later than 60 days”),

SI: reservations on the provision preferring 60 days instead of 30.

BE (could also live with the current time-limit), **EL, ES** (suggested the wording “as soon as possible, but no later than 90 days”), **NL, AT, PT:** prefer 90 days instead of 30, following the Blue-Card Directive.

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

2. Where the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.⁸³
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 decision⁸⁴, the possible redress procedures available and the time limit for taking action.

⁸³ **PL:** add the possibility to suspend the deadline where the application is not complete. **Cion:** reiterated that the deadline starts only when the application is complete **DE:** reservation on this paragraph, considering that it infringes the principle of subsidiarity, because the administrative issue it regulates is not necessary to be dealt with at EU level. **BE, RO:** shall provide that if the complete documents are not sent within the deadline, the application may be rejected.

⁸⁴ **IT:** the reasons should be set out in the decision not in the notification, which is a technical document. **Cion:** considered that this suggestion needs further examination. **DE:** if a visa has been delivered there is no possibility for legal challenge. **Cion:** recalled that the TCN who will come to a MS under this proposal will be equipped with a residence permit rather than a visa.

CHAPTER IV

RIGHTS

Article 13

Rights on the basis of the intra-corporate transferee permit

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

1. the right to enter and stay in the territory of the Member State issuing the permit;⁸⁵
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 other⁸⁶ entity belonging to the group of undertakings listed in the additional document provided for in Article 11(4) in accordance with Article 16;⁸⁷

⁸⁵ **ES, NL:** to add the right to remain in the territory of the MS where the entity mentioned in the permit is located. **Cion:** the MS where the ICT is authorised to work is the one where he / she has the right to reside.

⁸⁶ **CZ, SE:** delete the word “other”.

⁸⁷ **DE:** the employment activity should not be specified in the permit; if the rights provided for in Article 16 are repeated in this Article, the two provisions could be merged. **Cion:** this provision is about the specific employment activity authorized under the permit and not specified on the residence permit. **EE, FI, LV, AT, SE, SI:** scrutiny reservations on paragraphs 3 and 4, considering the procedure too cumbersome.

4. the right to carry out his/her assignment at the sites of clients⁸⁸ of the entities belonging to the group of undertakings listed in the additional document provided for in Article 11 (4), as long as the employment relationship is maintained with the undertaking established in a third country.

Article 14

Rights⁸⁹

Whatever the law applicable to the employment relationship, intra-corporate transferees shall be entitled to:⁹⁰

⁸⁸ **FI:** want to clarify that temporary work agencies are excluded from the scope of this provision. **CZ, FI, FR:** scrutiny reservations on the provision, having concerns about abuse related to illegal hiring out of labour. **Cion:** an integral element of the definition of an ICT is the requirement that the transfer takes place within a group of undertakings; the specificities of the work are related to the host entity and not to the client. **DE, AT** (which entered a reservation on the provision): query about the scope of the term “assignment”. **Cion:** it is the actual work (as a set of tasks) to be carried out by the ICT.

⁸⁹ **DE, AT** (which entered a reservation on the Article): MS should retain the power to decide on what rights should be allocated; additional costs should be avoided. **CY, CZ, FI, LV:** reservations, **PL:** scrutiny reservation due to concerns about the effect of the draft Directive on their social security systems. **FI, FR, AT, LV, RO:** these issues should be also addressed by the Social Questions WP. **AT:** In Article 14(1) the type of posting should be clarified because Directive 96/71 provides for 3 types of posting and the issue might have an impact on social security issues. **EE:** query whether a definition of seconded workers (which might draw on Directive 96/71) is needed to be inserted in Article 3 of this proposal.

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

⁹⁰ **SE:** paragraph 1 of this Article should be titled “working conditions” and paragraph 2 “equal treatment”. **FI,** supporting **SE,** suggested splitting this Article and referring in what is the current paragraph 1, to Directive 96/71 on the posting of workers.

- ⁹¹1. 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.⁹²

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

2. equal treatment with nationals of the host Member State⁹³ as regards:
- (a) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
 - (b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures,⁹⁴

⁹¹ **ES:** scrutiny reservation on this paragraph, having concerns that it may have negative results on working conditions; **LT:** query about the term “similar situation”. **HU:** considers that it is too broadly drafted and a list of minimum conditions for the protection of the employee, on the basis of the one in Article 3(1) of Directive 96/71 could be inserted.

⁹² **FI:** add at the end of the sentence: “... which ensure at least the same level of protection as provided for in Article 3(1) of Directive 96/71.”

⁹³ **EE:** query why here reference is mad to “host MS” whereas in paragraph 1 to “the MS to which they have been admitted.

⁹⁴ **DE:** questioned the relevance of such a provision as the TCN should be able to prove that he/she meets the qualifications requirements when applying for the ICT permit. **Cion:** recalled that such provision has already been applicable to the Blue Card holders); it could also be of interest for the ICT whose qualifications were recognised in a MS according to Directive 2005/36/EC on the recognition of professional qualifications.

- (c) without prejudice to existing bilateral agreements, provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No 859/2003⁹⁵ shall apply accordingly;⁹⁶

⁹⁵ OJ L 124, 20.5.2003, p. 1.

⁹⁶ **IT** (which entered a scrutiny reservation on the point), **PL**: concerns about the application of Regulation 883/04 and the application of social security / use of unemployment benefits. **Cion**: all branches of unemployment benefits pursuant to Regulation 883/04 are applicable in this Article. It is not possible to differentiate access to unemployment benefits, as long as same contributions are paid. **ES**: the principle of equal treatment (which should be the first one stated in the provision) applies to branches of social security rather than in the framework of bilateral agreements. Moreover, it should be clarified that this principle applies without prejudice to bilateral agreements and (supported by **CZ**, **EE**, **EL**, **IT**, **LT**, **LV**) provided that the ICT is able to pay his/her contribution. It shall be clarified whether this obligation for contribution applies in the first, or in the second MS. **Cion**: if the ICT is transferred to a MS which does not have a bilateral agreement with the third country concerned, the national legislation of this MS applies; if the ICT moves to another MS, this matter is regulated under the relevant Community co-ordination rules. **CZ**: suggested deletion of the point as, it interferes with national law on social security; it may constitute an obstacle for facilitating the entry and residence of prospective ICT and equal treatment also entails obligation to pay contributions and it is likely to create a double obligation for ICT to pay contributions in the MS and the third country as well. **CZ**, **FI**: query whether the obligation in Article 5 to provide proof that he/she has sickness insurance contradicts the principle of equal treatment; pointed out that where, by virtue of bilateral agreement on social security pensions, the TCN is covered by the third country, it should be clarified that the relevant rights do not affect the social security system of the MS concerned. **FI** has also concerns whether certain benefits for the ICT families are linked with the country / MS of residence. **Cion**: TCN are eligible for those benefits which are already granted to own nationals and under the same conditions (including contributions). Unemployment benefits are already provided for in other legal migration instruments and discrimination on the basis of nationality is not allowed in this area, according to the ECHR case-law. There is no contradiction between Article 5(1)(g), (which covers periods of insurance that are not already covered as a result of the employment activity), and this provision. **Cion** also clarified that if there is no bilateral agreement, the situation in each country as regards the affiliation issue may differ. As regards intra EU mobility, equal treatment applies pursuant to Regulation 859/2003. **DE**: discussions should be on hold pending the outcome of the Single Permit Directive negotiations; it should be clarified that bilateral agreements in the context of national law continue to apply. In reply to a query by **AT**, **Cion** pointed out that points (c) and (d) are different from the relevant provisions of the Seasonal Workers proposal because in the ICT all bilateral agreements (and not just those which are more favourable) apply and because under this proposal the ICT is entitled to move from one MS to another, whereas under the Seasonal Workers proposal mobility is limited.

- (d) without prejudice to Regulation (EC) No 859/2003 and to existing bilateral agreements,⁹⁷ payment of statutory pensions based on the worker's previous employment when moving to a third country;⁹⁸
- (e) access to goods and services and the supply of goods and services made available to the public, except public housing⁹⁹ and counselling services afforded by employment services.¹⁰⁰

⁹⁷ **ES:** suggested deleting the first part of the sentence until “bilateral agreements” as redundant.
⁹⁸ **CZ:** expressed concerns similar to those in point (c) of this paragraph (see footnote 96). **DE:** general scrutiny reservation on the principle of equal treatment; as regards social security, has particular concerns about the family members allowances, which should be granted only to TCN who settle permanently, otherwise could constitute a pull factor. **DE:** if the export of benefits is permitted it should be under the reciprocity principle. **Cion:** An entitlement for pension rights (five years of insurance) could be built taking into account the time passed as an ICT. **HU, AT:** like **DE**, reservation on the granting of allowances/benefits for family members of TCN under this Directive, because they are destined to TCN planning to stay for longer periods. **LT:** scrutiny reservation on points (c) and (d); social security should not come under the principle of equal treatment, unless the TCN is covered by social security in the MS concerned; in the same vein, **EE, LV** pointed out that TCN under this Directive should not be granted access to certain benefits. **SE:** considers that ICT should be treated as national workers given their contribution to the MS economies.

AT has concerns about this provision, because it might entail less favourable treatment to own nationals than to the TCN concerned. **Cion:** only the benefits which could be granted to own nationals could fall under this provision. **CY:** is in principle against modifying Directive 883/04; the wording in points (c) and (d) should be assimilated to the relevant provisions of the Single Permit Directive. **Cion:** the aim has been to deviate as little as possible from Regulation 883/04. **EL:** has concerns whether under this point MS are obliged to pay pension rights.

⁹⁹ **MT:** housing as a whole (not just public) should be excluded. **SI:** scrutiny reservation on the reference to public housing.

¹⁰⁰ **FI:** the scope of the provision should be widened, all services related to employment should be excluded. Provision should be made for the security of the wages in case of insolvency of the employer. **DE:** services in the social sphere should also be excluded; counseling services ought not to be mentioned under the employment framework; long-term training / educational services should also be excluded. The concern about training was shared by **IT**, which entered a reservation on the point. **Cion:** coherence with the Seasonal Workers and the Single Permit proposals will be ensured.

The right to equal treatment laid down in paragraph 2 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.

Article 15
Family members¹⁰¹

1. Council Directive 2003/86/EC shall apply, subject to the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification in the 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.
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.¹⁰²

¹⁰¹ **DE, AT:** scrutiny reservations on this Article; query about the number of ICT who come to EU only for a short period (e.g. 3-4 months) for whom family reunification is not particularly relevant. If they constitute the bulk of ICT cases, maybe Article 15 has no added value. **Cion:** there is no data for the duration of stay for ICT.

¹⁰² **AT:** delete this paragraph (will be counter to its upcoming legislation).

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the first Member State, if the conditions for family reunification are fulfilled, at the latest within two months from the date on which the application was lodged.¹⁰³

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.¹⁰⁴

¹⁰³ **IT:** scrutiny reservation on the provision, query about the time the two-month period starts to run. **Cion:** it starts when the application for family reunification is lodged. **SE:** replace the two months with “as soon as possible” and stress that the period starts after a complete application has been lodged (as it is worded for the ICT application). **ES** (which entered a scrutiny reservation on the paragraph), **NL, AT:** suggested 90 days (as they did for the treatment of the ICT application in Article 12). **AT:** a longer deadline in the light of Directive 2004/38/EC (which provides for six months) could be considered. **Cion:** this is a key provision for the proposal.

¹⁰⁴ **SE:** want to make provision for the access of family members to the labour market on the basis of the relevant point in the Blue Card Directive. **NL:** in order to make the system more flexible, delete the last part of the sentence ("insofar as the period of validity...allows.") and make the provision optional by saying that the period of validity of the residence permits for the family members **may** be limited by the MS to the length of validity of the ICT permit. **LT:** delete reference to Article 13(3) because the duration of the residence permit granted to the family member cannot go beyond the duration of the ICT residence permit. **Cion:** will check if the provision needs to be adapted. **EL:** reservation on this paragraph with regard to access to labour market rights for family members; provision for family reunification in the second MS could be useful.

CHAPTER V

MOBILITY BETWEEN MEMBER STATES

Article 16

*Mobility between Member States*¹⁰⁵

¹⁰⁵ **CZ, DE, EE, EL, ES, FI, LT, LV, AT, PL, PT, SE, SI, SK:** general scrutiny reservations on all the provisions related to intra EU mobility.

CZ (query if the ICT have to register with the competent authorities of the MS), **EE, FI:** reservations, **DE, EL, IT, LT, LV, NL** (in particular with regard to the reference to the sites of clients of the host entity - certain elements have not been dealt with in this Article: family reunification in the second MS, withdrawal / not issue of the residence permit in the second MS, admission back by the first MS of the ICT if something goes wrong in the second one), **AT, PL, SI, SK:** scrutiny reservations on this Article, its procedures are too complex and difficult to implement in practice. **EE:** The consultation mechanism between MS should be described in more detail. Each MS should have the right to take a final decision regarding the applicants' access to its territory. **EE** has queries about the general liability for the ICT, about consultations between MS to guarantee that deadlines are met, and - supported by **SE:** about the mechanism to solve disputes between MS, etc. **EL:** second MS could give its consent. A deadline shall be inserted for submitting documents to the second MS under paragraph 1(b).

AT: concerns about the fact that each MS will have to assess actions taken in another MS. **EL:** fear of abuses generated by this intra-EU mobility system, concerns related to pension issues; concerns with regard to the fact that the second MS is not entitled to approve the mobility and to a lacuna related to the possibility to request family reunification in the second MS. **LT:** concerns related to the assessment of the legal status of the undertakings in other MS; in relation to the right of appeal to the courts; the possibility of the family members of the ICT to move with him/her to another MS, and supported by **CZ:** the question of which MS is responsible to return the ICT if he/she remains illegally in the territory of a MS ; the administrative costs in case of a MS which did not issue an ICT permit. **LT:** considers that consultation could be problematic and each MS could issue its own residence permit. **FI:** concerns about how to carry out checks in the other MS on the compliance with the working conditions and the employment contract in general. **DE:** the power of one MS to determine the work of an ICT in another MS has to be clearly delineated; query if the second MS can reject the ICT if work was unnecessary in the first MS; query if the first MS does not have a preparatory period mechanism before assuming work; concerns if at the customers site the host entities are not present. **ES:** query if the bulk of the work has to be done in the second MS what kind of document is needed for entering the first MS.

Cion: Following notification from the second MS that the bulk of the activity will be carried out in its territory, the first MS can adapt the residence permit and the additional document accordingly. Where mobility arrives after the issue of the residence permit, an application for amending it (if it is still valid) along with the additional document has to be done. The rules regarding quotas, deadlines etc are the same for the second MS as for the application for the first MS. Concerning the sites of clients, **Cion** recalled that the employment link applies and it is not considered as posting under Directive 96/71. Furthermore, the Vander Elst ruling regarding the provision of services does not apply to this proposal. Concerning family reunification **Cion** clarified that in the second MS the Family Reunification Directive applies. In reply to the liability concern of **EE**, **Cion** pointed out that a case-by-case examination is needed and it depends on the nature of each problem. In reply to **CZ**, **Cion** pointed out that there is no obligation to return to the first MS when the residence permit is no longer valid in the second MS. In case he / she is illegally staying, the Return Directive may be used. **SI:** even if the residence permit has expired he/she should return to the first MS along the Blue Card Directive. **PL** query if the second MS can challenge the decision taken by the first one; if the first MS could amend the document upon presentation by the applicant of documents showing that he/she wanted to continue working in another MS.

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:
 - (a) the duration of the transfer in the other Member State(s) does not exceed twelve months;¹⁰⁶
 - (b) the applicant has submitted to the competent authority of the other Member State, 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.
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.¹⁰⁷

¹⁰⁶ **LV.** has concerns about the cost of processing the residence permit and suggested providing for reimbursement in case of withdrawal. **AT:** suggested replacing the 12-month period (which thinks is too long) with three. **NL, DE:** want explicit reference to the conditions laid out in Articles 5 and 6. **Cion** clarified that if the stay in the second MS will be more than 12 months, a visa would be needed for the remaining time.

¹⁰⁷ **LT:** if the ICT moves to another MS for more than 3 months, he / she must obtain a new residence permit in that second MS. This approach would, according to **LT**, reflect Article 1(b) of the proposal and it would be in line with the structures established by Directives 2003/109 and 2009/50.

Where the relevant legislation requires a visa or residence permit for exercising mobility, such visas or permits shall be granted in a timely manner¹⁰⁸ within a period that does not hamper pursuit of the assignment, whilst leaving the competent authorities sufficient time to process the applications.

Member States shall not require intra-corporate transferees to leave their territory in order to submit applications for visas or residence permits.

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.¹⁰⁹

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¹⁰⁸ **AT:** has a reservation on the obligation to grant a visa in a timely manner in accordance with the provision. **DE:** supports this view.

¹⁰⁹ In the light of its suggested wording for Article 11(2); **SE** proposed to amend this point in order to allow for more flexibility. **FI:** by the end of the three-year period, the TCN has to return to his/her country of origin. In reply to **FI**, **Cion** clarified that the TCN can come back after the passing of the three years when there is a new assignment

¹¹⁰ **LT:** add the following: “The second MS shall notify its decision to grant an ICT to the first MS”.

CHAPTER VI

final provisions

Article 17

Statistics¹¹¹

1. Member States shall communicate to the Commission statistics on the number of residence permits issued for the first time or renewed and, as far as possible, on the number of residence permits withdrawn for the purpose of intra-corporate transfer to persons who are third-country nationals, disaggregated by citizenship, age and sex, by transferee position (manager, specialist and graduate trainee), by length of validity of the permit and by economic sector.
2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007¹¹².
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 [.....].

¹¹¹ **AT** reservation and **DE, EE, ES, PT, SI**: scrutiny reservations on Article 17. **DE** considers that collection of this data is disproportionate for the purpose of this proposal, cannot provide data for withdrawal of residence permits, nor data based on gender criteria, nor on the period of validity of the permit, it can provide data only for residence permits issued for the first time or renewed, **EE** wants more coherent provisions like in the Blue Card Directive. **ES** has a scrutiny until it gets a report on these statistics from the competent services, **PT** and **AT** consider that it duplicate rules already existing in the context of the 862/2007 Statistics Regulation. **AT** wants to delete reference to the transferee position basis, the length of validity of the permit (**SI** has a scrutiny reservation on it) and (along with **SI**) the economic sector (*the latter was also deleted in the case for the Seasonal Workers proposal*), or make their collection optional, because it keeps no relevant data.

Cion: statistics are very important to monitor the implementation of the Directive, to gauge its impact on manifold issues such as gender equality, external relations, etc. The collection of data for withdrawals of permits is optional. It also recalled that Regulation 862/2007 is just the basis which is implemented in the form of guidelines tailored for each legal instrument.

¹¹² OJ L 199, 31.7.2007, p. 23.

Article 18

Reports

By [three years after the date of transposition of this Directive] at the latest and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive in the Member States including any necessary proposal.¹¹³

Article 19

*Contact points*¹¹⁴

1. Member States shall appoint¹¹⁵ contact points which shall be responsible for receiving and transmitting the information needed to implement Article 16.
2. Member States shall provide appropriate cooperation on exchanges of the information and documentation referred to in paragraph 1.

¹¹³ **DE:** delete the wording “including any necessary proposal” as unclear. **Cion:** it is standard language and **Cion** has the right of initiative.

¹¹⁴ **AT:** contact points are not the appropriate instrument for receiving and transmitting the information needed to implement Article 16.

¹¹⁵ **DE:** replace “appoint” with “designate” as these competent authorities already exist.

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.¹¹⁶

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.¹¹⁷

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*.

¹¹⁶ **CY, DE:** the transposition period should be three years (**DE** at least three) instead of two. **AT:** scrutiny reservation on this period, considering it too short. **CY, DE, ES, IT, LV, AT, PT, SI:** reservations on the obligation to draw a correlation table; **PT** this obligation does not arise from the Treaties nor from the Interinstitutional Agreement on Better Regulation, it could be converted into an optional provision. It entails an extra work and use of financial resources. **Cion:** the correlation table is very important to compare from the outset, in a clear way, the future Directive with the relevant national legislation and the administrative work is not out of proportion.

¹¹⁷ **PT:** has concerns about this provision.

Article 22
Addressees

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

Done at Brussels, [...]

For the European Parliament

For the Council

The President

The President
