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of:	Working Party on Integration, Migration and Expulsion
on:	19 January 2012
No. Cion prop.:	12211/10 MIGR 67 SOC 462 DRS 27 CODEC 691
Subject:	Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

At the meeting of the Working Party on Integration, Migration and Expulsion held on 19 January, Presidency compromise suggestions for Articles 3, 5, 6, 7, 9, 10A, 12A - 16 of the above proposal were discussed. The results of the discussions at the meeting have been incorporated in the text of the previous outcome of proceedings and are set out in the Annex to this Note, with delegations' comments in the footnotes.

ANNEX

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 [1]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the ordinary legislative procedure,

Whereas:

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1 **FI**, **AT:** general reservations on the proposal; (**AT** related mainly to subsidiarity, legal basis and implementation concerns). **CZ**, **BE**, **DE**, **EE, EL, ES, HU, IT, LT, LV, MT, NL, PL, PT**, **SE**, **SI**, **SK**: general scrutiny reservations on the proposal. **MT, LT, PL, SE:** Parliamentary scrutiny reservations on the proposal. **DE**, **LT**, **SE:** language reservations on the proposal.
PT: scrutiny reservation on **Pres** suggestions in this document.

2 OJ C , , p. .

3 OJ C , , p. .

(1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals. [4]

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

(3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth5 sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists or **[…] employees in training** 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 [6].

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[4] **AT**: scrutiny reservations on Recitals 1-8.
[5] COM(2010) 2020.
[6] COM(2005)669.

(5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational corporations, in recent years movements of managerial and technical employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.

(6) These intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host companies, thus advancing the knowledge-based economy in Europe while fostering investment flows across the Union. Well-managed transfers from third countries also have the potential to facilitate transfers from Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best. [7]

(7) The set of rules established by this Directive is also beneficial to the migrants' countries of origin as this temporary migration fosters transfers of skills, knowledge, technology and know-how.

(8) This Directive should be applied without prejudice to the principle of Union preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. According to that principle, the Member States should, during any period when national measures or those resulting from bilateral agreements are applied, give preference to workers who are nationals of the Member States over workers who are nationals of third-countries as regards access to their labour market. [8]

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[7] **DE** suggested to insert a new Recital 6a in order to clarify the definition of intra-corporate transfer: "*Intra-corporate transfer comprises a secondment within the same group of undertakings between entities linked directly to one another, that means between parent undertaking and subsidiary, as well as linked indirectly, that means between subsidiaries each linked to the same parent undertaking*."

[8] **AT**, **SK** suggested to amend the Recital along the lines of Recital 6 of the Blue Card Directive: "*In implementing this Directive, Member States are bound to respect the principle of Community preference as expressed, in particular, in the relevant provisions of the Acts of Accession of 2003 and 2005* […]."

(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.

(8b) This Directive should be without prejudice to the right of Member States to deny issuance of permits in cases where the intent or effect of temporary presence of third-country nationals is to interfere with, or otherwise affect the outcome of, any labour/management dispute or negotiation.

(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. [9]

(10) For the purpose of this Directive, intra-corporate transferees encompass managers, specialists and **[…] employees in training** with a higher education qualification. Their definition builds on specific commitments of the Union under the General Agreement on Trade in Services[10] (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and facilitates the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive is broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement.

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[9] **AT**, **DE**, **EL**, **FI**, **NL**, **SE**, **SK** suggested to add the following new Recital 9a) in order to make sure that MS can continue to require certain documents etc according to national law : "*Labour law rights of posted workers granted on the basis of the Posted Workers Directive 96/71/EC or the Member States' labour law provisions shall remain unaffected by the ICT Directive. The ICT Directive and the permits that are issued on its basis must not prevent the application of Member States' labour law provisions having as their object the control of compliance with these working conditions*."

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

The criteria set out in the definition of specialists is in line with the definition of professional qualifications in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. [11]

(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. [12]

(11) Intra-corporate transferees should benefit[13] 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 [14]. That requirement is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.

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[11] **DE** suggested the following amendments to the Recital "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[11] (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and facilitates the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive is broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement. […] *The definitions of manager, specialist and graduate trainee are in line with the definitions within the GATS. As in the GATS, undertaking means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.*"

[12] **SE**: reference should be made to the new version of the ISCED which is to be adopted in the second half of 2011.

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

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

(12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, the transferee should have been employed within the same group of undertakings from at least 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 **[…] employees in training**.

(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 **[…] employees in training** 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.

(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.

(14) Third-country nationals who apply to be admitted as **[…] employees in training** 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 should, if required, present a training agreement, including a description of the training programme, its duration and the conditions in which the **[…] employees in training** will be supervised, proving that they will benefit from genuine training and not be used as normal workers.

(15) Unless this condition conflicts with the principle of 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]

(16) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of the Member States where the ancillary host entities are located must be provided with the relevant information by the applicant.

(17) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals entering their territory for the purposes of intra-corporate transfer as specified in the Treaty.[16]

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[15] **AT**, **BE** (reservation), **MT**, **SK**: the recital should be deleted as the right to apply a labour market test falls under the sole competence of MS and the recital contradicts that right. **AT** and **SK** argued that labour market tests are not lacking in transparency as they are based on national law which allows to verify whether a position could not be filled by national, Union or legally resident third-country national workers. Evidence of each step of the individual verification process is laid down and open to control by the applicant through courts.

[16] **NL** suggested to insert the following new Recital: "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. Indications for this abuse could be a low turnover of the undertaking and/or a small number of employees. Without prejudice to small bona fide undertakings, in general undertakings should have a certain size for an adequate international circulation of its highly qualified staff and for the payment of the salary and other labour conditions, as submitted with the application, and other costs related to international transfers."

(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.

(20) A fast-track procedure may be set up for groups of undertakings which have been recognised for that purpose. Recognition should be granted on the basis of objective criteria made publicly available by the Member State and ensuring equal treatment between applicants. It should be granted for a maximum of three years, as the criteria need to be reassessed on a regular basis. Such recognition should be restricted to transnational corporations presenting credentials showing their ability to comply with their obligations and supplying information about the expected intra-corporate transfers. Any major change affecting the ability of the corporation to meet those obligations and any complementary information on future transfers should be reported without delay to the relevant authority. Appropriate sanctions such as financial sanctions, the possibility of withdrawing recognition, and rejections of future applications for permit should be provided for.

(21) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, the third-country national should receive a specific residence permit (an intra-corporate transferee permit) allowing the holder to carry out, under certain conditions, their assignment in diverse entities belonging to the same transnational corporation, including entities located in another Member State.

(21a) 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 can serve to prevent the exploitation of third-country nationals and combat illegal employment but 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.

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

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

(23) Equal treatment should be granted under national law in respect of those branches of social security defined in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems[17]. 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. Since this Directive is without prejudice to provisions included in bilateral agreements, the social security rights enjoyed by third country national intra-corporate transferees on the basis of a bilateral agreement concluded between the Member State to which the person has been admitted and his or her country of origin could be strengthened compared to the social security rights which would be granted to the transferee under national law. This Directive should not confer more rights than those already provided for in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States. It should be granted without prejudice to posting provisions on national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin.**[18]**

(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.

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17 OJ L 166, 30.4.2004, p. 1.

18 **SK** suggested to add the following in the recital: "*This Directive should not confer any rights on the family members of intra-corporate transferees*." **SK** explained that in its case social security, including health care, is linked to employment and any other person should have private health insurance.

(24a) In order to facilitate the fast processing of application Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.

(24b) The collection and transmission of files and data should be carried out in compliance with the relevant data protection and security rules.

(25) This Directive should not apply to third country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research [19].

(26) Since the objectives of a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals cannot be achieved sufficiently by Member States and, therefore, by reason of the scale and effects of the action, can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

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

[19] OJ L 289, 3.11.2005, p. 15.

(29) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject-matter [20]

This Directive determines:

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

(b) the conditions of entry to and residence, and the rights, of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national a residence permit on the basis of this Directive.[21]

[20] **SK** supported the current version of the Article.
[21] **AT**, **SI:** scrutiny reservations in relation to the mobility scheme.

Article 2

Scope [22]

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. [23]

2. This Directive shall not apply to third-country nationals: [24]

   (a) who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;

   (b) who, under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of citizens of the Union or are employed by an undertaking established in those third countries;

   (c) who are posted in the framework of Directive 96/71/EC; [25]

   (d) being assigned by temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking. [26]

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[22] **AT**, **NL**: scrutiny reservations on the Article. **SK** supported the current version of the Article.

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

[24] **EL**: scrutiny reservation. **AT**: beneficiaries of international protection and asylum seekers should be explicitly excluded from the scope similarly to Article 3(2)b) of the Blue Card Directive due to a strict distinction in AT law between migration and asylum. **Cion** noted that asylum seekers are excluded from the scope of the Directive by definition.

[25] **AT**, **DE**: scrutiny reservations.

[26] **AT**, **CZ**, **ES**, **FI**, **NL**, **SE**, **SI**: scrutiny reservations. **SE**: there is no need for such a provision since an ICT would never come through an agency. **FI** wanted to know whether subcontracting falls under the scope of the Directive.

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. [27]

Article 3

Definitions [28]

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 during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory; [29]

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[27] **EL** would have preferred a more general formulation without a reference to the criteria. **Cion**: a strong reservation on the creation of a parallel national system.

[28] **RO**: scrutiny reservation on the Article.

[29] **AT**, **EL**, **ES**: scrutiny reservations. **EL** suggested to align the definition with the definition of a worker in the Posting of Workers Directive thus referring to the law of the MS. **DE**: scrutiny reservation in relation to the Posting of Workers Directive (Article 2.2 c) and d) of this Directive). **FI** stated that this concept should be defined more precisely and should be in line with Directive 96/71/EC on Posted Workers thus suggesting to add the following text to the end of this provision: "*According to Article 1(3)(b) of Directive 96/71/EC this means transnational situations where a company posts workers to an establishment or an undertaking owned by the group in the territory of a MS, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting*." **NL**: multinationals which have their headquarters within the EU and branches outside should be excluded from the scope of this provision.

(c) 'intra-corporate transferee' means any third-country national subject to an intra-corporate transfer; [30]

[31]

(d) 'host entity' means the entity, regardless of its legal form, established, in accordance with national law, in the territory of a Member State to which the third-country national is transferred;

(e) 'manager' means an intra-corporate transferee [32] 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; [33]

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[30] **DE**: scrutiny reservation.

[31] **FI** (supported by **SK**) suggested to add the following new definition: " *For the purposes of this Directive, the definition of an employee is that which applies in the law of the Member State to whose territory the worker (the intra-corporate transferee) is transferred*".

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

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

(f) 'specialist' means an intra-corporate transferee possessing uncommon knowledge essential and specific to the host entity's areas of activity, techniques or management, taking also 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; [34]

(g) '**[…] employee in training**' means an intra-corporate transferee with a higher education qualification who is **temporarily** transferred for career development purposes, or to obtain training in business techniques or methods; [35]

[34] **AT**, **EL**, **ES**, **IT**, **PL**: scrutiny reservations. **PT**: scrutiny reservation as the definition should be as close to the one used in GATS as possible. **ES**, **NL**, **RO**, **SE** could not support "uncommon" as it is not a clear notion and would be difficult to implement. **CZ** would prefer "*specific* knowledge". **SE** could not understand the reasons for including "membership of an accredited profession". **AT**, **FI**, **SK** suggested the following definition which is identical to the GATS' definition: "'Specialist' means an intra-corporate transferee *who possesses uncommon knowledge essential to the host entity´s service, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification referring to the type of work or trade requiring specific technical knowledge, including membership of an accredited profession.*" **DE** suggested a similar definition with the following beginning "'specialist' means an intra-corporate transferee *working within a juridical person possessing uncommon knowledge essential to..*". **SK** suggested to add a requirement for a university education together with a concrete level of qualification (5a).

[35] **BE**, **DE**, **EE**, **EL**, **ES**, **FI**, **IT**: scrutiny reservations. **ES**, **FR** supported the term "employee in training", **CZ** could accept it. **AT**, **BE** (reservation), **BG**, **DE**, **EL**, **PT**, **SK**: GATS should be followed where the term "*graduate trainee*" is used. **BG** suggested "*graduate employee in training*" by way of a compromise. **EL** suggested a clarifying explanation in a recital that would allay the concerns of some MS related to the term "graduate trainee". **DE**, **SK**: the term "*university degree*" should also be used instead of "higher education qualification". **SK** also suggested to add a reference to a concrete level of qualification (6 ISCED). **HU**: the addition of "temporarily" is not necessary as the idea is already contained in the definition of an intra-corporate transfer.

(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; [36]

(i) 'family members' means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC [37];

(j) 'intra-corporate transferee [38] 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; [39]

(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; [40]

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

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

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

[39] **DE**, **AT**, **PT**: scrutiny reservations.

[40] **AT**: scrutiny reservation.

(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. **Member States may require that the undertaking(s) should have a reasonable turnover and a minimum number of employees and that the undertaking(s) have been registered with an official authority**; [41]

(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; [42]

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[41] **AT**, **IT**: scrutiny reservations on the definition. **SK**: reservation on the definition. **ES**, **RO**, **PT**: scrutiny reservations on the last sentence of the paragraph. **HU**, **PL** did not consider the additional requirement necessary and pointed out that a may-clause should not be part of a definition as it is not in line with the principle of harmonisation; the addition could also cause problems in the case of mobility. **SK** expressed support for the last sentence of the definition. **CZ**, **DE** could support the requirement to register with an official authority but the requirement for a reasonable turnover and a minimum number of employees could exclude small and medium-sized companies and should not be part of the definition. **FR** did not oppose the last sentence as long as the intention was to ensure that there is real and significant activity. **AT** could support the last sentence as it is a may-clause. **EE** supported the last sentence. **NL** agreed to the deletion of the last sentence suggesting to include the requirement to register with an official authority among in the admission criteria. **Cion** did not consider the requirement in the last sentence necessary as it can lead to further differentiation between MS.
CY: reservation in relation to its national law definition. **PT**: reservation on the first part of the definition since the drafting needs to be improved as the same thing is repeated twice; also the definition should be broader providing for other types of links. **RO**: reservation as the link between undertakings should be clearly defined, the current definition is open to abuse as the notion of a group of undertakings may vary considerably among MS. **DE**: reservation suggesting the following wording at the end of the paragraph: "… management or supervisory body *or both undertakings are managed on a unified basis by the parent undertaking.*" **ES**, **IT**: scrutiny reservations suggesting including in the scope of the definition undertakings which have commercial rather than legal links. **Cion**: MS, under their national law, ascertain whether certain entities fall under this definition. Furthermore, **Cion** considered that sibling companies would be within the scope of this definition whereas, companies / entities contractually linked but not in the same group would not. **SE** pointed out that the language of the 7th Company Law Directive should be taken on board.

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

(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; [43]

[…] [44]

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

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:

   (a) Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other; [45]

   (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries. [46]

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

[44] **DE**, **NL**, **PT**: scrutiny reservations on the deletion.

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

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

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions[47] for persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15. [48]

[49]

CHAPTER II
CONDITIONS OF ADMISSION

Article 5

Criteria for admission [50]

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: [51]

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

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

49 **ES**, **FI** suggested adding a new point whereby a TCN who does not fall under the scope of this Directive could benefit from the mobility scheme while, as **ES** wanted to clarify, national legislation would apply to them.
Cion: the more favourable provisions concept should essentially apply to provisions conferring rights to the TCN concerned, while the provisions which are important for the legal framework of the Directive ought not be affected by this concept.

50 **CY** considered that "*Conditions* of admission" as the title of the Article would better reflect its contents. **BE**, **DE**, **PL**: scrutiny reservations on the Article. **DE**: admission should be at the discretion of MS according to its national law. AT: reservation on the Article due to the exhaustive nature of the list of criteria. **EL**: MS should be allowed to add further conditions for admission. **AT** questioned the legal basis of the proposal, arguing that is more closely linked to labour market issues than immigration. **CLS** pointed out that the objective of this proposal is to regulate in a transparent way the conditions of entry and residence of the TCN concerned, including the rights and obligations which emanate from this context, therefore, Art. 79(2)(a) and (b) constitute the correct bases.

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

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

(b) present an assignment letter from the employer and/or a work contract, from the employer including: [52]

(i) evidence of employment with the undertaking established in a third country;

(ii) the duration of the transfer and the location of the host entity or entities of each Member State concerned; [53]

(iii) evidence that the third-country national is taking a position as a manager, specialist or **[…] employee in training** in the host entity or entities in the Member State concerned;

(iv) the remuneration **such as** overtime rates of pay, as well as maximum work periods, minimum rest periods and minimum paid annual holidays granted during the transfer; [54]

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52 **FR**, **SE** supported the deletion in the introductory sentence of the paragraph.

53 **NL**: add to the end of the sentence: "… *and/or the sites of the clients*."

54 **BE**, **EE**, **ES**, **PT**: scrutiny reservations. **AT**, **DE**, **FR**, **PL**, **SE**, **SK** preferred the previous version of the paragraph where "*including*" was used. **Cion** opposed the addition of "such as" which implies that further restrictions can be added and pointed in a general way that uniform and straightforward set of admission conditions is crucial for the attractiveness of the scheme. **BE**, **FR** (scrutiny reservation), **IT**, **NL**, **SE** would prefer a general reference to "terms and conditions of employment" finding the current wording too detailed. **FI** suggested to insert a reference to "other terms and conditions of employment". **AT**: MS should not be hindered from checking the fulfilment of other conditions. **HU** opposed the requirement to have these conditions in the assignment letter as these are checked only once the person starts working and not in advance. **BG** saw no particular need to provide a list of employment conditions.

(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. [55]

[56]

(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 **[…] employee in training**, the higher education qualifications required; [57]

(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; [58]

(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 [59] require the period of validity of the travel document to cover at least the initial duration of the residence permit;

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

[56] **NL** suggested to insert the following new paragraph: "*Member States may require that the undertaking(s) have been registered with an official authority*".

[57] **SE**: reservation as this should be optional for MS and it should be up to the employer to decide which qualifications are needed. **AT**: scrutiny reservation.

[58] **SE**: this provision should become optional and the term "transferee" should be replaced by "intra-corporate transferee".

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

(f) without prejudice to existing bilateral agreements, present evidence 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; [60]

[61]

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. [62]

1b. Member States may require the applicant to provide the address of the third-country national concerned in the territory of the Member State. [63]

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[60] **BG**, **FI**, **LV**: scrutiny reservations. **NL** supported **Pres** suggestion. **CZ** pointed out that this paragraph should be read together with Article 14(2)c). **FI** (supported by **BG**) maintained its position that a MS should have a right to require insurance for the entire period if it has a residence-based social security system. **Cion** considered it sufficient to require that an ICT has applied for sickness insurance as it provides more flexibility. **AT** stated that it should be clarified at least in a recital that this does not prevent MS from obliging employers to register workers at social insurance institutions according to national rules.

[61] **ES** suggested a point whereby the applicant should have to submit the tax domicile of the transferring company in order to confirm that it is a member of the group of undertakings. **CZ** suggested that the TCN should provide evidence of prior employment in the third country and that the transfer will not last for more than 3 years. **LT** suggested to add the following criterion: "i) *provide evidence that he/she has suitable accommodation for himself/herself and family members during the transfer*" (supported by **BG**, **AT**). **CZ** (supported by **AT**, **BG**, **EE**, **LT**, **SK**) suggested adding the following point: "*MS may require the applicant to provide his/her address in the territory of the MS concerned*". **Cion** pointed out that a permanent address cannot often be produced at the moment of application, so this requirement would be difficult to meet. **SK**: if the address is not known at the time of entry, the address of the company could be given first.

[62] **DE**: MS should have a possibility to require a certified translation of the assignment letter into the language of the MS.

[63] **AT**, **CZ**, **EL**, **FI**, **FR**, **LT**, **SI**, **SK** welcomed the new paragraph.

2. Member States shall require that the 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 14 (1). [64]

2a. Member States **[…] shall** 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 **[…] nationals** in the Member State concerned occupying comparable positions. [65]

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 the social assistance system of the Member State concerned. [66]

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[64] **AT**, **BE**, **DE**, **ES**, **PT**, **SI**: scrutiny reservations. **SE** (supported by **AT**, **FI**): reservation linked to paragraph 1b) iv referring to the DE/SE proposal for Article 6(2) and stating that it is important that other terms and conditions of employment be checked before an ICT is admitted. If the current wording is kept, then insert: "… *at least* in line with …" **Cion** indicated that ICTs' rights should be coherent and in line with those enjoyed by posted workers and reminded that Article 4 of the proposal recognised the possibility for the Member States to apply more favourable provisions.

[65] **AT**, **CZ**, **EE**, **EL**, **ES**, **HU**, **IT**, **NL**, **SE**, **SI**: scrutiny reservations. **PT** could support **Pres** suggestions for this paragraph. **CZ**, **DE**, **EE**, **FR**, **SE** preferred the previous wording which referred to "*employees*" rather than "nationals". **FI**, **DE** suggested that this should be a may-clause. **AT**: the wording of this paragraph depends on the outcome of negotiations on Article 14. **SE** (supported by **AT**, **DE**, **ES**): reference should also be made to other terms and conditions of employment.

[66] **BE**: scrutiny reservation. **SE** (supported by **FI**): replace "the social assistance system" with "*social benefits including the social assistance system*".

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 for training**, its duration and the conditions under which the applicant is supervised during the programme. **The Member States may require that the training of the employee in training is linked to the higher education qualification which the employee in training has obtained.** [67]

4. Any modification that affects the conditions for admission set out in this Article shall be notified by the host entity [68] to the competent authorities of the Member State concerned.

5. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive. [69]

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 **[…] employees in training**. [70]

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[67] **EL**, **FR**, **AT**: scrutiny reservations. **CZ**, **DE**, **HU**, **PL**, **PT** could not support the last sentence in the paragraph as it is too limiting and the link is not relevant. **Cion** did not support the last sentence as the requirement may lead to arbitrary exclusion. **EL**, **HU**, **SI**: the requirement to present a training agreement should be mandatory. **FR**: that requirement should be optional.

[68] **SE**: add that the ICT could also notify the modification to the competent authorities.

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

[70] **FR**, **HU**: scrutiny reservations. **AT**: the second MS should also be able to check that this requirement is met. **AT**, **DE**, **EL**, **FI**, **NL**, **SE**, **SI**, **SK** suggested the following amendments to the paragraph: " Member States *may* require the third-country national to provide evidence of employment within the same group of undertakings, […] for up to 12 months immediately preceding the date of the intra-corporate transfer […]."

7. Member States may, if provided for by national law, require the host entity to provide a statement of financial responsibility to ensure that:

(a) The intra-corporate transferee will be guaranteed the required level of remuneration and rights as specified under Article 14, in particular that she/he and his/her family members will not have recourse to the social assistance system of the Member States concerned;[71]

(b) All expenses that could be related to the return of the intra-corporate transferee in case of illegal stay are covered. [72] 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. [73]

Article 5A

Volumes of admission

1. This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory. [74]

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[71] **EL**: scrutiny reservation. **FI**: positive scrutiny reservation. **SE**: replace "the social assistance system" with "*social benefits including the social assistance system*" noting that the requirement should be directed to workers rather than the host entity. **HU** also pointed out that the employer cannot be expected to ensure what is required here. **Cion** preferred the previous wording as the suggested one seems to refer to social security benefits which is in conflict with Article 14. If an ICT pays contributions, he/she should be entitled to social security benefits.

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

[73] **SE**: the time period should not be obligatory. **BE** suggested the following wording along the lines of Article 5 (3) of the Researchers' Directive: " *In case of illegal stay, all expenses related to the stay and the return of the intra-corporate transferee and incurred by public funds are covered.* The financial responsibility… ".

[74] **AT**, **DE**, **SI** suggested to add the following sentence at the end of the paragraph: " … Member States retain the possibility not to grant residence permits for intra-corporate transferees in general and/or for certain professions, economic sectors or regions." **EL**, **CY**, **NL** have also supported the idea of clarifying that MS retain the possibility to set a 0-quota in general or for certain sectors or regions. **DELETED**

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.

Article 6

Grounds for refusal [75]

1. Member States shall reject an application in the following cases: [76]

(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

[75] **AT**, **ES**: scrutiny reservations. **AT**, **DE**, **FI**, **SK** (supported by **CY**) proposed to add the following ground for refusal in a new paragraph 4: "*Member States may reject an application if the applicant has committed a breach of legal provisions, court rulings or official orders, excepting isolated or minor breaches, or has committed an offence outside the territory of a Member State which is regarded in the Member State's territory as an intentionally committed offence*." **Cion**: Article 5 already contains an admission condition related to public policy. **AT**, **SK** suggested to add the following ground for refusal in order to give MS the possibility to apply a labour market test: "*Member States may verify whether the vacancy in question could be filled by nationals or by other EU citizens, or by third-country nationals lawfully residing in that Member State and already forming part of its labour market in accordance with national or Union law, or by EC long-term residents wishing to move to that Member State in accordance with Chapter III of Directive 2003/109/EC, in which case they may reject the application.*"

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

(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.[77]

2. Member States may reject an application if the employer or the host entity: [78]

(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**;[79]

or

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

[78] **HU**: scrutiny reservation.

[79] **CZ**, **DE**, **FI** supported **Pres** suggestions in this paragraph. **EE**: scrutiny reservation enquiring whether this paragraph covers cases where the host entity is in the process of being declared bankrupt or insolvent.

(b) the **terms of the employment according to applicable laws, collective agreements or practices in the relevant occupational branches in the Member State where the host entity is established are not met**; [80]

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** [81]**;** [82]

(d) **the employer or 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. [83]

(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).

[84]

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[80] **DE**, **SE** supported **Pres** suggestions in this paragraph. **FR** supported the paragraph but scrutiny reservation on the notion of collective agreements, "collective agreements of general application" should be used instead (the same remark was made by **BE**). **CZ**: scrutiny reservation on the reference to collective agreements. **AT** (supported by **EE**, **FI**, **SE**): delete "in the relevant occupational branches" as it is too restrictive. **DE**: scrutiny reservation on AT suggestion. **Cion** could not support the paragraph as it is too broad and open-ended.

[81] **New recital (8b): "This Directive should be without prejudice to the right of Member States to deny issuance of permits in cases where the intent or effect of temporary presence of third-country nationals is to interfere with, or otherwise affect the outcome of, any labour/management dispute or negotiation."**

[82] **CZ**, **FR**, **PL**: scrutiny reservations on the paragraph as the meaning is not clear. **AT**, **FI** supported the paragraph pointing out that similar wording can be found in GATS. **DE** could supported **Pres** suggestions in this paragraph if it remained optional for MS. **Cion**: reservation on the paragraph as it is not clear.

[83] **DE**: scrutiny reservation as could not see the need for it.

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

Article 7

Withdrawal or non-renewal of the permit

1. Member States shall withdraw an intra-corporate transferee permit [85] 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.

2. Member States shall refuse to renew an intra-corporate transferee permit in the following cases: [86]

   (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;

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

[86] **ES**: scrutiny reservation.

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.

3. Member States may withdraw or refuse to renew an intra-corporate transferee permit in the following cases; [87]

(a) wherever the **[…] criteria** laid down in Article 5 were not met or are no longer met; [88]

or

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

or

(c) **where the terms of the employment according to applicable laws, collective agreements or practices in the relevant occupational branches in the Member State where the host entity is established are not met**; [89]

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[87] **HU**: scrutiny reservation. **EE**: the same comments as the ones made with respect to Article 6 apply here too. **DE** could support **Pres** suggestions in this paragraph.

[88] **AT**: scrutiny reservation as references to Articles 5A(1) and 10A(1) should be included as it is the case in Article 6.

[89] **CZ**, **FR**: scrutiny reservations on the term "collective agreements". **AT**, **SE**: delete "relevant occupational branches". **Cion** could not support the paragraph as it is too broad and open-ended.

or

(d) where the **[…] intra-corporate transferee** has abused the short-term mobility rules set out in Article 16;

or

(e) when the intra-corporate transferee applies for social assistance, provided that the appropriate written information concerning this consequence has been provided to him/her in advance by the Member State concerned. [90]

Article 8

Sanctions [91]

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.

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[90] **CZ**: scrutiny reservation. **AT** could support **Pres** suggestions in this paragraph. **FI** enquired whether this paragraph is really needed considering that necessary safeguards are contained in Articles 5(2b), 6(1)(a) and 7(3)(a) and pointed out that it could be administratively very cumbersome to apply to this provision. **FR**: the scope of obligation to provide information is not clear. **Cion**: the concept of social assistance is not clear and could cause problems at the stage of application.

[91] Recital 18: "Member States should provide for appropriate **[…] 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."

CHAPTER III
PROCEDURE AND PERMIT [92]

Article 9

Access to information [93]

1. 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.

2. **[…] The first Member State shall provide information to the host entity on** the right of Member States to impose sanctions in accordance with Article 8 and/or Article 16(8). [94]

Article 10

Applications for admission [95]

1. Member States shall determine whether an application is to be made by the third-country national and/or by the host entity. [96]

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

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

[94] **DE**, **NL**, **PT** could support **Pres** suggestions in this paragraph. **NL** suggested that it could be clarified in a Recital that the information should concern the general possibility of applying sanctions rather than specific sanctions. **LT** did not consider the paragraph necessary as it is up to MS to decide what information they give. **SE** (supported by **PT**, **ES** (scrutiny reservation)): the wording should be less specific and more in line with paragraph 1. **EE**, **LV**: the paragraph is not necessary but if it is kept then the wording should be made more general. **AT**, **IT** expressed doubts regarding the usefulness of the paragraph. **IT** suggested it should be optional for MS.

[95] **AT**, **IT**: scrutiny reservations.

[96] **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*."

2. The application shall be considered and examined when the third-country national is residing outside the territory of the Member State to which admission is sought. [97]

3. Member States shall designate the authority competent to receive the application and to issue the intra-corporate transferee permit.[98]

4. The application shall be submitted in a single application procedure. [99]

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.

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[97] **EL**: scrutiny reservation. **LV**, **PT** preferred the previous wording giving MS the option to consider applications submitted by an ICT legally staying in its territory. **PT**: this is a matter of procedure enquiring about situations where it is not possible to apply in a third country. **HU** would like to keep the possibility to allow applications to be submitted in the territory of a MS but for certain categories only (e.g. those who enjoy visa-free entry to the EU). **Cion**: the provision is in line with the scope of the Directive.

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

[99] **AT**: reservation.

Article 10A [100]

Duration of an intra-corporate transfer

1. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for **[…] employees in training** 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. [101]

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. [102]

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.

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[100] **ES**: scrutiny reservation on the Article.

[101] **AT**, **LT**: scrutiny reservations. **BE**, **EL**: reservations as opposed the possibility to change the purpose of stay after the end of an ICT term. **ES**: scrutiny reservation on the possibility for a TCN to stay on in the territory of a MS. **SE** would prefer more flexibility with the maximum duration of 4 years.

[102] **PT** agreed with the ideas contained in paragraphs 2 and 3 but expressed concerns (shared by **CZ**) about their practical implementability as in the case of mobility a huge exchange of information would be required. **BE** (scrutiny reservation) supported the idea of a waiting period but suggested that it should be mandatory for MS, and noted that this could be complicated to apply in the case of short-term mobility. **HU** was opposed to including paragraphs 2 and 3 in the Directive as these provisions raise a lot of issues related to practical implementation, especially in the case of short-term mobility an especially as these are optional provisions. **ES**: scrutiny reservation as the requirements would be different in different MS and this would pose problems especially in the case of short-term mobility.

Article 11

Intra-corporate transferee permit [103]

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.

2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member States concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for **[…] employees in training**. [104]

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 [105].[106]

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

[104] **AT** wanted to know whether the extension of the permit is obligatory or whether this could be at the discretion of MS. **Cion** replied that the extension of the permit can only be refused when the conditions for refusal as laid down in Article 7 are met or if the maximum duration has been reached. **SE** suggested amending the provision as follows, based on Article 7(2) of the Blue Card Directive in order to allow for more flexibility: "*MS shall set a standard period of validity of the ICT permit, which shall comprise between one and four years. If the work contract covers a period less than this period, the ICT permit shall be issued or renewed for the duration of the work contract. The aggregated period of validity of the ICT permit shall not exceed four years*".

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

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

4. Under the heading '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'. [107]

5. Member States shall not issue any additional permits, in particular work permits of any kind.[108]

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. [109]

7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility [110] to obtain the requisite visa.

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[107] **LV**: scrutiny reservation related to mobility. **FR**: reservation on the obligation regarding the type of the permit which should be left for MS decide. **DE** supported FR stating that there is no need for a new type of a permit. **DE** suggested the following wording: "*The residence permit shall indicate that it is a residence permit for ICT*".

[108] **AT**: scrutiny reservation. **SE** suggested the following clarifying addition: "MS shall not, *for persons who have been granted an intra-corporate transferee permit*, issue any additional permits, in particular work permits of any kind".

[109] **AT**: scrutiny reservation.

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

Article 12

Procedural safeguards

1. The competent authorities of the Member State concerned shall adopt a decision on the application for an intra-corporate transferee permit or a renewal of it and notify [111] the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible but no later than 60 days [112] of the complete application being lodged.

   In exceptional cases involving complex applications the deadline may be extended by a maximum of 30 days.

   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. [113]

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.

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111 **IT** suggested replacing "notify" with "*communicate*" or "*inform*". **BE** suggested that MS could also inform the host entity.

112 **AT**, **DE**, **EL**, **FI**, **NL**, **SE**, **SI**, **SK** suggested a deadline of 90 days arguing that the one-stop-shop procedure set out in the Directive is complex and involves considerable administrative effort. **ES** suggested the wording "*as soon as possible, but no later than 90 days*". **PT** would prefer 90 days instead of 60, following the Blue Card Directive. **LT**, **PL** supported the 60-day time-limit. **PL**, **RO** suggested to add the possibility of suspending the time-limit where the application is not complete should be added. **Cion**: it is important to provide for a quick transfer within a group to make the proposal more attractive; undertakings need something more concrete than "as soon as possible". **Cion** also pointed out that unlike the Blue Card Directive, the periods of stay in this proposal are short and would not justify a processing period of three months; delegations were also reminded that the number of ICT applicants is limited; therefore no significant administrative burden is anticipated. It also stressed that for complex cases involving mobility the deadline could be extended beyond 60 days.
PL, **RO**: the possibility of suspending the time-limit where the application is not complete should be added.

113 **DE**: should be a "may-clause".

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

3. Reasons for a decision rejecting an application for an intra-corporate transferee permit, refusing modification or renewal shall be given in writing to the applicant. Reasons for a decision withdrawing an intra-corporate residence permit shall be given in writing to the intra-corporate transferee [114] and, when the application for the intra-corporate transferee permit was lodged by the host entity, to the applicant. [115]

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. [116]

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 [117] 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.

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

[115] **DE**: reservation, considering that this provision infringes the subsidiarity principle.

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

[117] **ES**: "*up to*"

6. If the intra-corporate transferee permit expires during the procedure, Member States may issue, if required by national law, national temporary residence permits or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities. [118]

Article 12A

Fees [119]

Member States may **[…] require** applicants to pay **a** fee for handling applications in accordance with this Directive. The level of **such a** fee **[…] shall** be proportionate and **[…] may be based on the services actually provided for the processing of applications and the issuance of permits**.

CHAPTER IV
RIGHTS

Article 13

Rights on the basis of the intra-corporate transferee permit [120]

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

1. the right to enter and stay in the territory of the Member State issuing the permit;

2. free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;

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[118] **SK**: scrutiny reservation.

[119] **HU**: it should be reinserted that the fees must be reasonable. **BG** preferred the previous wording of the Article. **AT**, **EL**, **ES**, **BG**, **PL**, **PT**: "fees" should be used in the plural. **SK** supported the **Pres** suggestions in this paragraph pointing out that the content of the Article should be in line with the title. **DE**: such details should be left for national law to regulate.

[120] **AT**, **SK**: scrutiny reservations on the Article. **NL** queried as to whether mobility is covered by the Article.

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. [121]

Article 14

Rights [122]

1. Whatever the law applicable to the employment relationship, intra-corporate transferees admitted under this Directive shall enjoy **[…]** equal treatment **[…] in remuneration and working conditions** with **nationals of the host Member State occupying comparable positions**. [123]

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[121] **AT**, **CZ**, **DE**, **FI**, **SE**: scrutiny reservations on the paragraph. **BE**, **FI** could support **Pres** suggestions in this paragraph. **FR**: reservation as preferred the previous wording in doc 17686/11. **SK** insisted on deleting the paragraph as the possibility to provide services for the client could give rise to abuse. **Cion**: it might be useful to clarify that assignments at the sites of clients are not excluded.

[122] **BG**, **CY**, **CZ**, **DE**, **FI**, **IT**, **LV**: reservations, **AT**, **EE**, **EL**, **LT**, **PL**, **PT**, **SK**: scrutiny reservations on the Article. **LT**: the principle of equal treatment should not apply to non-contributory benefits, especially child benefits. **SE**: the title of the Article should be "*Equal treatment*". **AT**, **CY**, **FI** suggested to add the following new paragraph in Article 14: "*Member States may retain restrictions on access to regulated professions, in cases where, in accordance with existing national or Union law, these activities are reserved to nationals, Union citizens or EEA citizens*." (Reasoning: More specific Union law exists (Directive 77/249/EEC and 98/5/EC) with regard to the admissibility of temporary provision of services as well as the establishment of lawyers in other MS). **FI** (supported by **CZ**) suggested to add the following new paragraph in order to avoid double insurance: "5. *A Member State may decide that equal treatment under point (c) of paragraph 2 shall be granted without prejudice to posting provisions in national legislation of the Member State concerned providing for the application of the social security legislation of the country of origin*."

[123] **AT**, **BG**, **ES**, **HU**: scrutiny reservations on the paragraph. **FR**: reservation on this paragraph. **PT** could support **Pres** suggestions for this paragraph. **BE**, **CZ**, **DE**, **PL**, **SE** preferred the previous approach linking this Directive with POW Directive so that EU nationals would not be treated less favourably than third-country nationals. **FI** (supported by **AT**, **BE**, **CZ**, **DE**, **LT**, **SE**): EU posted workers should remain the comparable group but "*at least*" could be added as was proposed previously (doc 5128/12, footnote 119). **FR**: reinstate a reference to Article 3 of Directive 96/71/EC. **DE** suggested to insert "*without prejudice to Article 5(2a)*" as this is a condition of admission and not a right. **EE** found that Article 5(2a) was not needed and its content could be integrated in Article 14(1) instead. **Cion** could not support **Pres** suggestions for this paragraph as the rights of the ICTs should be coherent and in line with those enjoyed by posted workers and pointed that the proposed equal treatment would lead to

2. Intra-corporate transferees shall **also** enjoy equal treatment with nationals of the host Member State as regards:[124]

(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; [125]

(c) without prejudice to existing bilateral agreements, provisions in national law regarding the branches of social security defined in Article 3 [126] 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 1231/2010 shall apply accordingly; [127]

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a situation where two different instruments would cover similar situations while providing a different level of protection; according to Article 1(4) of the POW Directive "Undertakings established in a non-Member State must not be given more favourable treatment than undertakings established in a Member State".

124 **BE**, **PT**: scrutiny reservations on the paragraph. **DE**: delete "also".

125 **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.

126 **DE** (supported by **FI**): "Article 3(1)".

127 **FI**, **BG**, **SK**: reservations. **CZ**: scrutiny reservation regarding the possibility of double insurance. **FI** (supported by **BG**, **CZ**, **DE**, **SI**, **SK**) suggested the following wording in order to avoid double insurance:
"(c) *provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04 unless the legislation of the country of origin applies by virtue of bilateral agreements or national legislation of the host Member State. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No 1231/2011 shall apply accordingly*".

(d) without prejudice to Regulation (EC) 1231/2010 and to existing bilateral agreements, payment of statutory pensions [128] based on the worker's previous employment when moving to a third country;[129]

(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 [130] services afforded by employment offices. [131]

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.

4. The Member State concerned may restrict equal treatment under point (c) of paragraph 2 as regards family benefits. [132]

[133]

Article 15

Family members [134]

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.

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

[129] **BG**: reservation. **LT**: scrutiny reservation. **DE** maintained that MS should be able to make equal treatment regarding the transfer of pensions conditional upon the existence of relevant bilateral agreements.

[130] **FR**: replace with "*as well as*" in order to avoid confusion.

[131] **ES**, **FR**: scrutiny reservations. **IT**: reservation.

[132] **AT**: scrutiny reservation. **FI** preferred the earlier version of the paragraph referring to the registered or usual place of residence of the ICT. **FR**: reservation on this derogation from the principle of equal treatment which could create distortions. **Cion** was opposed to the derogation regarding family benefits as it is an arbitrary distinction and creates problems in the case of intra-EU mobility and also with respect to the Regulation 1231/10.

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

[134] **DE**, **AT**: scrutiny reservations on the Article.

2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification in the Member State shall not be made dependent on the requirement that the holder of the permit issued by that Member State on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.

3. By way of derogation from the last subparagraph of Article 4(1) and from Article 7(2) of Directive 2003/86/EC, the integration measures referred to therein may be applied by the Member State only after the persons concerned have been granted family reunification. [135]

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the Member State, if the conditions for family reunification are fulfilled, **[…]** within **[…] 60 days** from the date on which the complete application was lodged and not before the ICT permit is issued. **The procedural safeguards laid down in** Article 12 **apply** accordingly. [136]

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. [137]

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

[136] **AT**, **DE**, **ES**: scrutiny reservations. **FR**: scrutiny reservation asking what is meant by "and not before the ICT permit is issued". **DE**, **ES**, **NL**, **AT**, **LT**, **SE**, **SK**: the deadline should be 90 days here too as it is the case in Article 12(1). **IT**: reservation on the paragraph as the deadline should be longer.

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

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. [138]

7. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC Member States shall not apply any time limits in respect of access to the labour market. [139]

[138] **BE**, **NL**: use the wording of Article 15.6 of the Blue Card Directive instead. **AT**, **CY**, **CZ**, **EL**, **HU**: scrutiny reservations related to access to the labour market. **AT**, **SK**: this provision is problematic as it gives more favourable treatment to the family members of ICTs compared to family members of long-term migrants. **FR**: use "*who have been admitted under this quality*" instead of "who have been granted family reunification". **EL** supported **Pres** suggestions for this paragraph.

[139] **CZ**: scrutiny reservation as derogation from Article 14(2) should not be provided for. **AT**, **CY**, **EL**, **FR**, **HU**: scrutiny reservations related to access to the labour market. **EL** supported **Pres** suggestions for this paragraph.

CHAPTER V

MOBILITY BETWEEN MEMBER STATES [140]

Article 16

Provisions governing short-term mobility [141]

1. When the intra-corporate transferee intends to work in a second Member State for a period of up to three months in any six-month period, the transfer may take place on the basis of the intra-corporate transferee permit issued by the first Member State during its validity, provided that**:** [142]

   (a) there is a host entity belonging to the same group of undertakings in the second Member State concerned,

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[140] **EL**: scrutiny reservation on Chapter V. **CZ**, **EE**, **SI**: scrutiny reservations on all provisions concerning mobility.

[141] **AT**, **CZ**, **DE**, **EE**, **ES**, **IT**, **PT**, **SI**, **SK**: scrutiny reservations on the Article. **BE**, **FI**, **SE**: reservations on the Article. **LV** supported **Pres** suggestions in this Article. **LT** (scrutiny reservation) would prefer a more flexible procedure for short-term mobility. For example, the host entity might not know that an ICT is in the register of unwanted persons and might face sanctions. **DE** noted that the proposed procedure is out of balance as it contains no preventive checks but has become overly complicated. **DE** (supported by **AT**, **FI**) presented a compromise solution which gives MS the option of requiring that a TCN applies for a permit at any time during the 3-month period. **AT** continued to support the "Blue Card model" for all transfers thus insisting on the possibility for the second MS to check all the admission criteria and to refuse admission. **AT**, **FI** found ex-post checks an unsatisfactory solution and insisted on the checks to be carried out before a TCN is admitted and on the possibility of the second MS influencing the decision.

[142] **IT**: scrutiny reservation. **AT**, **BE**, **DE**, **EL** insisted on the possibility for a second MS to refuse entry. **DE** (supported by **FI**, **RO**) enquired whether notification constitutes an administrative act which can be appealed against. If not, then a TCN has no possibility to invoke his/her rights in the case of refusal. **FI** shared the concerns of DE pointing out that legally the permit is granted to an employee. **AT** (scrutiny reservation): the list of criteria is not complete, the second MS might wish to check other criteria for admission. **FI**, **SE** could not see how Article 16(1) would work legally or in practice if the second MS could not challenge the decision by the first MS. **HU**: the list of criteria is too long for a simple notification procedure. The reference to volumes in particular complicates the procedure. **NL** warned against too rigid an interpretation of "the same position" as the person could have been promoted in the meantime.

(b) the transfer covers the same position,

(c) the intra-corporate transferee is not considered to pose a threat to public policy, public security or public health in that second Member State, [143]

(d) the second Member State has been notified in accordance with paragraph 2, [144]

(e) the time period, which a Member State may require in accordance with Article 10A(2), has expired in the second Member State, [145]

(f) the volumes of admission of third-country nationals entering **the** territory of the second Member State have not been exhausted [146] and

(g) as long as the terms and conditions of employment set out in Article 5 (2) and (2a) in the second Member State are fulfilled. [147]

2. When lodging the application for an intra-corporate transferee permit the applicant shall notify the competent authorities of the first Member State and the host entity shall notify the competent authorities of the second Member State about the transfer intended to take place **[…]** by sending to **the** second Member State **a copy of** the documents **[…]** specified in Article 5 (1) a), b), d), f) and Article 5 (3) **[…]**, and the information **[…] intra-corporate transferee** permit issued by the first Member State or on the application lodged in the first Member State.[148]

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143 **SK**: scrutiny reservation. **BG**: it should be clarified that this provision applies without prejudice to the Return Directive.

144 **FR**: scrutiny reservation pointing out that this seems to apply only to those cases where mobility is known in advance.

145 **PT**: scrutiny reservation. **CZ**: scrutiny reservation as it could not see how the paragraph would be applied in practice. **FR** (reservation), **HU**: the paragraph creates confusion between long-term and short-term mobility. **PL** did not support the paragraph. **Cion**: this provision is not in line with a simple mobility scheme pointing to its implications on the uniformity of the ICT scheme.

146 **IT** pointed out that it would not apply a quota to this category of persons.

147 **BE**: reference should also be made to Article 5(2b). **DE**: reference should also be made to the requirement for prior employment set out in Article 5(6).

148 **FR**: scrutiny reservation. **PL** preferred the previous version of the paragraph which was more flexible as it did not refer to copies of the documents in all cases. **FR**: it is not clear whether the host entity referred to is the one in the first or second MS; also there is no need to notify the authorities of the first MS about mobility. **HU**: there is a requirement for too many documents to be sent which amounts to a lot of bureaucracy.

2a. The second Member State informs the host entity **[…]** within 10 working days from receiving the documents in accordance with paragraph 2 **if:** [149]

a. the time period, which a Member State may require in accordance with Article 10A(2), has not expired in the second Member State or

b. the volumes of admission of third-country nationals entering the territory of the second Member State have been exhausted.[150]

The absence of a reply within this deadline shall mean that **[…] the second Member State does not object to short-term mobility on the grounds set out under (a) or (b) of this paragraph.**

3. The intra-corporate transferee permit issued by the first Member State entitles the intra-corporate transferee to work, in accordance with Article 14, in the first and in the second Members State(s), except where the criteria set out in paragraph 1 are not fulfilled.[151]

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.

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[149] **PT**: scrutiny reservation. **LV** enquired why paragraph 2a only contains two criteria and not the others contained in paragraph 1. **RO**: reservation on the paragraph arguing that the second MS should be able to consider all the criteria set out in Article 5 before accepting the ICT to its territory. **BG**: it could be provided that the second MS should receive the documents in its language. **DE**: the procedure in the paragraph seems to amount to refusal without actually saying it and this raises concerns regarding legal certainty and consequences. **MT**, **SK** suggested 15 working days instead. **SE** pointed out that not all MS apply quotas and this should be reflected in the drafting of the paragraph.

[150] **SK** expressed support for the idea of a MS being able to refuse mobility in the case of a quota being full.

[151] **HU**: add a reference to Article 13 as well. **SE**: it is not clear what happens if the criteria are not fulfilled.

4. If the intra-corporate transferee intends to exercise the right of short-term mobility in a second Member State other than the Member State(s) notified during the application procedure, the host entity shall notify the competent authorities of the first and of the second Member State about this intention before the transfer takes place in that second Member State in accordance with paragraph 2. The transfer may take place to that second Member State in accordance with paragraph 3. [152]

5. The second Member State may require registrations to be carried out in accordance with national law when the intra-corporate transferee enters the territory of the second Member State with the purpose of work. The second Member State may indicate additional information specified under Article 11 (6) as a proof of such registration. [153]

6. 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. Paragraphs 2, **2a,** 3 and 4 shall apply accordingly to the application for renewal of the intra-corporate transferee permit and to the renewed intra-corporate transferee permit. [154]

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

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[152] **FR**: add a reference to paragraph 5 in the second sentence.

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

[154] **FI**: the second MS(s) should be informed of the renewed permit. **PT**, **SE**: add to the end of the paragraph: "*... within the 3 months set out in paragraph 1.*"

8. In case the employment activity of the third-country national in the second Member State is not in accordance with paragraph 1, the second Member State may take the following measures:

(a) impose effective, proportionate and dissuasive sanctions [155] against the host entity;

(b) inform the authorities of the first Member State accordingly. [156]

Article 16A

Provisions governing long-term mobility [157]

1. If the third-country national who intends to work in a second Member State for more than 3 months within any 6-month period [158], 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. [159]

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155 **FR** enquired about the meaning of the term "dissuasive sanctions".

156 **CZ**, **EE**: it is not clear what the practical implications of sanctions would be. **DE** queried as to the actual possibility for the second MS to prohibit the TCN to stay and work in its territory if the conditions are not met. Informing the first MS is of no use since it might not be in the interest of the first MS to withdraw the permit. **LT**: the paragraph should be aligned with paragraphs 1 and 2 of this Article. **ES**: scrutiny reservation on the paragraph as it is not clear.

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

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

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

2. If the third-country national has already been granted an intra-corporate transferee permit the second Member State may decide not to verify certain criteria for admission and/or may allow the intra-corporate transferee to work until a positive decision on the application has been taken by its competent authority.

3. The provisions set out in Article 16 shall apply in a way that "the first Member State" shall be understood as the second Member States in which the application for a new intra-corporate permit is lodged and "the second Member State" as the Member State in which short-term mobility right is intended to be exercised. [160]

4. The second Member State issuing or withdrawing a new intra-corporate transferee permit shall inform the first Member State about it, in case the intra-corporate transferee permit issued by the first Member State is still valid. [161]

5. Articles 5A, 6, 7, 10, 10A, 11, 12 and 12A shall apply accordingly.

[160] **IT**: reservation. **EL**: scrutiny reservation. **FR** found this paragraph unnecessary.

[161] **IT** enquired as to whether the first permit should be returned before the second one is issued. **Pres** replied that an ICT can have several permits at the same time. **CZ** stated that MS should also inform one another when an application is rejected and wanted to know what happens if a MS does not decide within the period of validity of the first permit. **Pres** replied that a transitional permit as set out in Article 12.6 could be used in that case.

CHAPTER VI
FINAL PROVISIONS

Article 17

Statistics [162]

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 **[…] employee in training**), 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 862/2007 [163].

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 […].

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[162] **AT** reservation and **DE**, **EE**, **ES**, **PT**, **SI**: scrutiny reservations on Article 17. **DE** considered the collection of this data disproportionate for the purpose of this proposal, cannot provide data for withdrawal of residence permits, nor data based on gender criteria, nor on the period of validity of the permit, it can provide data only for residence permits issued for the first time or renewed, **EE** would prefer more coherent provisions like in the Blue Card Directive. **ES** has a scrutiny reservation until it gets a report on these statistics from the competent services, **PT** and **AT** considered that it duplicate rules already existing in the context of the 862/2007 Statistics Regulation. **AT**: delete reference to the transferee position, the length of validity of the permit (**SI** has a scrutiny reservation on it) and (along with **SI**) the economic sector, or make their collection optional.
Cion: statistics are very important to monitor the implementation of the Directive, to gauge its impact on manifold issues such as gender equality, external relations, etc. The collection of data for withdrawals of permits is optional. It also recalled that Regulation 862/2007 is just the basis which is implemented in the form of guidelines tailored for each legal instrument.

[163] 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. [164]

Article 19

Cooperation on information[165]

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Article 16 and 16A. Member States shall give preference to exchange of information via electronic means.

2. Member States shall provide appropriate cooperation on exchanges of the information and documentation referred to in paragraph 1. Such procedural cooperation shall be effectively carried out especially when the application has not been lodged with the designated authorities of the Member State having competence within the meaning of this Directive.

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[164] **DE**: delete the wording "including any necessary proposal" as it is unclear. **Cion**: it is standard language and **Cion** has the right of initiative.

[165] **AT**, **DE**: scrutiny reservations on the Article in relation to Article 16. **ES**: scrutiny reservation related to the application of the Article in practice. **AT**, **IT**: reservations. **RO**: scrutiny reservation. **SI** expressed concerns regarding the legal basis for the exchange of personal data and suggested to consult the European Data Protection Supervisor. **LT** could support the Article in principle although administrative burden could be minimised even further.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. [166]

   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. [167]

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*.

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[166] **CY**, **DE**: the transposition period should be three years **(DE** at least three) instead of two. **AT**: scrutiny reservation on the two-year period, considering it too short.
CY, **DE**, **ES**, **IT**, **LV**, **AT**, **PT**, **SI**: reservations on the obligation to draw a correlation table.
Cion: the correlation table is very important to compare from the outset, in a clear way, the future Directive with the relevant national legislation and the administrative work is not out of proportion.

[167] **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*