

## I

(Legislative acts)

## DIRECTIVES

**DIRECTIVE 2014/66/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 15 May 2014****on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer**

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 points (a) and (b) of Article 79(2) 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 <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.
- (2) The TFEU 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 Commission's Communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth' sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists and trainee employees to enter the Union in the framework of an intra-corporate transfer have to be seen in that broader context.

<sup>(1)</sup> OJ C 218, 23.7.2011, p. 101.

<sup>(2)</sup> OJ C 166, 7.6.2011, p. 59.

<sup>(3)</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 13 May 2014.

- (4) The Stockholm Programme, adopted by the European Council on 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 and, consequently, 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. The Stockholm Programme thus invites the Commission and the Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's Communication of 21 December 2005.
- (5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational groups, in recent years movements of managers, specialists and trainee employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.
- (6) Such intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host entities, thus advancing the knowledge-based economy in the Union while fostering investment flows across the Union. Intra-corporate transfers from third countries also have the potential to facilitate intra-corporate transfers from the Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best.
- (7) The set of rules established by this Directive may also benefit the migrants' countries of origin as this temporary migration may, under its well-established rules, foster transfers of skills, knowledge, technology and know-how.
- (8) This Directive should be without prejudice to the principle of preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of the relevant Acts of Accession.
- (9) This Directive should be without prejudice to the right of Member States to issue permits other than intra-corporate transferee permits for any purpose of employment if a third-country national does not fall within the scope of this Directive.
- (10) This Directive should establish a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria.
- (11) Member States should ensure that appropriate checks and effective inspections are carried out in order to guarantee the proper enforcement of this Directive. The fact that an intra-corporate transferee permit has been issued should not affect or prevent the Member States from applying, during the intra-corporate transfer, their labour law provisions having — in accordance with Union law — as their objective checking compliance with the working conditions as set out in Article 18(1).
- (12) The possibility for a Member State to impose, on the basis of national law, sanctions against an intra-corporate transferee's employer established in a third country should remain unaffected.
- (13) For the purpose of this Directive, intra-corporate transferees should encompass managers, specialists and trainee employees. Their definition should build on specific commitments of the Union under the General Agreement on Trade in Services (GATS) and bilateral trade agreements. Since those commitments undertaken under GATS do not cover conditions of entry, stay and work, this Directive should complement and facilitate the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive should be 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.
- (14) To assess the qualifications of intra-corporate transferees, Member States should make use of the European Qualifications Framework (EQF) for lifelong learning, as appropriate, for the assessment of qualifications in a comparable and transparent manner. EQF National Coordination Points may provide information and guidance on how national qualifications levels relate to the EQF.

- (15) Intra-corporate transferees should benefit from at least the same terms and conditions of employment as posted workers whose employer is established on the territory of the Union, as defined by Directive 96/71/EC of the European Parliament and of the Council <sup>(1)</sup>. Member States should require that intra-corporate transferees enjoy equal treatment with nationals occupying comparable positions as regards the remuneration which will be granted during the entire transfer. Each Member State should be responsible for checking the remuneration granted to the intra-corporate transferees during their stay on its territory. That 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.
- (16) 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 three up to twelve uninterrupted months immediately prior to the transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees.
- (17) As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for trainee employees after which they should leave for a third country unless they obtain a residence permit on another basis in accordance with Union or national law. The maximum duration of the transfer should encompass the cumulated durations of consecutively issued intra-corporate transferee permits. A subsequent transfer to the Union might take place after the third-country national has left the territory of the Member States.
- (18) In order to ensure the temporary character of an intra-corporate transfer and prevent abuses, Member States should be able to require a certain period of time to elapse between the end of the maximum duration of one transfer and another application concerning the same third-country national for the purposes of this Directive in the same Member State.
- (19) As intra-corporate transfers consist of temporary secondment, the applicant should provide evidence, as part of the work contract or the assignment letter, 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. The applicant should also provide evidence that the third-country national manager or specialist possesses the professional qualifications and adequate professional experience needed in the host entity to which he or she is to be transferred.
- (20) Third-country nationals who apply to be admitted as trainee employees should provide evidence of a university degree. 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 trainee employees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.
- (21) Unless it conflicts with the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, no labour market test should be required.
- (22) A Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of Union citizens and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and the Council <sup>(2)</sup>. Such recognition should be without prejudice to any restrictions on access to regulated professions deriving from reservations to the existing commitments as regards regulated professions made by the Union or by the Union and its Member States in the framework of trade agreements. In any event, this Directive should not provide for a more favourable treatment of intra-corporate transferees, in comparison with Union or European Economic Area nationals, as regards access to regulated professions in a Member State.

<sup>(1)</sup> 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 (OJ L 18, 21.1.1997, p. 1).

<sup>(2)</sup> Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

- (23) This Directive should not affect the right of the Member States to determine the volumes of admission in accordance with Article 79(5) TFEU.
- (24) With a view to fighting possible abuses of this Directive, Member States should be able to refuse, withdraw or not renew an intra-corporate transferee permit where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees and/or does not have a genuine activity.
- (25) This Directive aims to facilitate mobility of intra-corporate transferees within the Union ('intra-EU mobility') and to reduce the administrative burden associated with work assignments in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State is allowed to enter, to stay and to work in one or more Member States in accordance with the provisions governing short-term and long-term mobility under this Directive. Short-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit, for a period of up to 90 days per Member State. Long-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit for more than 90 days per Member State. In order to prevent circumvention of the distinction between short-term and long-term mobility, short-term mobility in relation to a given Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to submit a notification for short-term mobility and an application for long-term mobility at the same time. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the second Member State may request that the application be submitted at least 20 days before the end of the short-term mobility period.
- (26) While the specific mobility scheme established by this Directive should lay down autonomous rules regarding entry and stay for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen *acquis* continue to apply.
- (27) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of second Member States should be provided where applicable with the relevant information.
- (28) Where intra-corporate transferees have exercised their right to mobility, the second Member State should, under certain conditions, be in a position to take steps so that the intra-corporate transferees' activities do not contravene the relevant provisions of this Directive.
- (29) Member States should provide for effective, proportionate and dissuasive sanctions, such as financial sanctions, to be imposed in the event of failure to comply with this Directive. Those sanctions could, inter alia, consist of measures as provided for in Article 7 of Directive 2009/52/EC of the European Parliament and of the Council <sup>(1)</sup>. Those sanctions could be imposed on the host entity established in the Member State concerned.
- (30) Provision for a single procedure leading to one combined title encompassing both residence and work permit ('single permit') should contribute to simplifying the rules currently applicable in Member States.
- (31) It should be possible to set up a simplified procedure for entities or groups of undertakings which have been recognised for that purpose. Recognition should be regularly assessed.
- (32) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, that third-country national should receive an intra-corporate transferee permit allowing him or her to carry out, under certain conditions, his or her assignment in diverse entities belonging to the same transnational corporation, including entities located in other Member States.

<sup>(1)</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

- (33) Where a visa is required and the third-country national fulfils the criteria for being issued with an intra-corporate transferee permit, the Member State should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.
- (34) Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen *acquis* in full and the intra-corporate transferee, in the framework of intra-EU mobility, crosses an external border within the meaning of Regulation (EC) No 562/2006 of the European Parliament and of the Council <sup>(1)</sup>, a Member State should be entitled to require evidence proving that the intra-corporate transferee is moving to its territory for the purpose of an intra-corporate transfer. Besides, in case of crossing of an external border within the meaning of Regulation (EC) No 562/2006, the Member States applying the Schengen *acquis* in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council <sup>(2)</sup>, has been issued in that system.
- (35) Member States should be able to indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of Council Regulation (EC) No 1030/2002 <sup>(3)</sup> and point (a)16 of the Annex thereto, in order to provide more precise information on the employment activity during the intra-corporate transfer. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.
- (36) This Directive should not prevent intra-corporate transferees from exercising specific activities at the sites of clients within the Member State where the host entity is established in accordance with the provisions applying in that Member State with regard to such activities.
- (37) This Directive does not affect the conditions of the provision of services in the framework of Article 56 TFEU. In particular, this Directive does 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 should not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. Third-country nationals holding an intra-corporate transferee permit cannot avail themselves of Directive 96/71/EC. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.
- (38) Adequate social security coverage for intra-corporate transferees, including, where relevant, benefits for their family members, is important for ensuring decent working and living conditions while staying in the Union. Therefore, equal treatment should be granted under national law in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council <sup>(4)</sup>. This 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 within its 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 law of the Member State where the work is carried out with regard to affiliation and entitlement to social security benefits.

In many Member States, the right to family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive should not affect the right of a Member State to restrict, under certain conditions, equal treatment in respect of family benefits, since the intra-corporate transferee and the accompanying family members are staying temporarily in that Member State. Social security rights

<sup>(1)</sup> 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) (OJ L 105, 13.4.2006, p. 1).

<sup>(2)</sup> Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

<sup>(3)</sup> Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

<sup>(4)</sup> Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

should be granted without prejudice to provisions of national law and/or bilateral agreements providing for the application of the social security legislation of the country of origin. However, bilateral agreements or national law on social security rights of intra-corporate transferees which are adopted after the entry into force of this Directive should not provide for less favourable treatment than the treatment granted to nationals of the Member State where the work is carried out. As a result of national law or such agreements, it may be, for example, in the interests of the intra-corporate transferees to remain affiliated to the social security system of their country of origin if an interruption of their affiliation would adversely affect their rights or if their affiliation would result in their bearing the costs of double coverage. Member States should always retain the possibility to grant more favourable social security rights to intra-corporate transferees. Nothing in this Directive should affect the right of survivors who derive rights from the intra-corporate transferee to receive survivor's pensions when residing in a third country.

- (39) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council <sup>(1)</sup> should apply accordingly. This Directive should not confer more rights than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.
- (40) In order to make the specific set of rules established by this Directive more attractive and to allow it to produce all the 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 issued the intra-corporate transferee permit and in those Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with the provisions of this Directive on long-term mobility. 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, and their access to the labour market should be facilitated.
- (41) In order to facilitate the fast processing of applications, Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.
- (42) The collection and transmission of files and data should be carried out in compliance with the relevant data protection and security rules.
- (43) 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 <sup>(2)</sup>.
- (44) Since the objectives of this Directive, namely 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 sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, 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 (TEU). 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.
- (45) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, which itself builds upon the rights deriving from the Social Charters adopted by the Union and by the Council of Europe.

<sup>(1)</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 on nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

<sup>(2)</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15).

- (46) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 <sup>(1)</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (47) 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 TEU and to the TFEU, 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.
- (48) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### GENERAL PROVISIONS

##### *Article 1*

##### **Subject-matter**

This Directive lays down:

- (a) the conditions of entry to, and residence for more than 90 days in, the territory of the Member States, and the rights, of third-country nationals and of their family members in the framework of an intra-corporate transfer;
- (b) the conditions of entry 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 an intra-corporate transferee permit on the basis of this Directive.

##### *Article 2*

##### **Scope**

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States at the time of application 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 as managers, specialists or trainee employees.
2. This Directive shall not apply to third-country nationals who:
  - (a) 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) under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of Union citizens or are employed by an undertaking established in those third countries;

<sup>(1)</sup> OJ C 369, 17.12.2011, p. 14.

- (c) are posted in the framework of Directive 96/71/EC;
  - (d) carry out activities as self-employed workers;
  - (e) are assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking;
  - (f) are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies.
3. This Directive shall be without prejudice to the right of Member States to issue residence permits, other than the intra-corporate transferee permit covered by this Directive, for any purpose of employment for third-country nationals who fall outside the scope of this Directive.

### Article 3

#### Definitions

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

- (a) 'third-country national' means any person who is not a citizen of the Union, within the meaning of Article 20(1) TFEU;
- (b) 'intra-corporate transfer' means the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States;
- (c) 'intra-corporate transferee' means any third-country national who resides outside the territory of the Member States at the time of application for an intra-corporate transferee permit and who is subject to an intra-corporate transfer;
- (d) 'host entity' means the entity to which the intra-corporate transferee is transferred, regardless of its legal form, established, in accordance with national law, in the territory of a Member State;
- (e) 'manager' means a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent; that position shall include: directing the host entity or a department or subdivision of the host entity; supervising and controlling work of the other supervisory, professional or managerial employees; having the authority to recommend hiring, dismissing or other personnel action;
- (f) 'specialist' means a person working within the group of undertakings possessing specialised knowledge essential to the host entity's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession;
- (g) 'trainee employee' means a person with a university degree who is transferred to a host entity for career development purposes or in order to obtain training in business techniques or methods, and is paid during the transfer;
- (h) 'family members' means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC <sup>(1)</sup>;
- (i) 'intra-corporate transferee permit' means an authorisation bearing the acronym 'ICT' entitling its holder to reside and work in the territory of the first Member State and, where applicable, of second Member States, under the terms of this Directive;

<sup>(1)</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

- (j) 'permit for long-term mobility' means an authorisation bearing the term 'mobile ICT' entitling the holder of an intra-corporate transferee permit to reside and work in the territory of the second Member State under the terms of this Directive;
- (k) 'single application procedure' means the procedure leading, on the basis of one application for the authorisation for residence and work of a third-country national in the territory of a Member State, to a decision on that application;
- (l) 'group of undertakings' means two or more undertakings recognised as linked under national law in the following ways: an undertaking, in relation to another undertaking directly or indirectly, holds a majority of that undertaking's subscribed capital; controls a majority of the votes attached to that undertaking's issued share capital; is entitled to appoint more than half of the members of that undertaking's administrative, management or supervisory body; or the undertakings are managed on a unified basis by the parent undertaking;
- (m) 'first Member State' means the Member State which first issues a third-country national an intra-corporate transferee permit;
- (n) 'second Member State' means any Member State in which the intra-corporate transferee intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;
- (o) 'regulated profession' means a regulated profession as defined in point (a) of Article 3(1) 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;
  - (b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.
2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for third-country nationals to whom it applies in respect of point (h) of Article 3, and Articles 15, 18 and 19.

#### CHAPTER II

#### **CONDITIONS OF ADMISSION**

#### Article 5

#### **Criteria for admission**

1. Without prejudice to Article 11(1), a third-country national who applies to be admitted under the terms of this Directive or the host entity shall:
  - (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) provide evidence of employment within the same undertaking or group of undertakings, from at least three up to twelve uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees;
  - (c) present a work contract and, if necessary, an assignment letter from the employer containing the following:
    - (i) details of the duration of the transfer and the location of the host entity or entities;
    - (ii) evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities in the Member State concerned;

- (iii) the remuneration as well as other terms and conditions of employment granted during the intra-corporate transfer;
- (iv) evidence that the third-country national will be able to transfer back to an entity belonging to that undertaking or group of undertakings and established in a third country at the end of the intra-corporate transfer;
- (d) provide evidence that the third-country national has the professional qualifications and experience needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a trainee employee, the university degree required;
- (e) where applicable, present documentation certifying that the third-country national fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;
- (f) present a valid travel document of the third-country national, as determined by national law, and, if required, an application for a visa or a visa; Member States may require the period of validity of the travel document to cover at least the period of validity of the intra-corporate transferee permit;
- (g) without prejudice to existing bilateral agreements, provide evidence of having, or, if provided for by national law, having applied for, sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State.

2. Member States may require the applicant to present the documents listed in points (a), (c), (d), (e) and (g) of paragraph 1 in an official language of the Member State concerned.

3. Member States may require the applicant to provide, at the latest at the time of the issue of the intra-corporate transferee permit, the address of the third-country national concerned in the territory of the Member State.

4. Member States shall require that:

- (a) all conditions in the law, regulations, or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met during the intra-corporate transfer with regard to terms and conditions of employment other than remuneration.

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

- (b) the remuneration granted to the third-country national during the entire intra-corporate transfer is not less favourable than the remuneration granted to nationals of the Member State where the work is carried out occupying comparable positions in accordance with applicable laws or collective agreements or practices in the Member State where the host entity is established.

5. On the basis of the documentation provided pursuant to paragraph 1, Member States may require that the intra-corporate transferee will have sufficient resources during his or her stay to maintain himself or herself and his or her family members without having recourse to the Member States' social assistance systems.

6. In addition to the evidence required under paragraph 1, any third-country national who applies to be admitted as a trainee employee may be required to present a training agreement relating to the preparation for his or her future position within the undertaking or group of undertakings, including a description of the training programme, which demonstrates that the purpose of the stay is to train the trainee employee for career development purposes or in order to obtain training in business techniques or methods, its duration and the conditions under which the trainee employee is supervised during the programme.

7. Any modification during the application procedure that affects the criteria for admission set out in this Article shall be notified by the applicant to the competent authorities of the Member State concerned.

8. 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.

#### Article 6

##### **Volumes of admission**

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals in accordance with Article 79(5) TFEU. On that basis, an application for an intra-corporate transferee permit may either be considered inadmissible or be rejected.

#### Article 7

##### **Grounds for rejection**

1. Member States shall reject an application for an intra-corporate transferee permit in any of the following cases:
  - (a) where Article 5 is not complied with;
  - (b) where the documents presented were fraudulently acquired, or falsified, or tampered with;
  - (c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;
  - (d) where the maximum duration of stay as defined in Article 12(1) has been reached.
2. Member States shall, if appropriate, reject an application where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.
3. Member States may reject an application for an intra-corporate transferee permit in any of the following cases:
  - (a) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
  - (b) where the employer's or the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;
  - (c) where the intent or effect of the temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation.
4. Member States may reject an application for an intra-corporate transferee permit on the ground set out in Article 12(2).
5. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

#### Article 8

##### **Withdrawal or non-renewal of the intra-corporate transferee permit**

1. Member States shall withdraw an intra-corporate transferee permit in any of the following cases:
  - (a) where it was fraudulently acquired, or falsified, or tampered with;
  - (b) where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;
  - (c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees.

2. Member States shall, if appropriate, withdraw an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.
3. Member States shall refuse to renew an intra-corporate transferee permit in any of the following cases:
  - (a) where it was fraudulently acquired, or falsified, or tampered with;
  - (b) where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;
  - (c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;
  - (d) where the maximum duration of stay as defined in Article 12(1) has been reached.
4. Member States shall, if appropriate, refuse to renew an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.
5. Member States may withdraw or refuse to renew an intra-corporate transferee permit in any of the following cases:
  - (a) where Article 5 is not or is no longer complied with;
  - (b) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
  - (c) where the employer's or the host entity's business is being or has been wound up under national insolvency laws or if no economic activity is taking place;
  - (d) where the intra-corporate transferee has not complied with the mobility rules set out in Articles 21 and 22.
6. Without prejudice to paragraphs 1 and 3, any decision to withdraw or to refuse to renew an intra-corporate transferee permit shall take account of the specific circumstances of the case and respect the principle of proportionality.

#### *Article 9*

#### **Sanctions**

1. Member States may hold the host entity responsible for failure to comply with the conditions of admission, stay and mobility laid down in this Directive.
2. The Member State concerned shall provide for sanctions where the host entity is held responsible in accordance with paragraph 1. Those sanctions shall be effective, proportionate and dissuasive.
3. Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.

#### CHAPTER III

#### **PROCEDURE AND PERMIT**

#### *Article 10*

#### **Access to information**

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence, including the rights, obligations and procedural safeguards, of the intra-corporate transferee and of his or her family members. Member States shall also make easily available information on the procedures applicable to the short-term mobility referred to in Article 21(2) and to the long-term mobility referred to in Article 22(1).

2. The Member States concerned shall make available information to the host entity on the right of Member States to impose sanctions in accordance with Articles 9 and 23.

#### Article 11

##### **Applications for an intra-corporate transferee permit or a permit for long-term mobility**

1. Member States shall determine whether an application is to be submitted by the third-country national or by the host entity. Member States may also decide to allow an application from either of the two.
2. The application for an intra-corporate transferee permit shall be submitted when the third-country national is residing outside the territory of the Member State to which admission is sought.
3. The application for an intra-corporate transferee permit shall be submitted to the authorities of the Member State where the first stay takes place. Where the first stay is not the longest, the application shall be submitted to the authorities of the Member State where the longest overall stay is to take place during the transfer.
4. Member States shall designate the authorities competent to receive the application and to issue the intra-corporate transferee permit or the permit for long-term mobility.
5. The applicant shall be entitled to submit an application in a single application procedure.
6. Simplified procedures relating to the issue of intra-corporate transferee permits, permits for long-term mobility, permits granted to family members of an intra-corporate transferee, and visas may be made available to entities or to undertakings or groups of undertakings that have been recognised for that purpose by Member States in accordance with their national law or administrative practice.

Recognition shall be regularly reassessed.

7. The simplified procedures provided for in paragraph 6 shall at least include:
  - (a) exempting the applicant from presenting some of the evidence referred to in Article 5 or in point (a) of Article 22(2);
  - (b) a fast-track admission procedure allowing intra-corporate transferee permits and permits for long-term mobility to be issued within a shorter time than specified in Article 15(1) or in point (b) of Article 22(2); and/or
  - (c) facilitated and/or accelerated procedures in relation to the issue of the requisite visas.
8. Entities or undertakings or groups of undertakings which have been recognised in accordance with paragraph 6 shall notify to the relevant authority any modification affecting the conditions for recognition without delay and, in any event, within 30 days.
9. Member States shall provide for appropriate sanctions, including revocation of recognition, in the event of failure to notify the relevant authority.

#### Article 12

##### **Duration of an intra-corporate transfer**

1. The maximum duration of the intra-corporate transfer shall be three years for managers and specialists and one year for trainee employees after which they shall leave the territory of the Member States unless they obtain a residence permit on another basis in accordance with Union or national law.

2. Without prejudice to their obligations under international agreements, Member States may require a period of up to six months to elapse between the end of the maximum duration of a transfer referred to in paragraph 1 and another application concerning the same third-country national for the purposes of this Directive in the same Member State.

#### *Article 13*

##### **Intra-corporate transferee permit**

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for trainee employees.
3. The intra-corporate transferee permit shall be issued by the competent authorities of the Member State using the uniform format laid down in Regulation (EC) No 1030/2002.
4. Under the heading 'type of permit', in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter 'ICT'.

Member States may also add an indication in their official language or languages.

5. Member States shall not issue any additional permits, in particular work permits of any kind.
6. Member States may indicate additional information relating to the employment activity during the intra-corporate transfer of the third-country national in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto.
7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.

#### *Article 14*

##### **Modifications affecting the conditions for admission during the stay**

Any modification during the stay that affects the conditions for admission set out in Article 5 shall be notified by the applicant to the competent authorities of the Member State concerned.

#### *Article 15*

##### **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 the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the competent authorities have received the additional information required.
3. Reasons for a decision declaring inadmissible or rejecting an application or refusing renewal shall be given to the applicant in writing. Reasons for a decision withdrawing an intra-corporate transferee permit shall be given in writing to the intra-corporate transferee and to the host entity.
4. Any decision declaring inadmissible or rejecting the application, refusing renewal, or withdrawing an intra-corporate transferee permit shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.
5. Within the period referred to in Article 12(1) an applicant shall be allowed to submit an application for renewal before the expiry of the intra-corporate transferee permit. Member States may set a maximum deadline of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.
6. Where the validity of the intra-corporate transferee permit expires during the procedure for renewal, Member States shall allow the intra-corporate transferee to stay on their territory until the competent authorities have taken a decision on the application. In such a case, they may issue, where required under national law, national temporary residence permits or equivalent authorisations.

#### *Article 16*

##### **Fees**

Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive.

#### CHAPTER IV

##### **RIGHTS**

#### *Article 17*

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

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

- (a) the right to enter and stay in the territory of the first Member State;
- (b) free access to the entire territory of the first Member State in accordance with its national law;
- (c) the right to exercise the specific employment activity authorised under the permit in accordance with national law in any host entity belonging to the undertaking or the group of undertakings in the first Member State.

The rights referred to in points (a) to (c) of the first paragraph of this Article shall be enjoyed in second Member States in accordance with Article 20.

#### *Article 18*

##### **Right to equal treatment**

1. Whatever the law applicable to the employment relationship, and without prejudice to point (b) of Article 5(4), intra-corporate transferees admitted under this Directive shall enjoy at least equal treatment with persons covered by Directive 96/71/EC with regard to the terms and conditions of employment in accordance with Article 3 of Directive 96/71/EC in the Member State where the work is carried out.

2. Intra-corporate transferees shall enjoy equal treatment with nationals of the Member State where the work is carried out as regards:
  - (a) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and 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;
  - (c) provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/2004, unless the law of the country of origin applies by virtue of bilateral agreements or the national law of the Member State where the work is carried out, ensuring that the intra-corporate transferee is covered by the social security legislation in one of those countries. In the event of intra-EU mobility, and without prejudice to bilateral agreements ensuring that the intra-corporate transferee is covered by the national law of the country of origin, Regulation (EU) No 1231/2010 shall apply accordingly;
  - (d) without prejudice to Regulation (EU) No 1231/2010 and to bilateral agreements, payment of old-age, invalidity and death statutory pensions based on the intra-corporate transferees' previous employment and acquired by intra-corporate transferees moving to a third country, or the survivors of such intra-corporate transferees residing in a third country deriving rights from the intra-corporate transferee, in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member State concerned when they move to a third country;
  - (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 freedom of contract in accordance with Union and national law, and services afforded by public employment offices.

The bilateral agreements or national law referred to in this paragraph shall constitute international agreements or Member States' provisions within the meaning of Article 4.

3. Without prejudice to Regulation (EU) No 1231/2010, Member States may decide that point (c) of paragraph 2 with regard to family benefits shall not apply to intra-corporate transferees who have been authorised to reside and work in the territory of a Member State for a period not exceeding nine months.

4. 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 8.

#### Article 19

#### Family members

1. Directive 2003/86/EC shall apply in the first Member State and in second Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with Article 22 of this Directive, subject to the derogations laid down in this Article.

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

3. By way of derogation from the third 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 States only after the persons concerned have been granted family reunification.

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 a Member State, if the conditions for family reunification are fulfilled, within 90 days from the date on which the complete application was submitted. The competent authority of the Member State shall process the residence permit application for the intra-corporate transferee's family members at the same time as

the application for the intra-corporate transferee permit or the permit for long-term mobility, in cases where the residence permit application for the intra-corporate transferee's family members is submitted at the same time. The procedural safeguards laid down in Article 15 shall apply accordingly.

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 a Member State shall, as a general rule, end on the date of expiry of the intra-corporate transferee permit or the permit for long-term mobility issued by that Member State.

6. By way of derogation from Article 14(2) of Directive 2003/86/EC and without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, 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 family member residence permit.

## CHAPTER V

### INTRA-EU MOBILITY

#### *Article 20*

#### **Mobility**

Third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State may, on the basis of that permit and a valid travel document and under the conditions laid down in Article 21 and 22 and subject to Article 23, enter, stay and work in one or several second Member States.

#### *Article 21*

#### **Short-term mobility**

1. Third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State shall be entitled to stay in any second Member State and work in any other entity, established in the latter and belonging to the same undertaking or group of undertakings, for a period of up to 90 days in any 180-day period per Member State subject to the conditions laid down in this Article.

2. The second Member State may require the host entity in the first Member State to notify the first Member State and the second Member State of the intention of the intra-corporate transferee to work in an entity established in the second Member State.

In such cases, the second Member State shall allow the notification to take place either:

- (a) at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or
- (b) after the intra-corporate transferee was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

3. The second Member State may require the notification to include the transmission of the following documents and information:

- (a) evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;
- (b) the work contract and, if necessary, the assignment letter, which were transmitted to the first Member State in accordance with point (c) of Article 5(1);

- (c) where applicable, documentation certifying that the intra-corporate transferee fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;
- (d) a valid travel document, as provided for in point (f) of Article 5(1); and
- (e) where not specified in any of the preceding documents, the planned duration and dates of the mobility.

The second Member State may require those documents and that information to be presented in an official language of that Member State.

4. Where the notification has taken place in accordance with point (a) of paragraph 2, and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 6, the mobility of the intra-corporate transferee to the second Member State may take place at any moment within the period of validity of the intra-corporate transferee permit.

5. Where the notification has taken place in accordance with point (b) of paragraph 2, the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the period of validity of the intra-corporate transferee permit.

6. Based on the notification referred to in paragraph 2, the second Member State may object to the mobility of the intra-corporate transferee to its territory within 20 days from having received the notification, where:

- (a) the conditions set out in point (b) of Article 5(4) or in point (a), (c) or (d) of paragraph 3 of this Article are not complied with;
- (b) the documents presented were fraudulently acquired, or falsified, or tampered with;
- (c) the maximum duration of stay as defined in Article 12(1) or in paragraph 1 of this Article has been reached.

The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State and the host entity in the first Member State about their objection to the mobility.

7. Where the second Member State objects to the mobility in accordance with paragraph 6 of this Article and the mobility has not yet taken place, the intra-corporate transferee shall not be allowed to work in the second Member State as part of the intra-corporate transfer. Where the mobility has already taken place, Article 23(4) and (5) shall apply.

8. Where the intra-corporate transferee permit is renewed by the first Member State within the maximum duration provided for in Article 12(1), the renewed intra-corporate transferee permit shall continue to authorise its holder to work in the second Member State, subject to the maximum duration provided for in paragraph 1 of this Article.

9. Intra-corporate transferees who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

## Article 22

### Long-term mobility

1. In relation to third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State and who intend to stay in any second Member State and work in any other entity, established in the latter and belonging to the same undertaking or group of undertakings, for more than 90 days per Member State, the second Member State may decide to:

- (a) apply Article 21 and allow the intra-corporate transferee to stay and work on its territory on the basis of and during the period of validity of the intra-corporate transferee permit issued by the first Member State; or
- (b) apply the procedure provided for in paragraphs 2 to 7.

2. Where an application for long-term mobility is submitted:
  - (a) the second Member State may require the applicant to transmit some or all of the following documents where they are required by the second Member State for an initial application:
    - (i) evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;
    - (ii) a work contract and, if necessary, an assignment letter, as provided for in point (c) of Article 5(1);
    - (iii) where applicable, documentation certifying that the third-country national fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;
    - (iv) a valid travel document, as provided for in point (f) of Article 5(1);
    - (v) evidence of having, or, if provided for by national law, having applied for, sickness insurance, as provided for in point (g) of Article 5(1).

The second Member State may require the applicant to provide, at the latest at the time of issue of the permit for long-term mobility, the address of the intra-corporate transferee concerned in the territory of the second Member State.

The second Member State may require those documents and that information to be presented in an official language of that Member State;

- (b) the second Member State shall take a decision on the application for long-term mobility and notify the decision to the applicant in writing as soon as possible but not later than 90 days from the date on which the application and the documents provided for in point (a) were submitted to the competent authorities of the second Member State;
- (c) the intra-corporate transferee shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;
- (d) the intra-corporate transferee shall be allowed to work in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that:
  - (i) the time period referred to in Article 21(1) and the period of validity of the intra-corporate transferee permit issued by the first Member State has not expired; and
  - (ii) if the second Member State so requires, the complete application has been submitted to the second Member State at least 20 days before the long-term mobility of the intra-corporate transferee starts;
- (e) an application for long-term mobility may not be submitted at the same time as a notification for short-term mobility. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the second Member State may request that the application for long-term mobility be submitted at least 20 days before the short-term mobility ends.

3. Member States may reject an application for long-term mobility where:

- (a) the conditions set out in point (a) of paragraph 2 of this Article are not complied with or the criteria set out in Article 5(4), Article 5(5) or Article 5(8) are not complied with;
- (b) one of the grounds covered by point (b) or (d) of Article 7(1) or by Article 7(2), (3) or (4) applies; or
- (c) the intra-corporate transferee permit expires during the procedure.

4. Where the second Member State takes a positive decision on the application for long-term mobility as referred to in paragraph 2, the intra-corporate transferee shall be issued with a permit for long-term mobility allowing the intra-corporate transferee to stay and work in its territory. This permit shall be issued using the uniform format laid down in Regulation (EC) No 1030/2002. Under the heading 'type of permit', in accordance with point (a)6.4 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter: 'mobile ICT'. Member States may also add an indication in their official language or languages.

Member States may indicate additional information relating to the employment activity during the long-term mobility of the intra-corporate transferee in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto.

5. Renewal of a permit for long-term mobility is without prejudice to Article 11(3).

6. The second Member State shall inform the competent authorities in the first Member State where a permit for long-term mobility is issued.

7. Where a Member State takes a decision on an application for long-term mobility, Article 8, Article 15(2) to (6) and Article 16 shall apply accordingly.

#### Article 23

#### Safeguards and sanctions

1. Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen *acquis* in full and the intra-corporate transferee crosses an external border, the second Member State shall be entitled to require as evidence that the intra-corporate transferee is moving to the second Member State for the purpose of an intra-corporate transfer:

- (a) a copy of the notification sent by the host entity in the first Member State in accordance with Article 21(2); or
- (b) a letter from the host entity in the second Member State that specifies at least the details of the duration of the intra-EU mobility and the location of the host entity or entities in the second Member State.

2. Where the first Member State withdraws the intra-corporate transferee permit, it shall inform the authorities of the second Member State immediately.

3. The host entity of the second Member State shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.

4. The second Member State may request that the intra-corporate transferee immediately cease all employment activity and leave its territory where:

- (a) it has not been notified in accordance with Article 21(2) and (3) and requires such notification;
- (b) it has objected to the mobility in accordance with Article 21(6);
- (c) it has rejected an application for long-term mobility in accordance with Article 22(3);
- (d) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;
- (e) the conditions on which the mobility was allowed to take place are no longer fulfilled.

5. In the cases referred to in paragraph 4, the first Member State shall, upon request of the second Member State, allow re-entry of the intra-corporate transferee, and, where applicable, of his or her family members, without formalities and without delay. That shall also apply if the intra-corporate transferee permit issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

6. Where the holder of an intra-corporate transferee permit crosses the external border of a Member State applying the Schengen *acquis* in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.
7. Member States may impose sanctions against the host entity established on its territory in accordance with Article 9, where:
- (a) the host entity has failed to notify the mobility of the intra-corporate transferee in accordance with Article 21(2) and (3);
  - (b) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;
  - (c) the application for an intra-corporate transferee permit has been submitted to a Member State other than the one where the longest overall stay takes place;
  - (d) the intra-corporate transferee no longer fulfils the criteria and conditions on the basis of which the mobility was allowed to take place and the host entity fails to notify the competent authorities of the second Member State of such a modification;
  - (e) the intra-corporate transferee started to work in the second Member State, although the conditions for mobility were not fulfilled in case Article 21(5) or point (d) of Article 22(2) applies.

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 24*

#### **Statistics**

1. Member States shall communicate to the Commission statistics on the number of intra-corporate transferee permits and permits for long-term mobility issued for the first time, and, where applicable, the notifications received pursuant to Article 21(2) and, as far as possible, on the number of intra-corporate transferees whose permit has been renewed or withdrawn. Those statistics shall be disaggregated by citizenship and by the period of validity of the permit and, as far as possible, by the economic sector and transferee position.
2. The statistics shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2017.
3. The statistics shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council <sup>(1)</sup>.

#### *Article 25*

#### **Reporting**

Every three years, and for the first time by 29 November 2019, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary. The report shall focus in particular on the assessment of the proper functioning of the intra-EU mobility scheme and on possible misuses of such a scheme as well as its interaction with the Schengen *acquis*. The Commission shall in particular assess the practical application of Articles 20, 21, 22, 23 and 26.

<sup>(1)</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

*Article 26***Cooperation between contact points**

1. Member States shall appoint contact points which shall cooperate effectively and be responsible for receiving and transmitting the information needed to implement Articles 21, 22 and 23. Member States shall give preference to exchanging of information via electronic means.
2. Each Member State shall inform the other Member States, via the national contact points referred to in paragraph 1, about the designated authorities referred to in Article 11(4) and about the procedure applied to mobility referred to in the Articles 21 and 22.

*Article 27***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 November 2016. They shall forthwith communicate the text of those measures to the Commission.

When Member States adopt those measures, 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.

*Article 28***Entry into force**

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 29***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 15 May 2014.

*For the European Parliament*  
*The President*  
M. SCHULZ

*For the Council*  
*The President*  
D. KOURKOULAS