

## III

*(Preparatory acts)*

## COMMITTEE OF THE REGIONS

89TH PLENARY SESSION HELD ON 31 MARCH AND 1 APRIL 2011

**Opinion of the Committee of the Regions on ‘Seasonal workers and intra-corporate transfer’**

(2011/C 166/10)

## THE COMMITTEE OF THE REGIONS

- stresses that legal certainty, lawfulness and fair, equal treatment of workers from third countries must be ensured in the EU;
- emphasises that migration is closely linked to development and notes that the emigration of skilled workers should not have a negative economic impact ('brain drain') on developing countries. Therefore welcomes the fact that the directives promote circular migration, in a way which could make a positive contribution both to the Member States' labour markets and to development in the countries of origin;
- takes note with interest of the scrutiny procedures by national parliaments regarding both proposals and of the views and arguments expressed therein; considers, based on its own analysis, both proposals to be compatible with the subsidiarity principle; underlines the fact that that the added value of EU legislation must lie mainly in its ability to prevent national systems from engaging in a race to the bottom with regard to protection;
- reiterates the significance of the Member States' right under the Treaty to determine the volumes of admissions while stressing that the Member States must involve local and regional authorities in deciding on the number of third-country nationals to be admitted to their territory, and on their employment profiles;
- cautions that both directives should be enacted in such a way as to respect the principle of Community preference;
- is convinced, nevertheless, that seasonal work and intra-corporate transfers have a major contribution to make to the recovery of certain economic and production sectors in Europe.

<b>Rapporteur</b>	Graziano Ernesto MILIA (IT/PES), President of the Province of Cagliari
<b>Reference documents</b>	<p>Proposal for a Directive of the European Parliament and Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer</p> <p>COM (2010) 378 final and</p> <p>Proposal for a Directive of the European Parliament and Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment</p> <p>COM (2010) 379 final</p>

## I. GENERAL COMMENTS

### THE COMMITTEE OF THE REGIONS

1. welcomes the two Commission proposals, on conditions for entry and residence of seasonal workers from third countries and on intra-corporate transfers of third-country nationals; nevertheless, underlines that the two proposals must be viewed in the light of the ongoing debate on legal migration in the EU and that it is vital that such a policy should take a consistent approach – also covering the social aspects of the issue - in order to create legal certainty and ensure equal treatment and compliance with fundamental rights;
  2. draws the Commission's attention to the need to counter illegal immigration and any form of illegal work or exploitation in the EU of third country nationals. The Committee of the Regions believes it is essential to provide third country nationals working legally in the EU with working and residence conditions which are in line with fundamental rights and the requirements laid down by law and to ensure that they are treated on an equal footing with EU citizens, and to encourage the widest, fullest social integration of these people. In this regard, the Committee of the Regions calls for absolute, unreserved respect for the fundamental rights laid down in the EU Charter of Fundamental Rights, and points out that this now has full legal status alongside the Treaties following the entry into force of the Lisbon Treaty;
  3. stresses that legal certainty (in the sense of a clear regulatory framework) and lawfulness (in the sense of respect for the law) and fair, equal treatment of workers from third countries must be ensured in the EU. Regions, intermediary authorities such as provinces, and municipalities (including rural areas) are the first to experience the economic and social impact of migration flows in their areas both regular and irregular. Regional, intermediate and local authorities (RLAs) are responsible for providing individuals with a wide range of services (reception, healthcare, education, vocational training, housing, etc.), and so their role on the ground and in the management of these issues should be underlined by the European Commission;
  4. highlights that regional, local and intermediate authorities are key players in the recently-adopted EU 2020 strategy
- addressing the challenges posed by the economic and financial crisis, climate change and energy resources, and therefore EU employment policy as well. As the legislative proposals in question show, these issues are closely linked to immigration policy;
5. points out that, although legal immigration falls within the remit of both the EU and the Member States, implementation of legal immigration policy is closely related to other policies such as (as stated in the proposals in question) labour, employment and social affairs, social security, local public services and services of general interest, housing and other policies which have been devolved in many EU Member States to RLAs. Therefore, RLAs play an important role in gathering information and statistical data to be used in the course of evaluation of existing legislation or the design of new measures in migration policies. Thus, the need for a close partnership with RLAs should be stressed;
  6. emphasises that migration is closely linked to development and notes that the emigration of skilled workers should not have a negative economic impact ('brain drain') on developing countries. Therefore welcomes that the directives promote circular migration, in a way which could make a positive contribution both to the Member States' labour markets and to development in the countries of origin <sup>(1)</sup>;
  7. acknowledges that circular migration may forge a valuable link between the countries of origin and the host countries, and may serve to promote dialogue, cooperation and mutual understanding and proposes to use the existing tools and institutional structures, such as the Committee of the Regions' initiative - Euro-Mediterranean Regional and Local Assembly (ARLEM) to promote these kinds of links;
  8. recalls, however, that circular migration should not be seen as a substitute for permanent migration and effective channels must be established to facilitate migrants' circulation and return as well as to avoid any irregular immigration;

<sup>(1)</sup> See opinions Cdr 296/2007 and Cdr 210/2008.

9. takes note with interest of the scrutiny procedures by national parliaments regarding both proposals and of the views and arguments expressed therein; considers, based on its own analysis, both proposals to be compatible with the subsidiarity principle; underlines that the added value of EU legislation must lie mainly in its ability to prevent national systems from engaging in a race to the bottom with regard to the protection of seasonal workers and intra-corporate transferees;

10. considers legislation on the intra-corporate transfer of certain key personnel necessary at the EU level given the discrepancies between the Member States' legislation as regards admission and rights of third-country nationals as intra-corporate transferees, the need to tackle situations with a cross-border nature and to guarantee a better discharge of the Union's international obligations under the WTO; in addition, believes that such EU legislation would increase the attractiveness of the EU labour market to highly qualified migrants and thus contribute to the competitiveness of the EU's economy as a whole;

11. believes that legislation regarding seasonal workers at the EU level is necessary because of the existing discrepancies between the Member States' legislation as regards admission and rights of third-country nationals as seasonal workers, the need to ensure a uniform set of minimum rights and the need to guarantee that instances of abuse as well as illegal immigration are countered;

12. reiterates the significance of the Member States' right under the Treaty to determine the volumes of admissions while stressing that, in compliance with the principle of subsidiarity and multilevel governance, the Member States must involve local and regional authorities in deciding on the number of third-country nationals to be admitted to their territory, and on their employment profiles<sup>(2)</sup>;

13. supports, after the examination of both proposals with regard to the proportionality principle, the choice of legal instrument, directives in both cases, in that it gives Member States the necessary room for discretion on domestic implementing arrangements, and to take the specific situations and needs of each Member State and its authorities responsible for implementing the directives at the national, regional and local levels into consideration;

14. nevertheless believes that some individual elements of the proposals might require closer analysis with reference to the proportionality principle: indeed the directives should not place disproportionate obligations upon individuals seeking to enter the EU as seasonal workers or intracorporate transferees or their employers; neither should they generate unnecessary costs or burdens for the national, regional or local authorities called to implement them; with regard to the latter consideration, the time limit of thirty days which authorities would have to consider applications and decide on admission

may be considered excessively short and may put authorities in a number of Member States under considerable administrative and financial pressure;

15. cautions that both directives should be enacted in such a way as to respect the principle of community preference, in particular as regards citizens of the new Member States for whom transitional arrangements still apply; to achieve this aim, it may be useful to allow Member States and their authorities to perform so-called labour market tests, i.e. to verify whether a post could not be filled from job-seekers in the EU labour market; in this regard, is not convinced by the Commission's argumentation that no labour market test is needed in the case of intra-corporate transfer;

16. regrets the considerable delay with which the two proposals in question, already included in the December 2005 'legal immigration' package, have been issued by the Commission – almost five years after the political commitment was made on these subjects. and also regrets the fact that due to difficulties in discussing the 'single permit', the two processes, which should have run in parallel, have now been separated. Regrets the fact that the proposals have been submitted, moreover, in a period when some sectors such as agriculture, rearing and pastoralism<sup>(3)</sup>, tourism and the construction sector, which form the core of seasonal work, have been particularly badly affected by the economic and financial crisis, as is shown by EU data and statistics, and are only seeing a slow recovery. Thus, the economic situation has changed since 2005, when the political commitment was made on these issues, and economic, statistical and employment data on the impact of seasonal work on the European economy should be updated;

17. is convinced, nevertheless, that - despite the delay in submitting the proposals and the additional time the EU legislative process and subsequent national implementation will take- seasonal work and intra-corporate transfers have a major contribution to make to the recovery of certain economic and production sectors in Europe;

#### SPECIFIC RECOMMENDATIONS ON THE PROPOSALS

18. welcomes the introduction of single application procedures for seasonal workers and intra-corporate transfers as a useful streamlining tool which will ensure transparency and certainty in the admission procedures; however, agrees with views expressed by some in the European Parliament that it would have been more efficient and straightforward to include seasonal workers and intra-corporate transfer within the scope of the so-called 'single-permit' directive<sup>(4)</sup>; therefore, calls on the co-legislators to continue negotiations on this matter;

<sup>(3)</sup> The pastoralism and dairy sector suffers in many EU Member States from substantial price volatility and urgently needs mechanisms for market control, price stabilisation and increasing the bargaining power of rearers and pastoralists, who are the weak link in the chain.

<sup>(4)</sup> COM(2007) 638 final, Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

<sup>(2)</sup> See opinions Cdr 296/2007 and Cdr 201/2009.

19. agrees with the proposals in that Member States shall refuse applications if prospective employers have been sanctioned in conformity with national law for undeclared and/ or illegal work; however insists that this measure should be dissuasive and proportionate rather than automatic; an automatic exclusion of prospective employers without regard to the gravity or nature of the infraction would affect the job-seekers from third countries;

#### RECOMMENDATIONS ON THE PROPOSAL ON SEASONAL WORK

20. stresses that unfortunately third country seasonal workers are currently subjected to exploitation and working and living conditions which are below the legal standards in certain EU Member States. This is because national legislation on labour law and social security is often not implemented or enforced in practice. The proposal should therefore establish a clearly-defined legal framework which helps combat all forms of illegal seasonal work and ensure decent working conditions for workers from third countries. This new regulatory framework will therefore require oversight mechanisms to avoid abuse or evasion of the rules, such as monitoring of the abovementioned working and residence conditions, along with cooperation between public authorities at EU, national, regional and local level in a form of integrated multi-level governance. In this regard the Committee of the Regions recommends that the activity of recruitment agencies is also regulated in a way as to make sure that it cannot be abused as a cover for exploitation or abuse;

21. recalls the important role and competences of RLAs and the CoR in preventing and combating discrimination and the de-humanisation of seasonal migrant workers in light of the high level of labour insecurity and vulnerability inherent in seasonal work;

22. is pleased that the idea of long-period multiple entry visas as facilitators of circular mobility, endorsed in its previous opinion, has been taken up <sup>(5)</sup>;

23. points out that it would be useful to better define the proposal's scope, and therefore the sectors it covers, in order to avoid abuse of seasonal work permits in sectors that cannot be considered seasonal according to the specific characteristics of seasonal work in Europe and in the light of the spirit and aims of this proposal. In most OECD countries immigrants are over-represented in temporary jobs. The percentage of immigrants in temporary jobs can be at least 50 % higher than the percentage of EU citizens; hence the need to prevent the rules being abused and seasonal work being used to legalise forms of work of a different, insecure nature;

24. welcomes the fact that the directive would oblige employers to provide evidence that third-country national

seasonal workers benefit from adequate and not excessively priced accommodation. This is a direct recognition of the particularly vulnerable situation of third-country national seasonal workers. Notes that this right would go considerably beyond the rights enjoyed by seasonal workers, who are EU nationals and therefore urges the Member States to consider according similar treatment to EU nationals;

25. points out in this regard that, in the light of research and consultations carried out by the rapporteur, certain types of seasonal work, for instance in agriculture (in particular the zootechnical and plant and flower sectors) or large-scale construction (civil engineering sites and works), can entail periods of work longer than six months; therefore believes that the maximum length is too restrictive and should be extended to nine months;

#### RECOMMENDATIONS ON THE PROPOSAL ON INTRA-CORPORATE TRANSFER

26. welcomes the Commission's endeavours to develop an all-encompassing framework for immigration policy and with this proposal to make the EU's economy more attractive to highly qualified workers in multinational companies based in third countries, so that they can be transferred by their company to work legally in a European office of that company; in this context, underlines, on the one hand, the need to avoid discrimination and, on the other, to avoid invalidating the principle of Community preference, ensuring that intra-corporate transferees should enjoy the same working conditions as EU employees in comparable situations in the country of residence; therefore recommends removing the reference to the Posted Workers Directive when defining the rights and conditions of intra-corporate transferees;

27. calls for an explanation of why the labour market test has been excluded from the proposal on intra-corporate transfer. In this connection, the Committee of the Regions points out that EU directive 2009/50/ EC 'Blue Card Directive', which deals with highly qualified workers also coming from third countries, does provide for a labour market test;

28. highlights the fact, moreover, that non-EU companies and multinationals with registered offices in an EU Member State should be encouraged to use highly-qualified local professionals as well in order to ensure the professional development of a highly skilled workforce at the local level. The danger is that large non-EU multinationals will only use low-skilled local labour and highly qualified third-country labour. On the basis of the current proposal, there is no guarantee that EU citizens will be given precedence for managerial, specialist or trainee positions;

29. notes that the draft directive does not – as it now stands – provide that the Member States can refuse an application on grounds of public health, public policy or public security. Thus, suggests that such a ground for refusal be included in the directive;

<sup>(5)</sup> See opinion CdR 296/2007.

30. welcomes the fact that admitted intra-corporate transferees have the possibility to move between different establishments of the same company or group in different Member States; however cautions that the proposal – as it now stands under article 16 – does not specifically allow the Member States subsequent to the country of first admission to refuse an application for admission and notes that this would in effect amount to a circumvention of their right to determine the volumes of admission of third-country nationals to their territory. Therefore, suggests amending the proposal accordingly;

31. stresses that the requirement for non-EU workers to prove that they have the professional qualifications needed in the EU Member State or to fulfil the conditions laid down under national legislation to exercise a regulated profession

[Article 5(1)(d) and (e) of the proposal] seem disproportionate. It should be pointed out that this would be an excessive burden and that, as yet in the EU, the system for recognition of EU workers' professional qualifications remains an open issue, as noted in the recent Single Market Act; it therefore calls on the European Commission to review this requirement and make it less restrictive;

32. welcomes the fact that the proposed directive on intra-corporate transfer encourages family reunification and acknowledges that the specific regime for intra-corporate transferees' family members could indeed contribute to making the EU labour market more attractive for them;

33. would recommend that the co-legislators consider the following legislative amendments to the proposals:

## II. RECOMMENDATIONS FOR AMENDMENTS

### Seasonal Workers – Recommendation for Amendment 1

#### Article 6 para. 3 Seasonal Workers Proposal

Text proposed by the Commission	CoR amendment
<p data-bbox="475 1128 549 1151"><i>Article 6</i></p> <p data-bbox="432 1178 592 1200"><i>Grounds for refusal</i></p> <p data-bbox="240 1249 791 1375">1. Member States shall reject an application for admission to a Member State for the purposes of this Directive whenever the conditions set out in Article 5 are not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.</p> <p data-bbox="240 1424 791 1550">2. Member States may verify whether the vacancy concerned could not be filled by national or EU, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market by virtue of EU or national law and reject the application.</p> <p data-bbox="240 1599 791 1702">3. Member States may reject an application if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment.</p> <p data-bbox="240 1751 791 1823">4. Member States may reject an application on the grounds of volumes of admission of third-country nationals.</p>	<p data-bbox="1034 1128 1107 1151"><i>Article 6</i></p> <p data-bbox="991 1178 1150 1200"><i>Grounds for refusal</i></p> <p data-bbox="802 1249 1343 1375">1. Member States shall reject an application for admission to a Member State for the purposes of this Directive whenever the conditions set out in Article 5 are not met or whenever the documents presented have been fraudulently acquired, or falsified, or tampered with.</p> <p data-bbox="802 1424 1343 1550">2. Member States may verify whether the vacancy concerned could not be filled by national or EU, or by third-country nationals lawfully residing in the Member State and already forming part of its labour market by virtue of EU or national law and reject the application.</p> <p data-bbox="802 1599 1343 1702">3. Member States may reject an application if the employer has been sanctioned in conformity with national law for <u>repeated or serious infringements in relation</u> to undeclared work and/or illegal employment.</p> <p data-bbox="802 1751 1343 1823">4. Member States may reject an application on the grounds of volumes of admission of third-country nationals.</p>

#### Reason

Sanctions on employers who infringe legislation should be proportionate and dissuasive. But they should not be automatic. Automatic sanctions are of greater detriment to the prospective third-country workers than to the employers.

## Seasonal Workers - Recommendation for Amendment 2

### Article 11 Seasonal Workers Proposal

Text proposed by the Commission	CoR amendment
<p><i>Article 11</i></p> <p><i>Duration of stay</i></p> <p>1. Seasonal workers shall be allowed to reside for a maximum of six months in any calendar year, after which they shall return to a third country.</p> <p>2. Within the period referred to under paragraph 1, and provided that the criteria of Article 5 are met, seasonal workers shall be allowed to extend their contract or to be employed as seasonal worker with a different employer.</p>	<p><i>Article 11</i></p> <p><i>Duration of stay</i></p> <p>1. Seasonal workers shall be allowed to reside for a maximum of <del>six</del> <u>nine</u> months in any calendar year, after which they shall return to a third country.</p> <p>2. Within the period referred to under paragraph 1, and provided that the criteria of Article 5 are met, seasonal workers shall be allowed to extend their contract or to be employed as seasonal worker with a different employer.</p>

#### Reason

It has been explained in the body of the opinion that in certain Member States and in defined sectors seasonal workers perform duties in excess of six months. Therefore, it is advocated that the limit should be extended.

## Intra-corporate transfer – Recommendation for Amendment 1

### Article 5 Intra-corporate Transfer Proposal

Text proposed by the Commission	CoR amendment
<p><i>Article 5</i></p> <p><i>Criteria for admission</i></p> <p>1. Without prejudice to Article 10, a third-country national who applies to be admitted under the terms of this Directive shall:</p> <p>(a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;</p> <p>(b) provide evidence of employment within the same group of undertakings, for at least 12 months immediately preceding the date of the intra-corporate transfer, if required by national legislation, and that he or she will be able to transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment;</p> <p>(c) present an assignment letter from the employer including:</p> <p>(i) the duration of the transfer and the location of the host entity or entities of the Member State concerned;</p> <p>(ii) evidence that he or she is taking a position as a manager, specialist or graduate trainee in the host entity or entities in the Member State concerned;</p> <p>(iii) the remuneration granted during the transfer;</p>	<p><i>Article 5</i></p> <p><i>Criteria for admission</i></p> <p>1. Without prejudice to Article 10, a third-country national who applies to be admitted under the terms of this Directive shall:</p> <p>(a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;</p> <p>(b) provide evidence of employment within the same group of undertakings, for at least 12 months immediately preceding the date of the intra-corporate transfer, if required by national legislation, and that he or she will be able to transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment;</p> <p>(c) present an assignment letter from the employer including:</p> <p>(i) the duration of the transfer and the location of the host entity or entities of the Member State concerned;</p> <p>(ii) evidence that he or she is taking a position as a manager, specialist or graduate trainee in the host entity or entities in the Member State concerned;</p> <p>(iii) the remuneration granted during the transfer;</p>

Text proposed by the Commission	CoR amendment
<p>(d) provide evidence that he or she has the professional qualifications needed in the Member State to which he or she has been admitted for the position of manager or specialist or, for graduate trainees, the higher education qualifications required;</p> <p>(e) present documentation certifying that he or she fulfils the conditions laid down under national legislation for citizens of the Union to exercise the regulated profession which the transferee will work in;</p> <p>(f) present a valid travel document, as determined by national law, and an application for a visa or a visa, if required;</p> <p>(g) without prejudice to existing bilateral agreements, present evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work contract;</p> <p>(h) be considered not to pose a threat to public policy, public security or public health.</p>	<p>(d) provide evidence that he or she has the professional qualifications needed in the Member State to which he or she has been admitted for the position of manager or specialist or, for graduate trainees, the higher education qualifications required;</p> <p>(e) present documentation certifying that he or she fulfils the conditions laid down under national legislation for citizens of the Union to exercise the regulated profession which the transferee will work in;</p> <p>(f) present a valid travel document, as determined by national law, and an application for a visa or a visa, if required;</p> <p>(g) without prejudice to existing bilateral agreements, present evidence of having or, if provided for by national law, having applied for sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work contract;</p> <p><del>(h) be considered not to pose a threat to public policy, public security or public health.</del></p>
<p>2. Member States shall require that all conditions in the law, regulations or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met with regard to the remuneration granted during the transfer.</p>	<p>2. Member States shall require that all conditions in the law, regulations or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met with regard to the remuneration granted during the transfer.</p>
<p>In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.</p>	<p>In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.</p>
<p>3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as a graduate trainee shall present a training agreement, including a description of the training programme, its duration and the conditions under which the applicant is supervised during the programme.</p>	<p>3. In addition to the evidence stipulated in paragraphs 1 and 2, any third-country national who applies to be admitted as a graduate trainee shall present a training agreement, including a description of the training programme, its duration and the conditions under which the applicant is supervised during the programme.</p>
<p>4. Where the transfer concerns host entities located in several Member States, any third-country national who applies to be admitted under the terms of this Directive shall present evidence of the notification required pursuant to Article 16(1)(b).</p>	<p>4. Where the transfer concerns host entities located in several Member States, any third-country national who applies to be admitted under the terms of this Directive shall present evidence of the notification required pursuant to Article 16(1)(b).</p>
<p>5. Any modification that affects the conditions for admission set out in this Article shall be notified to the competent authorities of the Member State concerned.</p>	<p>5. Any modification that affects the conditions for admission set out in this Article shall be notified to the competent authorities of the Member State concerned.</p>
	<p><u>6. 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.</u></p>

**Reason**

The draft directive does not – as it now stands – provide that the Member States can refuse an application on grounds of public health, public policy or public security. Thus the Committee could suggest that such a ground for refusal be provided for in the directive.

**Intra-corporate transfer – Recommendation for Amendment 2**

## Article 6 Intra-corporate Transfer Proposal

Text proposed by the Commission	CoR amendment
<i>Article 6</i> <i>Grounds for refusal</i>	<i>Article 6</i> <i>Grounds for refusal</i>
<p>1. Member States shall reject an application where the conditions set out in Article 5 are not met or where the documents presented have been fraudulently acquired, falsified or tampered with.</p> <p>2. Member States shall reject an application if the employer or the host entity has been sanctioned in conformity with national law for undeclared work and/or illegal employment.</p> <p>3. Member States may reject an application on the grounds of volumes of admission of third-country nationals.</p> <p>4. Where the transfer concerns host entities located in several Member States, the Member State where the application is lodged shall limit the geographical scope of validity of the permit to the Member States where the conditions set out in Article 5 are met.</p>	<p>1. Member States shall reject an application where the conditions set out in Article 5 are not met or where the documents presented have been fraudulently acquired, falsified or tampered with.</p> <p>2. Member States shall reject an application if the employer or the host entity has been sanctioned in conformity with national law for <u>repeated or serious infringements in relation to</u> undeclared work and/or illegal employment.</p> <p>3. Member States may reject an application on the grounds of volumes of admission of third-country nationals.</p> <p>4. Where the transfer concerns host entities located in several Member States, the Member State where the application is lodged shall limit the geographical scope of validity of the permit to the Member States where the conditions set out in Article 5 are met.</p>

**Reason**

The CoR agrees that certain sanctions should be imposed on employers who infringe legislation. They should be proportionate and dissuasive, but they should not be automatic. Automatic sanctions are of greater detriment to prospective third-country workers than to the employers.

**Intracorporate Transfer – Recommendation for Amendment 3**

## Article 14(1)

Text proposed by the Commission	CoR Amendment
<i>Article 14</i> <i>Rights</i>	<i>Article 14</i> <i>Rights</i>
<p>Whatever the law applicable to the employment relationship, intra-corporate transferees shall be entitled to:</p> <p>1. the terms and conditions of employment applicable to posted workers in a similar situation, as laid down by law, regulation or administrative provision and/or</p>	<p>Whatever the law applicable to the employment relationship, intra-corporate transferees shall be entitled to:</p> <p>1. the <u>same</u> terms and conditions of employment applicable to <u>EU employees in comparable situations in the country of residence</u> <del>posted workers in a</del></p>

Text proposed by the Commission	CoR Amendment
<p>universally applicable collective agreements in the Member State to which they have been admitted pursuant to this Directive.</p> <p>In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.</p> <p>2. equal treatment with nationals of the host Member State as regards:</p> <p>(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;</p> <p>(b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;</p> <p>(c) without prejudice to existing bilateral agreements, provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No 859/2003 shall apply accordingly;</p> <p>(d) without prejudice to Regulation (EC) No 859/2003 and to existing bilateral agreements, payment of statutory pensions based on the worker's previous employment when moving to a third country;</p> <p>(e) access to goods and services and the supply of goods and services made available to the public, except public housing and counselling services afforded by employment services.</p> <p>The right to equal treatment laid down in paragraph 2 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.</p>	<p>similar situation, as laid down by law, regulation or administrative provision and/or universally applicable collective agreements in the Member State to which they have been admitted pursuant to this Directive.</p> <p><del>In the absence of a system for declaring collective agreements to be of universal application, Member States may, if they so decide, base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.</del></p> <p>2. equal treatment with nationals of the host Member State as regards:</p> <p>(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;</p> <p>(b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;</p> <p>(c) without prejudice to existing bilateral agreements, provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No 859/2003 shall apply accordingly;</p> <p>(d) without prejudice to Regulation (EC) No 859/2003 and to existing bilateral agreements, payment of statutory pensions based on the worker's previous employment when moving to a third country;</p> <p>(e) access to goods and services and the supply of goods and services made available to the public, except public housing and counselling services afforded by employment services.</p> <p>The right to equal treatment laid down in paragraph 2 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 7.</p>

## Reason

The CoR believes that there is a need to guarantee equal treatment with intra-corporate transferees. This proposed amendment follows the same reasoning. Furthermore, the so-called Blue Card <sup>(6)</sup> and Long-Term Residents Directives <sup>(7)</sup> guarantee equal treatment with highly qualified workers.

<sup>(6)</sup> See Article 14(1)(a) of Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.2009, p. 17.

<sup>(7)</sup> See Article 11(1)(a) of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44.

## Intra-corporate transfer - Recommendation for Amendment 4

### Article 16 Intra-corporate Transfer Proposal

Text proposed by the Commission	CoR amendment
<p>Article 16</p> <p><i>Mobility between Member States</i></p> <p>1. Third-country nationals who have been granted an intra-corporate transferee permit in a first Member State, who fulfil the criteria for admission as set out in Article 5 and who apply for an intra-corporate transferee permit in another Member State shall be allowed to work in any other entity established in that Member State and belonging to the same group of undertakings and at the sites of clients of that host entity if the conditions set out in Article 13(4) are fulfilled, on the basis of the residence permit issued by the first Member State and the additional document provided for in Article 11(4), provided that:</p> <p>(a) the duration of the transfer in the other Member State(s) does not exceed twelve months;</p> <p>(b) the applicant has submitted to the competent authority of the other Member State, before his or her transfer to that Member State, the documents referred to in Article 5(1) (2) and (3) relating to the transfer to that Member State and has provided evidence of such submission to the first Member State.</p> <p>2. If the duration of the transfer in the other Member State exceeds twelve months-, the other Member State may require a new application for a residence permit as an intra-corporate transferee in that Member State.</p> <p>Where the relevant legislation requires a visa or residence permit for exercising mobility, such visas or permits shall be granted in a timely manner within a period that does not hamper pursuit of the assignment, whilst leaving the competent authorities sufficient time to process the applications.</p> <p>Member States shall not require intra-corporate transferees to leave their territory in order to submit applications for visas or residence permits.</p> <p>3. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for graduate trainees.</p>	<p>Article 16</p> <p><i>Mobility between Member States</i></p> <p>1. Third-country nationals who have been granted an intra-corporate transferee permit in a first Member State, who fulfil the criteria for admission as set out in Article 5 and who apply for an intra-corporate transferee permit in another Member State shall be allowed to work in any other entity established in that Member State and belonging to the same group of undertakings and at the sites of clients of that host entity if the conditions set out in Article 13(4) are fulfilled, on the basis of the residence permit issued by the first Member State and the additional document provided for in Article 11(4), provided that:</p> <p>(a) the duration of the transfer in the other Member State(s) does not exceed twelve months;</p> <p>(b) the applicant has submitted to the competent authority of the other Member State, before his or her transfer to that Member State, the documents referred to in Article 5(1) (2) and (3) relating to the transfer to that Member State and has provided evidence of such submission to the first Member State.</p> <p><u>2. The other Member State shall have the right to refuse an application with respect to its territory on the same grounds as the first Member State. Article 6 of the Directive shall apply <i>mutatis mutandis</i>.</u></p> <p><del>2.3.</del> If the duration of the transfer in the other Member State exceeds twelve months-, the other Member State may require a new application for a residence permit as an intra-corporate transferee in that Member State.</p> <p>Where the relevant legislation requires a visa or residence permit for exercising mobility, such visas or permits shall be granted in a timely manner within a period that does not hamper pursuit of the assignment, whilst leaving the competent authorities sufficient time to process the applications.</p> <p>Member States shall not require intra-corporate transferees to leave their territory in order to submit applications for visas or residence permits.</p> <p><del>3.4.</del> The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for graduate trainees.</p>

**Reason**

The CoR believes the proposal – as it now stands under article 16 – does not specifically allow the Member States subsequent to the country of first admission to refuse an application for admission and notes that this would in effect amount to a circumvention of their right to determine the volumes of admission of third-country nationals to their territory. Therefore, it suggests amending the proposal accordingly.

Brussels, 31 March 2011.

*The President*  
*of the Committee of the Regions*  
Mercedes BRESSO

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