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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on conditions of entry and residence of third-country nationals in the framework of an
intra-corporate transfer**

{SEC(2010) 884}
{SEC(2010) 885}

EXPLANATORY MEMORANDUM

1) Context of the proposal

- **Grounds for and objectives of the proposal**

This proposal forms part of the EU's efforts to develop a comprehensive immigration policy. The Hague Programme of November 2004 recognised that 'legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development and thus contributing to the implementation of the Lisbon Strategy' and asked the Commission to present a policy plan on legal migration 'including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market'.

The subsequent December 2005 Commission Communication *A Policy Plan on Legal Migration* (COM(2005) 669) provided for the adoption of five legislative proposals on labour immigration, including a proposal for a directive on intra-corporate transferees, between 2007 and 2009.

The European Pact on Immigration and Asylum, adopted by the European Council of 15 and 16 October 2008, expresses the commitment of the European Union and its Member States to conduct a fair, effective and consistent policy for dealing with the challenges and opportunities created by migration.

The Stockholm Programme, adopted by the European Council of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the EU in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the EU's economic development and performance in the longer term. It thus invites the Commission and Council to continue to implement the 2005 Policy Plan on Legal Migration.

The proposals regarding highly qualified workers ('EU Blue Card') and for a general Framework Directive were presented in October 2007¹. The Council adopted the first of these proposals on 25 May 2009; the second one is currently being negotiated in the European Parliament and in the Council.

In face of the obstacles encountered by businesses in relation to the complexity and diversity of rules, the aim of this Directive is, in particular, to facilitate intra-corporate transfers of skills both to the EU and within the EU in order to boost the competitiveness of the EU economy, and to complement the set of other measures the EU is putting in place to achieve the goals of the EU 2020 Strategy. It is specifically aimed at responding effectively and promptly to demand for managerial and qualified employees for branches and subsidiaries of multinational companies by setting up transparent and harmonised conditions of admission of this category of workers, by creating more attractive conditions of temporary stay for intra-corporate transferees and their family and by promoting efficient allocation and re-allocation of transferees between EU entities. Achieving this objective would also help to meet the EU's international trade commitments, including specific rules on intra-corporate transferees.

¹ COM(2007) 637 and 638, 23.10.2007.

Promotion of such transnational movements requires a climate of fair competition and respect for the rights of workers, including creating a secure legal status for intra-corporate transferees.

- **General context**

As a result of the globalisation of business, increasing international trade, the growth and spread of multinationals and the ongoing restructuring and consolidation of many sectors, movements of managerial and technical employees of branches and subsidiaries of multinational corporations, temporarily relocated for short assignments to other units of the company, have become more crucial in recent years. The capacity of businesses to react more rapidly to new challenges, to transfer know-how to their future managers and to harmonise qualifications in every country where the company is active, is essential. Developments in the organisation of work and allocation within businesses also necessitate increasing mobility.

However, a number of factors currently limit the scope for international companies to rely on mobility of intra-corporate transferees. Many multinationals wishing to transfer their personnel have run into inflexibility and limitations, including the lack of clear specific schemes in most EU Member States, the complexity of requirements, costs, delays in granting visas or work permits and uncertainty about the rules and procedures. In addition, there are big differences between Member States in terms of conditions of admission and restrictions on family rights.

- **Existing provisions in the area covered by the proposal**

The existing EU instrument addressing conditions for the admission of intra-corporate transferees in the context of the provision of a service is the 1994 Council Resolution on limitations on admission of third-country nationals to the territory of the Member States for employment², adopted under Article K.1 of the EC Treaty. This set out definitions and principles governing admission of this category of migrants.

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers by undertakings established in a Member State in the framework of the provision of services also has links to the present proposal, as its Article 1(4) states that '*Undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State*'. This proposal consequently ensures that undertakings established in a non-Member State which post workers to a Member State in the framework of intra-corporate provision of services are not given any competitive advantage.

The EU-25 commitments under the General Agreement on Trade in Services (GATS)³ open up the possibility to have recourse to intra-corporate transferees in the services sector and in the context of provision of services, typically without an economic needs test, for a maximum of three years (for managers and specialists) or one year (for graduate trainees), provided they meet the requirements specified in the relevant schedule, such as prior employment for one year. The EU-Chile Association Agreement concluded in 2002 and the Economic Partnership Agreement (EPA) with the CARIFORUM countries concluded in 2008 also included provisions on intra-corporate transfers which are based on those committed under the GATS.

² OJ C 274, 19.9.1996, p. 3.

³ See WTO Doc. S/L/286 and S/C/W/273 Suppl. 1 of 18 December 2006.

The trade commitments given under the GATS, as well as bilateral agreements, are not intended to cover exhaustively the conditions of entry, stay and work.

Council Directive 2003/86/EC of 22 September 2003 lays down the conditions under which the right to family reunification can be exercised. The present proposal goes further than that Directive in that it provides for more favourable conditions for family reunification.

The format of residence permits for third-country nationals is laid down in Regulation (EC) No 1030/2002 and applies to this proposal.

Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research lays down the conditions of admission of third-country researchers to the Member States for the purpose of carrying out a research project under hosting agreements with research organisations approved for that purpose by the Member State. As there are potential overlaps between the scopes of the two instruments and in order to maintain a coherent set of rules for third-country national researchers, the present proposal expressly states that it does not apply to third-country nationals who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project.

Moreover, the proposal for a Framework Directive⁴, presented on 23 October 2007 (COM(2007) 638), provides for two exclusions: people entering a Member State under commitments made in an international agreement facilitating the entry and temporary stay of certain categories of trade- and investment-related natural persons; and third-country nationals who are posted, irrespective of whether their undertaking is established in a Member State or in a non-member country. Intra-corporate transferees, who are seconded on the basis of a work contract with a third-country undertaking and encompass people entering a Member State under commitments such as those referred to above, are therefore excluded from the scope of this instrument and are accordingly subject to specific provisions on these aspects.

The ‘Blue Card’ Directive provides for the same exclusion as the Framework Directive as regards the people covered by trade agreements. In addition, applicants must present a work contract. Intra-corporate transferees are therefore excluded from its scope.

- **Consistency with other EU policies and objectives**

Measures to attract highly qualified third-country nationals, such as key staff of transnational corporations, are part of the broader framework identified by the EU 2020 Strategy, which set 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. Facilitation of intra-corporate transfers is also an objective shared by EU trade policy.

This proposal complies with fundamental rights, especially Articles 15, 21 and 31 (fair and equal treatment), 12 (freedom of association and affiliation), 34 (social security) and 7 (respect for private and family life) of the Charter of Fundamental Rights, as it recognises and

⁴ Proposal for a Directive on a single application procedure for third-country nationals to reside and work in the territory of a Member State and a common set of rights for third-country workers legally residing in a Member State.

safeguards the principle of equal treatment for intra-corporate transferees and includes procedural guarantees and the right to family life.

Personal data that authorities are required to handle when implementing this proposal will have to be processed in accordance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data.

2) Consultation of interested parties and impact assessment

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

A public consultation was conducted on the Green Paper on an EU approach to managing economic migration, including a public hearing on 14 June 2005.

Further consultations were held by means of seminars and workshops. Member States were consulted in the Commission's Committee on Immigration and Asylum. The external study commissioned to support the Impact Assessment included further consultation of the main stakeholders by means of questionnaires and interviews.

Summary of responses and how they have been taken into account

Analysis of the 130 contributions sent during the public consultation showed general support for a common EU policy on economic immigration, albeit with big differences in the approaches to be followed and in the expected end-result. Another clear request was to propose simple, non-bureaucratic and flexible solutions. As a large number of Member States were not in favour of a horizontal approach, the Commission considered that a sectoral approach was more realistic and would respond better to the requests for flexibility.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The following options were considered:

Option 1: Status quo. Current developments in Member States would continue within the existing legal framework. However, this would mean that the EU as a whole would not be attractive for enterprises and companies, which would still face difficulties in making best use of their staff, although the need for highly qualified internal resources would be increasing.

Option 2: Directive dealing with the conditions of entry and residence of intra-corporate transferees. The EU legislation would provide a common definition of intra-corporate transferee, either targeting some specific positions within the transnational corporation, as in the schedules annexed to the GATS, or identifying key personnel through salary and qualifications criteria, as in the Blue Card Directive. It would also lay down harmonised criteria for entry, a common set of rights, a maximum duration of stay and provisions with respect to certain social and economic rights. This option would create a more transparent legal environment. However, the rules would still vary between Member States in terms of procedure and family rights and EU mobility would not be provided for.

Option 3: Directive providing for intra-EU mobility for intra-corporate transferees. In addition to the points covered by option 2, provisions would be introduced to allow intra-corporate transferees to move within the EU and work in several establishments located in different Member States. Swift and simple transfer from third-country to EU companies would, however, not be ensured and family issues would not be tackled.

Option 4: Directive facilitating family reunification and access to work for spouses. By way of derogation from Directive 2003/86/EC, family reunification would not be made dependent on obtaining the right of permanent residence and on the intra-corporate transferee having a minimum period of residence. Residence permits for family members would be granted more rapidly and in respect of access to the labour market, Member States would not be allowed to apply the time limit of 12 months. As a result, companies would be able to attract intra-corporate transferees more easily. However, the right to work for spouses could conflict with EU preference as expressed in the Acts of Accession.

Option 5: Directive laying down common admission procedures. A single document allowing the holder to work as an intra-corporate transferee and to reside on the territory of the Member State would be issued. In parallel, a maximum time for processing applications would be set (e.g. 1 month). This option would significantly improve the ability to transfer key personnel easily and rapidly and reduce the time and costs for attracting intra-corporate transferees.

Option 6: Communication, coordination and cooperation among Member States. This option would contribute, to a certain extent, to approximating national practices on third-country national intra-corporate transferees across the EU and creating a more harmonised legal framework. However, the impact is likely to be very limited if the measures are not mandatory.

Comparing the options and their impact, the preferred option is a combination of options 2, 3, 4 and 5. A harmonised definition of intra-corporate transferee and harmonised conditions of entry and stay, provisions ensuring certain social and economic rights (option 2), intra-EU mobility (option 3), enhanced family rights (option 4, without access to the labour market for partners) and fast-track procedures (option 5) would contribute to better allocation of intra-corporate staff across third-country and EU entities and make the EU more attractive for third-country national key personnel of multinational corporations, while offering guarantees against unfair competition.

3) Legal elements of the proposal

- **Summary of the proposed action**

The proposal establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on a common definition and harmonised criteria: the transferee must occupy a post as manager, specialist or graduate trainee, as provided for in the EU's commitments under GATS; the prior employment within the same group of undertakings must have lasted at least 12 months, if required by the Member State; an assignment letter must be produced confirming that the third-country national is transferred to the host entity and specifying the remuneration. Unless this condition conflicts with the principle of Union preference as expressed in the relevant provisions of the Acts of Accession, no labour market test would be performed. A specific scheme for graduate trainees is envisaged. Intra-corporate transferees admitted would be issued with a specific residence permit (marked 'intra-

corporate transferee’) allowing them to carry out their assignment in diverse entities belonging to the same transnational corporation, including, under certain conditions, entities located in other Member States. This permit would also give them favourable conditions for family reunification in the first Member State.

4) Legal basis

This proposal concerns conditions of entry and residence for third-country nationals and procedures for issuing the necessary permits. It also lays down the conditions under which a third-country national may reside in a second Member State. Consequently, the appropriate legal basis is Article 79(2)(a) and (b) of the Treaty on the Functioning of the European Union (TFEU).

5) Subsidiarity principle

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Union. The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons:

- The treatment granted to intra-corporate transferees at EU level, combined with the conditions and procedures regulating such movements, have an impact on the attractiveness of the EU as a whole and influence the extent to which multinational companies decide to do business or invest in a certain area.
- Rigidities in transferring foreign intra-corporate transferees from one European corporate headquarters to another are extremely important for multinational companies. Action at EU level is the only way to remove these rigidities.
- A common legal framework laying down common conditions of admission for intra-corporate transferees, including in terms of social and economic rights, would prevent the risk of unfair competition.
- The big differences between Member States in terms of entry procedures and temporary residency rights could hamper uniform application of the international commitments which the EU and its Member States have taken on in the WTO negotiations.

The proposal therefore complies with the subsidiarity principle.

6) Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The instrument chosen is a directive, which gives Member States a high degree of flexibility when it comes to implementation.

A directive is the appropriate instrument for this action: it sets binding minimum standards but gives Member States flexibility in respect of the form and method for putting these principles into effect in their national legal system and general context. Non-binding measures would have too limited an effect, as potential ICTs and their host EU companies would continue to face an array of different rules for admission.

The action is limited to what is necessary to achieve the above aim. The proposed rules concern admission conditions, procedure and permit, as well as rights of ICTs, including intra-EU mobility, hence the areas that constitute elements of a common immigration policy under Article 79 of the Treaty. The administrative burden imposed on Member State in terms of change of legislation (design of specific rules on intra-corporate transfer) and cooperation would be moderate as intra-corporate transferees are already singled out by trade instruments and as this burden would be outweighed by the large benefits flowing from the enhanced possibility to easily transfer intra-corporate staff from one Member State to another.

7) Budgetary implications

The proposal has no implications for the EU budget.

8) Additional information

- **Review/revision/sunset clause**

The proposal includes a review clause.

- **Correlation table**

The Member States are required to communicate to the Commission the text of their national provisions transposing the Directive, together with a correlation table between those provisions and the Directive.

9) Detailed explanation of the proposal

Article 1

The proposal is part of the EU's efforts to put in place a comprehensive immigration policy, including common rules on economic migration. It has two specific purposes. The first is to introduce a special procedure for entry and residence and standards on the issue by Member States of residence permits for third-country nationals applying to reside in the EU for the purpose of an intra-corporate transfer (Article 79(2)(a) TFEU). The second purpose is to implement Article 79(2)(b) TFEU and define the rights of third-country nationals who are legally residing in a Member State under the terms of this proposal and determine the conditions under which they may reside in other Member States.

Article 2

The proposal does not cover EU citizens and their family members, including those whose eligibility for employment in a particular Member State is restricted by transitional arrangements. This Directive applies only to third-country nationals who reside outside the territory of a Member State and apply to be admitted to the territory of a Member State in the framework of an intra-corporate transfer.

As there are potential overlaps between the scopes of the Directive 2005/71/EC of 12 October 2005 on third-country national researchers and the present instrument, this Article expressly excludes from the scope of the Directive third-country nationals who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71, in order to carry out a research project. The present Directive also excludes persons who enjoy rights of free movement equivalent to those of EU citizens or are employed by an undertaking established

in a third country, as well as third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Article 56 of the Treaty and Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 on the posting of workers in the framework of the provision of services.

Articles 3 and 4

The proposal defines the concept of 'intra-corporate transferee'. This definition builds on specific EU-25 commitments under the GATS and bilateral trade agreements and is based on:

- the existence of a transnational corporation, including one or more entities established outside the territory of a Member State and one or more entities located in the Member States ('host entities');
- temporary secondment of a third-country national from the company located in the third country, to which the third-country national is bound by a work contract, to an EU entity belonging to the same group of undertakings. This transfer does not necessarily take place within the services sector or in the context of provision of a service and may originate in a third country which is not party to a trade agreement: the scope of this proposal is therefore broader than that implied by trade commitments.

This Article also defines the concepts of 'manager', 'specialist' and 'graduate trainee'. The existing definitions are based on the EU commitments schedule under the GATS, as these definitions are already familiar to the Member States. In addition, the definition of 'graduate trainees' has been specified in order to clarify that the training should aim at preparing the transferee for managerial positions.

Other definitions are referring to existing EU instruments such as Council Directive 2003/86/EC or Council Directive 2009/38/EC.

These Articles allow Member States to maintain or introduce provisions that are more favourable to third-country nationals, provided they are more favourable for the persons to whom they apply. Member States might wish, for instance, to apply more favourable procedures or provisions as regards family members.

Article 5

This Article lays down the conditions which applicants must fulfil, those specific to this proposal being as follows.

Evidence must be provided that the transfer is actually taking place between entities of a same group of undertakings.

As admission is demand-driven, a document describing the tasks assigned and specifying the remuneration, which must be in line with the terms and conditions of employment as referred to in Article 3 of Directive 96/71/EC, must be produced. It usually takes the form of an assignment letter. This document must indicate the place or places and duration of the assignment and provide evidence that the transferee is taking a post in the host entity as a manager, specialist or graduate trainee. This scheme targets key personnel, as usually defined in the EU commitments on trade, as they bring with them new technologies, innovation, or serve as vehicles to corporate culture in diverse locations and help establish operations in emerging markets, resulting in the end in an enhanced competitiveness of EU business. In

order to ensure that the skills of the intra-corporate transferee are specific to the host entity and in accordance with the EU's commitments on trade, there is a possibility for Member States to require a period of 12 months of prior employment within the group of undertakings. As the scheme focuses specifically on temporary migration, the applicant must provide evidence that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment.

The third-country national must fulfil the conditions set under national legislation for EU citizens to exercise the regulated profession specified in the assignment letter and, for non regulated professions, present documents showing the details of his or her professional qualifications (usually the resume). For the graduate trainee, the applicant should provide evidence of the higher education qualifications required, as provided under the EU's commitments on trade.

In addition, third-country nationals who apply to be admitted as a graduate trainee must present documents proving that they will benefit from genuine training and not be used as normal workers. Therefore, a training agreement including a description of the training programme, its duration and the conditions in which the trainees will be supervised in this programme is required.

To facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of the ancillary host entities must be informed by the applicant.

No labour market test is required, since this criterion would be in contradiction with the purpose of setting up a transparent and simplified scheme for admission of such skilled intra-corporate transferees. In addition, for those intra-corporate transferees who are covered by them, this condition would run counter to the EU's commitments under the GATS and under those of bilateral trade agreements. As primary law prevails, for Member States which happen to apply a transitional period to new Member States, EU preference must however be applied.

Articles 6, 7 and 8

The proposal does not create a right of admission, as this Directive is without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals entering their territory for the purposes of intra-corporate transfer. However, this right should be used in accordance with the commitments resulting from international agreements facilitating the entry and temporary stay of certain categories of trade- and investment-related natural persons.

These provisions lay down the mandatory and possible grounds for refusal (as well as for withdrawal and non-renewal), notably failure to fulfil the criteria and sanctioning of the employer for undeclared work or illegal employment, in accordance with Directive 2009/52/EC of 18 June 2009 on sanctions, and the existence of quotas. In the event of non-compliance with the conditions laid down in Article 5, Member States should provide for appropriate sanctions, such as financial sanctions, to be imposed on the host entity, which would be held responsible.

Articles 9, 10, 11, and 12

Applicants who fulfil the admission criteria will receive a specific residence permit entitling the holder to work as an intra-corporate transferee under the conditions specified in Article 14. No additional work permit may be required. A competent authority must be designated by the Member States to receive the applications and issue the permits. This designation will apply without prejudice to the role and responsibilities of other national authorities with regard to examining and deciding on applications. Furthermore, this designation to receive the applications and issue the permits should not prevent Member States from appointing other authorities (e.g. consular offices) with which the third-country national or the host entity can lodge the application and which can issue the permit.

The duration of the residence permit will be limited to three years for managers and specialists and one year for graduate trainees. A short time (30 days) is allowed to process applications, accompanied by various procedural safeguards, including the possibility of a legal challenge against decisions rejecting an application and the requirement for the authorities to give reasons for such decisions. Information on entry conditions including working conditions must be available.

A fast-track procedure may be set up for groups of undertakings which have been recognised for this purpose.

Articles 13 and 14

In order to ensure equality of treatment with posted workers covered by Directive 96/71, the rights granted to intra-corporate transferees as regards working conditions are aligned on the rights already enjoyed by posted workers. This Article also states the areas where equal treatment must be recognised. Due to the temporary nature of the intra-corporate transfer, equal treatment with regard to education and vocational training, public housing and counselling services from employment services were considered irrelevant. Existing bilateral agreements continue to apply, in particular in the area of social security. In case of mobility between Member States, Regulation (EC) No 859/2003 applies as a rule. The residence permit granted to intra-corporate transferees enables them to work, under certain conditions, in all the entities belonging to the same group of undertakings.

Article 15

This Article contains the derogations from Directive 2003/86 considered necessary in order to set up an attractive scheme for intra-corporate transferees and follows a different rationale from the Family Reunification Directive, which is a tool to foster integration of third-country nationals who could reasonably become permanent residents. In line with similar schemes already existing in the Member States and in other countries, it provides for immediate family reunification in the first State of residence. To achieve this aim, it also stipulates that possible national integration measures may be imposed only once the family members are on EU territory.

Article 16

This Article provides for geographic mobility for intra-corporate transferees and enables them to work in different entities of the same transnational corporation located in different Member States and on their clients' premises. Accordingly, a third-country national who has been admitted as an intra-corporate transferee may be allowed to carry out part of the assignment in an entity of the same group located in another Member State, on the basis of the first residence permit and of an additional document listing the entities of the group of undertakings in which he or she is authorised to work. The second Member State must be informed of the main conditions of this mobility. It may require a residence permit if the duration of work exceeds twelve months but may not require the intra-corporate transferee to leave its territory in order to submit applications.

Articles 17, 18, 19, 20, 21 and 22

The usual provisions are laid down on implementation, annual statistics and national contact points.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.
- (2) The Treaty provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, as well as the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.
- (3) The Communication from the Commission entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth"⁷ 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

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ COM(2010) 2020.

for third-country managers, specialists or graduate trainees to enter the Union in the framework of an intra-corporate transfer should be seen in this broader context.

- (4) The Stockholm Programme, adopted by the European Council at its meeting of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. It thus invites the Commission and the Council to continue to implement the 2005 Policy Plan on Legal Migration⁸.
- (5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational corporations, in recent years movements of managerial and technical employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.
- (6) These intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host companies, thus advancing the knowledge-based economy in Europe while fostering investment flows across the Union. Well-managed transfers from third countries also have the potential to facilitate transfers from Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best.
- (7) The set of rules established by this Directive is also beneficial to the migrants' countries of origin as this temporary migration fosters transfers of skills, knowledge, technology and know-how.
- (8) This Directive should be applied without prejudice to the principle of Union preference as regards access to Member States' labour market as expressed in the relevant provisions of Acts of Accession. According to that principle, the Member States should, during any period when national measures or those resulting from bilateral agreements are applied, give preference to workers who are nationals of the Member States over workers who are nationals of third-countries as regards access to their labour market.
- (9) This Directive establishes a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria.
- (10) For the purpose of this Directive, intra-corporate transferees encompass managers, specialists and graduate trainees with a higher education qualification. Their definition builds on specific commitments of the Union under the General Agreement on Trade in Services⁹ (GATS) and bilateral trade agreements. Those commitments undertaken under the General Agreement on Trade in Services do not cover conditions of entry, stay and work. Therefore, this Directive complements and facilitates the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive is broader than that implied by trade commitments, as the transfers do

⁸ COM(2005)669.

⁹ WTO Doc. S/L/286 and S/C/W/273 Suppl. 1 of 18 December 2006.

not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement.

- (11) Intra-corporate transferees should benefit from the same working conditions as posted workers whose employer is established on the territory of the European Union, as defined by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services¹⁰. That requirement is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.
- (12) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, Member States may require the transferee to have been employed within the same group of undertakings for at least 12 months prior to the transfer.
- (13) As intra-corporate transfers consist of temporary migration, the applicant should provide evidence that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. That evidence may consist of the relevant provisions under the work contract. An assignment letter should be produced providing evidence that the third-country national manager or specialist possesses the professional qualifications needed in the Member State to which they have been admitted to occupy the post or the regulated profession.
- (14) Third-country nationals who apply to be admitted as graduate trainees should provide evidence of the higher education qualifications required, namely of any diploma, certificate or other evidence of formal qualifications attesting the successful completion of a post-secondary higher education programme of at least three years. In addition, they must present a training agreement, including a description of the training programme, its duration and the conditions in which the trainees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.
- (15) Unless this condition conflicts with the principle of Union preference as expressed in the relevant provisions of the Acts of Accession, no labour market test should be required, since this criterion would be in contradiction with the purpose of setting up a transparent and simplified scheme for admission of intra-corporate transferees.
- (16) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of the Member States where the ancillary host entities are located must be provided with the relevant information by the applicant.
- (17) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals entering their territory for the purposes of intra-corporate transfer and not to grant residence permits for employment in general or for certain professions, economic sectors or regions.

¹⁰ OJ L 18, 21.1.1997, p. 1.

- (18) Member States should provide for appropriate penalties, such as financial penalties, to be imposed in the event of failure to comply with the conditions laid down in this Directive. The penalties could be imposed on the host entity.
- (19) Provision for a single procedure leading to one combined title, encompassing both residence and work permit, should contribute to simplifying the rules currently applicable in Member States
- (20) A fast-track procedure may be set up for groups of undertakings which have been recognised for that purpose. Recognition should be granted on the basis of objective criteria made publicly available by the Member State and ensuring equal treatment between applicants. It should be granted for a maximum of three years, as the criteria need to be reassessed on a regular basis. Such recognition should be restricted to transnational corporations presenting credentials showing their ability to comply with their obligations and supplying information about the expected intra-corporate transfers. Any major change affecting the ability of the corporation to meet those obligations and any complementary information on future transfers should be reported without delay to the relevant authority. Appropriate sanctions such as financial sanctions, the possibility of withdrawing recognition, and rejections of future applications for permit should be provided for.
- (21) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, the third-country national should receive a specific residence permit (an intra-corporate transferee permit) allowing the holder to carry out, under certain conditions, their assignment in diverse entities belonging to the same transnational corporation, including entities located in another Member State.
- (22) This Directive should not affect conditions for the provision of services in the framework of Article 56 of the Treaty. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. As a result, third-country nationals holding an intra-corporate transferee permit cannot avail themselves of the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.
- (23) Equal treatment should be granted under national law in respect of those branches of social security defined in Article 3 of Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems¹¹. Since this Directive is without prejudice to provisions included in bilateral agreements, the social security rights enjoyed by third country national intra-corporate transferees on the basis of a bilateral agreement concluded between the Member State to which the person has been admitted and his or her country of origin could be

¹¹ OJ L 166, 30.4.2004, p. 1.

strengthened compared to the social security rights which would be granted to the transferee under national law. This Directive should not confer more rights than those already provided for in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States.

- (24) In order to make the specific set of rules put in place by this Directive more attractive and to allow it to produce all expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification in the Member State which first grants the residence permit on the basis of this Directive. This right would indeed remove an important obstacle to potential intra-corporate transferees for accepting an assignment. In order to preserve family unity, family members should be able to join the intra-corporate transferee in another Member State under the conditions determined by the national law of such Member State.
- (25) This Directive should not apply to third country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research¹².
- (26) Since the objectives of a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals cannot be achieved sufficiently by Member States and, therefore, by reason of the scale and effects of the action, can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (28) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by or subject to its application.]
- (29) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

¹² OJ L 289, 3.11.2005, p. 15.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1 *Subject-matter*

This Directive determines:

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

Article 2 *Scope*

- 1. This Directive shall apply to third-country nationals who reside outside the territory of a Member State and apply to be admitted to the territory of a Member State in the framework of an intra-corporate transfer.
- 2. This Directive shall not apply to:
 - (a) third-country nationals who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;
 - (b) third-country nationals who, under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of citizens of the Union or are employed by an undertaking established in those third countries;
 - (c) third-country nationals carrying out activities on behalf of undertakings established in another Member State in the framework of a provision of services within the meaning of Article 56 of the Treaty on the Functioning of the European Union, including those posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC.

Article 3 *Definitions*

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

- (a) ‘third-country national’ means any person who is not a citizen of the Union, within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;
- (b) ‘intra-corporate transfer’ means the temporary secondment of a third-country national from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract, to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory;
- (c) ‘intra-corporate transferee’ means any third-country national subject to an intra-corporate transfer;
- (d) ‘host entity’ means the entity, regardless of its legal form, established in the territory of a Member State to which the third-country national is transferred;
- (e) ‘manager’ means any person working in a senior position, who principally directs the management of the host entity, receiving general supervision or direction principally from the board of directors or stockholders of the business or equivalent; this position includes: directing the host entity or a department or sub-division of the host entity, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and dismiss or recommend hiring, dismissing or other personnel actions;
- (f) ‘specialist’ means any person possessing uncommon knowledge essential and specific to the host entity, taking account not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge;
- (g) ‘graduate trainee’ means any person with a higher education qualification who is transferred to broaden his/her knowledge of and experience in a company in preparation for a managerial position within the company;
- (h) ‘higher education qualification’ means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme of at least three years, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated;
- (i) ‘family members’ means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC¹³;

¹³ OJ L 251, 3.10.2003, p. 12.

- (j) 'intra-corporate transferee permit' means any authorisation bearing the words 'intra-corporate transferee' entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;
- (k) 'single application procedure' means the procedure leading, on the basis of one application for the authorisation of a third-country national's residence and work in the territory of a Member State, to a decision on the application;
- (l) 'group of undertakings' for the purposes of this Directive means two or more undertakings recognised as linked in the following ways under national law: an undertaking, in relation to another undertaking directly or indirectly: holds a majority of that undertaking's subscribed capital; or controls a majority of the votes attached to that undertaking's issued share capital; or can appoint more than half of the members of that undertaking's administrative, management or supervisory body;
- (m) 'first Member State' means the Member State which first grants a third-country national a residence permit on the basis of this Directive;
- (n) 'universally applicable collective agreement' means a collective agreement which must be observed by all undertakings in the geographical area and in the profession or industry concerned. In the absence of a system for declaring collective agreements of universal application, Member States may base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers and labour organisations at national level and which are applied throughout national territory.

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 persons to whom it applies in respect of Articles 3 (i), 12, 14 and 15.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5 *Criteria for admission*

1. Without prejudice to Article 10, a third-country national who applies to be admitted under the terms of this Directive 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 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;
 - (c) present an assignment letter from the employer including:
 - (i) the duration of the transfer and the location of the host entity or entities of the Member State concerned;
 - (ii) evidence that he or she is taking a position as a manager, specialist or graduate trainee in the host entity or entities in the Member State concerned;
 - (iii) the remuneration granted during the transfer;
 - (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;
 - (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;
 - (f) present a valid travel document, as determined by national law, and an application for a visa or a visa, if required;
 - (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;
 - (h) be considered not to pose a threat to public policy, public security or public health.

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.

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.

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.
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).
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.

Article 6 *Grounds for refusal*

1. Member States shall reject an application where the conditions set out in Article 5 are not met or where the documents presented have been fraudulently acquired, falsified or tampered with.
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.
3. Member States may reject an application on the grounds of volumes of admission of third-country nationals.
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.

Article 7
Withdrawal or non-renewal of the permit

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

or
 - (b) where the holder is residing for purposes other than those for which he/she was authorised to reside.
2. Member States may withdraw or refuse to renew an intra-corporate transferee permit in the following cases;
 - (a) wherever the conditions laid down in Article 5 were not met or are no longer met;

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

Article 8
Penalties

Member States may hold the host entity responsible and provide for penalties for failure to comply with the conditions of admission. Those penalties shall be effective, proportionate and dissuasive.

CHAPTER III
PROCEDURE AND PERMIT

Article 9
Access to information

Member States shall take the necessary measures to make available information on entry and residence, including rights, and all documentary evidence needed for an application.

Article 10
Applications for admission

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

2. The application shall be considered and examined only when the third-country national is residing outside the territory of the Member State to which admission is sought.
3. The application shall be lodged to the authorities of the Member State where the intra-corporate transfer mainly takes place.
4. Member States shall designate the authority competent to receive the application and to issue the intra-corporate transferee permit.
5. The application shall be submitted in a single application procedure.
6. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.
7. Simplified procedures may be made available to groups of undertakings that have been recognised for that purpose by Member States in accordance with their national legislation or administrative practice.

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

- (a) information relating to the financial standing of the group of undertakings aiming to ensure that the intra-corporate transferee will be guaranteed the required level of remuneration and rights as provided for in Article 14;
 - (b) evidence that the conditions of admission regarding prior transfers have been complied with;
 - (c) evidence that tax law and regulations have been complied with in the host country;
 - (d) information related to forthcoming transfers.
8. The simplified procedures provided for in paragraph 7 shall consist of:
 - (a) exempting the applicant from presenting the documents referred to in Article 5 where they have been previously provided and are still valid;
 - (b) a fast-track admission procedure allowing intra-corporate transferee permits to be issued within a shorter time than specified in Article 12(1);
or
 - (c) specific facilitations for visas.
9. A group of undertakings that has been recognised in accordance with paragraph 7 shall notify to the relevant authority any modification affecting the conditions for recognition.
10. Member States shall provide for appropriate penalties, including revocation of recognition, in the event of failure to provide the evidence and information referred to in paragraph 7.

Article 11
Intra-corporate transferee permit

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.
2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for graduate trainees.
3. The intra-corporate transferee permit shall be issued by the competent authorities of the Member State using the uniform format as laid down in Council Regulation (EC) No 1030/2002¹⁴. In accordance with point (a) 7.5-9 of the Annex to that Regulation, Member States shall indicate on the residence permit information related to the permission to work under the conditions laid down in Article 13.
4. Under the heading ‘type of permit’, the Member States shall enter ‘intra-corporate transferee’ and the name of the group of undertakings concerned. Member States shall issue to the holder of an intra-corporate transferee permit an additional document containing a list of the entities authorised to host the third-country national and revise it whenever that list is modified.
5. Member States shall not issue any additional permits, in particular work permits of any kind.

Article 12
Procedural safeguards

1. The competent authorities of the Member State concerned shall adopt a decision on the application for admission to a Member State as an intra-corporate transferee or for revision of the additional document provided for in Article 11(4) and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, within 30 days of the complete application being lodged. In exceptional cases involving complex applications including applications concerning host entities in several Member States, the deadline may be extended for a maximum of a further 60 days.
2. Where the information supplied in support of the application is inadequate, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it.
3. Any decision rejecting an application or any decision not to renew or to withdraw intra-corporate transferee permits, shall be notified in writing to the applicant and shall be open to a legal challenge in the Member State concerned, in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.

¹⁴ OJ L 157, 15.6.2002, p. 1.

CHAPTER IV

RIGHTS

Article 13

Rights on the basis of the intra-corporate transferee permit

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

1. the right to enter and stay in the territory of the Member State issuing the permit;
2. free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;
3. the right to exercise the specific employment activity authorised under the permit in accordance with national law in any other entity belonging to the group of undertakings listed in the additional document provided for in Article 11(4) in accordance with Article 16;
4. the right to carry out his/her assignment at the sites of clients of the entities belonging to the group of undertakings listed in the additional document provided for in Article 11 (4), as long as the employment relationship is maintained with the undertaking established in a third country.

Article 14

Rights

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

1. the terms and conditions of employment applicable to posted workers in a similar situation, as laid down by law, regulation or administrative provision and/or universally applicable collective agreements in the Member State to which they have been admitted pursuant to this Directive.

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

2. equal treatment with nationals of the host Member State as regards:
 - (a) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such

organisations, without prejudice to the national provisions on public policy and public security;

- (b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
- (c) without prejudice to existing bilateral agreements, provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/04. In the event of mobility between Member States and without prejudice to existing bilateral agreements, Council Regulation (EC) No 859/2003¹⁵ shall apply accordingly;
- (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;
- (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.

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

Article 15 *Family members*

1. Council Directive 2003/86/EC shall apply, subject to the derogations laid down in this Article.
2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification in the first Member State shall not be made dependent on the requirement that the holder of the permit issued on the basis of this Directive must have reasonable prospects of obtaining the right of permanent residence and have a minimum period of residence.
3. By way of derogation from the last subparagraph of Article 4(1) and from Article 7(2) of Directive 2003/86/EC, the integration measures referred to therein may be applied by the first Member State only after the persons concerned have been granted family reunification.
4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the first Member State, if the conditions for family reunification are fulfilled, at the latest within two months from the date on which the application was lodged.
5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members in the first Member

¹⁵ OJ L 124, 20.5.2003, p. 1.

State shall be the same as that of the intra-corporate transferee permit, insofar as the period of validity of their travel documents allows.

CHAPTER V

MOBILITY BETWEEN MEMBER STATES

Article 16

Mobility between Member States

1. Third-country nationals who have been granted an intra-corporate transferee permit in a first Member State, who fulfil the criteria for admission as set out in Article 5 and who apply for an intra-corporate transferee permit in another Member State shall be allowed to work in any other entity established in that Member State and belonging to the same group of undertakings and at the sites of clients of that host entity if the conditions set out in Article 13(4) are fulfilled, on the basis of the residence permit issued by the first Member State and the additional document provided for in Article 11(4), provided that:
 - (a) the duration of the transfer in the other Member State(s) does not exceed twelve months;
 - (b) the applicant has submitted to the competent authority of the other Member State, before his or her transfer to that Member State, the documents referred to in Article 5(1) (2) and (3) relating to the transfer to that Member State and has provided evidence of such submission to the first Member State.
2. If the duration of the transfer in the other Member State exceeds twelve months-, the other Member State may require a new application for a residence permit as an intra-corporate transferee in that Member State.

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.

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

3. The maximum duration of the transfer to the European Union shall not exceed three years for managers and specialists and one year for graduate trainees.

CHAPTER VI

final provisions

Article 17 *Statistics*

1. Member States shall communicate to the Commission statistics on the number of residence permits issued for the first time or renewed and, as far as possible, on the number of residence permits withdrawn for the purpose of intra-corporate transfer to persons who are third-country nationals, disaggregated by citizenship, age and sex, by transferee position (manager, specialist and graduate trainee), by length of validity of the permit and by economic sector.
2. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007¹⁶.
3. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission within six months of the end of the reference year. The first reference year shall be [.....].

Article 18 *Reports*

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

Article 19 *Contact points*

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

Article 20 *Transposition*

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

¹⁶ OJ L 199, 31.7.2007, p. 23.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 21
Entry into force

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

Article 22
Addressees

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

Done at Brussels, [...]

For the European Parliament
The President

For the Council
The President