Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

Criteria for admission

1 Without prejudice to Article 11(1), a third-country national who applies to be admitted under the terms of this Directive or the host entity shall:

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

b provide evidence of employment within the same undertaking or group of undertakings, from at least three up to twelve uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees;

c present a work contract and, if necessary, an assignment letter from the employer containing the following:

(i) details of the duration of the transfer and the location of the host entity or entities;

(ii) evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities in the Member State concerned;

(iii) the remuneration as well as other terms and conditions of employment granted during the intra-corporate transfer;

(iv) evidence that the third-country national will be able to transfer back to an entity belonging to that undertaking or group of undertakings and established in a third country at the end of the intra-corporate transfer;

d provide evidence that the third-country national has the professional qualifications and experience needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a trainee employee, the university degree required;

e where applicable, present documentation certifying that the third-country national fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;

f present a valid travel document of the third-country national, as determined by national law, and, if required, an application for a visa or a visa; Member States may require the period of validity of the travel document to cover at least the period of validity of the intra-corporate transferee permit;

g without prejudice to existing bilateral agreements, provide evidence of having, or, if provided for by national law, having applied for, sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no

such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State.

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

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

4 Member States shall require that:

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

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

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

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

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

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

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

Article 6

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals in accordance with Article 79(5) TFEU. On that

basis, an application for an intra-corporate transferee permit may either be considered inadmissible or be rejected.

Article 7

Grounds for rejection

1 Member States shall reject an application for an intra-corporate transferee permit in any of the following cases:

a where Article 5 is not complied with;

b where the documents presented were fraudulently acquired, or falsified, or tampered with;

c where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;

d where the maximum duration of stay as defined in Article 12(1) has been reached.

2 Member States shall, if appropriate, reject an application where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

3 Member States may reject an application for an intra-corporate transferee permit in any of the following cases:

a where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

b where the employer's or the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;

c where the intent or effect of the temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation.

4 Member States may reject an application for an intra-corporate transferee permit on the ground set out in Article 12(2).

5 Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 8

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

1 Member States shall withdraw an intra-corporate transferee permit in any of the following cases:

a where it was fraudulently acquired, or falsified, or tampered with;

b where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;

c where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees.

2 Member States shall, if appropriate, withdraw an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

3 Member States shall refuse to renew an intra-corporate transferee permit in any of the following cases:

a where it was fraudulently acquired, or falsified, or tampered with;

b where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;

c where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;

d where the maximum duration of stay as defined in Article 12(1) has been reached.

4 Member States shall, if appropriate, refuse to renew an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

5 Member States may withdraw or refuse to renew an intra-corporate transferee permit in any of the following cases:

a where Article 5 is not or is no longer complied with;

b where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

c where the employer's or the host entity's business is being or has been wound up under national insolvency laws or if no economic activity is taking place;

d where the intra-corporate transferee has not complied with the mobility rules set out in Articles 21 and 22.

6 Without prejudice to paragraphs 1 and 3, any decision to withdraw or to refuse to renew an intra-corporate transferee permit shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 9

Sanctions

1 Member States may hold the host entity responsible for failure to comply with the conditions of admission, stay and mobility laid down in this Directive.

2 The Member State concerned shall provide for sanctions where the host entity is held responsible in accordance with paragraph 1. Those sanctions shall be effective, proportionate and dissuasive.

3 Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.