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

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

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

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

(3) The Commission's Communication of 3 March 2010 entitled ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’ sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists and trainee employees to enter the Union in the framework of an intra-corporate transfer have to be seen in that broader context.

(4) The Stockholm Programme, adopted by the European Council on 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and

economic vitality and that, in the context of the important demographic challenges that will face the Union in the future and, consequently, an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. The Stockholm Programme thus invites the Commission and the Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's Communication of 21 December 2005.

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

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

(7) The set of rules established by this Directive may also benefit the migrants' countries of origin as this temporary migration may, under its well-established rules, foster transfers of skills, knowledge, technology and know-how.

(8) This Directive should be without prejudice to the principle of preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of the relevant Acts of Accession.

(9) This Directive should be without prejudice to the right of Member States to issue permits other than intra-corporate transferee permits for any purpose of employment if a third-country national does not fall within the scope of this Directive.

(10) This Directive should establish a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria.

(11) Member States should ensure that appropriate checks and effective inspections are carried out in order to guarantee the proper enforcement of this Directive. The fact that an intra-corporate transferee permit has been issued should not affect or prevent the Member States from applying, during the intra-corporate transfer, their labour law provisions having — in accordance with Union law — as their objective checking compliance with the working conditions as set out in Article 18(1).

(12) The possibility for a Member State to impose, on the basis of national law, sanctions against an intra-corporate transferee's employer established in a third country should remain unaffected.

(13) For the purpose of this Directive, intra-corporate transferees should encompass managers, specialists and trainee employees. Their definition should build on specific commitments of the Union under the General Agreement on Trade in Services (GATS) and bilateral trade agreements. Since those commitments undertaken under GATS

do not cover conditions of entry, stay and work, this Directive should complement and facilitate the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive should be broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement.

(14) To assess the qualifications of intra-corporate transferees, Member States should make use of the European Qualifications Framework (EQF) for lifelong learning, as appropriate, for the assessment of qualifications in a comparable and transparent manner. EQF National Coordination Points may provide information and guidance on how national qualifications levels relate to the EQF.

(15) Intra-corporate transferees should benefit from at least the same terms and conditions of employment as posted workers whose employer is established on the territory of the Union, as defined by Directive 96/71/EC of the European Parliament and of the Council[(4)]. Member States should require that intra-corporate transferees enjoy equal treatment with nationals occupying comparable positions as regards the remuneration which will be granted during the entire transfer. Each Member State should be responsible for checking the remuneration granted to the intra-corporate transferees during their stay on its territory. That is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.

(16) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, the transferee should have been employed within the same group of undertakings from at least three up to twelve uninterrupted months immediately prior to the transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees.

(17) As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for trainee employees after which they should leave for a third country unless they obtain a residence permit on another basis in accordance with Union or national law. The maximum duration of the transfer should encompass the cumulated durations of consecutively issued intra-corporate transferee permits. A subsequent transfer to the Union might take place after the third-country national has left the territory of the Member States.

(18) In order to ensure the temporary character of an intra-corporate transfer and prevent abuses, Member States should be able to require a certain period of time to elapse between the end of the maximum duration of one transfer and another application concerning the same third-country national for the purposes of this Directive in the same Member State.

(19) As intra-corporate transfers consist of temporary secondment, the applicant should provide evidence, as part of the work contract or the assignment letter, that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. The applicant should

also provide evidence that the third-country national manager or specialist possesses the professional qualifications and adequate professional experience needed in the host entity to which he or she is to be transferred.

(20) Third-country nationals who apply to be admitted as trainee employees should provide evidence of a university degree. In addition, they should, if required, present a training agreement, including a description of the training programme, its duration and the conditions in which the trainee employees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.

(21) Unless it conflicts with the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, no labour market test should be required.

(22) A Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of Union citizens and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and the Council[(5)]. Such recognition should be without prejudice to any restrictions on access to regulated professions deriving from reservations to the existing commitments as regards regulated professions made by the Union or by the Union and its Member States in the framework of trade agreements. In any event, this Directive should not provide for a more favourable treatment of intra-corporate transferees, in comparison with Union or European Economic Area nationals, as regards access to regulated professions in a Member State.

(23) This Directive should not affect the right of the Member States to determine the volumes of admission in accordance with Article 79(5) TFEU.

(24) With a view to fighting possible abuses of this Directive, Member States should be able to refuse, withdraw or not renew an intra-corporate transferee permit where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees and/or does not have a genuine activity.

(25) This Directive aims to facilitate mobility of intra-corporate transferees within the Union (‘intra-EU mobility’) and to reduce the administrative burden associated with work assignments in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State is allowed to enter, to stay and to work in one or more Member States in accordance with the provisions governing short-term and long-term mobility under this Directive. Short-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit, for a period of up to 90 days per Member State. Long-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit for more than 90 days per Member State. In order to prevent circumvention of the distinction between short-term and long-term mobility, short-term mobility in relation to a given Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to submit a notification for short-term mobility and an application for long-term mobility at the

same time. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the second Member State may request that the application be submitted at least 20 days before the end of the short-term mobility period.

(26) While the specific mobility scheme established by this Directive should lay down autonomous rules regarding entry and stay for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen *acquis* continue to apply.

(27) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of second Member States should be provided where applicable with the relevant information.

(28) Where intra-corporate transferees have exercised their right to mobility, the second Member State should, under certain conditions, be in a position to take steps so that the intra-corporate transferees' activities do not contravene the relevant provisions of this Directive.

(29) Member States should provide for effective, proportionate and dissuasive sanctions, such as financial sanctions, to be imposed in the event of failure to comply with this Directive. Those sanctions could, inter alia, consist of measures as provided for in Article 7 of Directive 2009/52/EC of the European Parliament and of the Council[(6)]. Those sanctions could be imposed on the host entity established in the Member State concerned.

(30) Provision for a single procedure leading to one combined title encompassing both residence and work permit (‘single permit’) should contribute to simplifying the rules currently applicable in Member States.

(31) It should be possible to set up a simplified procedure for entities or groups of undertakings which have been recognised for that purpose. Recognition should be regularly assessed.

(32) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, that third-country national should receive an intra-corporate transferee permit allowing him or her to carry out, under certain conditions, his or her assignment in diverse entities belonging to the same transnational corporation, including entities located in other Member States.

(33) Where a visa is required and the third-country national fulfils the criteria for being issued with an intra-corporate transferee permit, the Member State should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.

(34) Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen *acquis* in full and the intra-corporate transferee, in the framework of intra-EU mobility, crosses an external border within the meaning of Regulation (EC) No 562/2006 of the European Parliament and of the Council[(7)], a Member State should be

entitled to require evidence proving that the intra-corporate transferee is moving to its territory for the purpose of an intra-corporate transfer. Besides, in case of crossing of an external border within the meaning of Regulation (EC) No 562/2006, the Members States applying the Schengen *acquis* in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council[(8)], has been issued in that system.

(35) Member States should be able to indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of Council Regulation (EC) No 1030/2002[(9)]and point (a)16 of the Annex thereto, in order to provide more precise information on the employment activity during the intra-corporate transfer. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.

(36) This Directive should not prevent intra-corporate transferees from exercising specific activities at the sites of clients within the Member State where the host entity is established in accordance with the provisions applying in that Member State with regard to such activities.

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

(38) Adequate social security coverage for intra-corporate transferees, including, where relevant, benefits for their family members, is important for ensuring decent working and living conditions while staying in the Union. Therefore, equal treatment should be granted under national law in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council[(10)]. This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its scope. The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective and non-discriminatory conditions laid down by the law of the Member State where the work is carried out with regard to affiliation and entitlement to social security benefits.
In many Member States, the right to family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member

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

(39) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council[(11)] should apply accordingly. This Directive should not confer more rights than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.

(40) In order to make the specific set of rules established by this Directive more attractive and to allow it to produce all the expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification in the Member State which issued the intra-corporate transferee permit and in those Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with the provisions of this Directive on long-term mobility. This right would indeed remove an important obstacle to potential intra-corporate transferees for accepting an assignment. In order to preserve family unity, family members should be able to join the intra-corporate transferee in another Member State, and their access to the labour market should be facilitated.

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

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

(43) This Directive should not apply to third -country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC[(12)].

(44) Since the objectives of this Directive, namely a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals, cannot be sufficiently achieved by the Member States but

can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(45) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, which itself builds upon the rights deriving from the Social Charters adopted by the Union and by the Council of Europe.

(46) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011[(13)], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

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

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

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 218, 23.7.2011, p. 101.

(**2**) OJ C 166, 7.6.2011, p. 59.

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

(**4**) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

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

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

(**7**) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

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

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

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

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

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

(**13**) OJ C 369, 17.12.2011, p. 14.