Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) 2010/0209(COD) Directive	Procedure completed
Intra-corporate transfer: conditions of entry and residence of third-country nationals Subject 4.15.04 Workforce, occupational mobility, job conversion, working conditions 7.10.04 External borders crossing and controls, visas 7.10.08 Migration policy	

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs (Associated committee)		27/09/2010
		PPE IACOLINO Salvatore	
		Shadow rapporteur	
		S&D BLINKEVIČIŪTĖ Vilija	
		ALDE MULDER Jan	
		Verts/ALE SARGENTINI Judith	
		ECR KIRKHOPE Timothy	
	Committee for opinion	Rapporteur for opinion	Appointed
	EMPL Employment and Social Affairs (Associated committee)		09/09/2010
		S&D JAAKONSAARI Liisa	
	FEMM Women's Rights and Gender Equality	The committee decided not to give an opinion.	
	Committee for opinion on the legal basis	Rapporteur for opinion	Appointed
	JURI Legal Affairs		
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	3313	13/05/2014
	Justice and Home Affairs (JHA)	3298	03/03/2014
	Justice and Home Affairs (JHA)	3096	09/06/2011
	Employment, Social Policy, Health and Consumer Affairs	3053	06/12/2010
	Justice and Home Affairs (JHA)	3034	07/10/2010
European Commission	Commission DG	Commissioner	
	Migration and Home Affairs	MALMSTRÖM Cecilia	

Key events

13/07/2010	Legislative proposal published	COM(2010)0378	Summary
07/09/2010	Committee referral announced in Parliament, 1st reading		
07/10/2010	Debate in Council	3034	Summary

06/12/2010	Debate in Council	3053	Summary
12/05/2011	Referral to associated committees announced in Parliament		
09/06/2011	Debate in Council	3096	
10/03/2014	Vote in committee, 1st reading		
12/03/2014	Committee report tabled for plenary, 1st reading	A7-0170/2014	Summary
15/04/2014	Results of vote in Parliament		
15/04/2014	Decision by Parliament, 1st reading	T7-0369/2014	Summary
13/05/2014	Act adopted by Council after Parliament's 1st reading		
15/05/2014	Final act signed		
15/05/2014	End of procedure in Parliament		
27/05/2014	Final act published in Official Journal		

Technical information

Procedure reference	2010/0209(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 079-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/03491

Documentation gateway

Legislative proposal		COM(2010)0378	13/07/2010	EC	Summary
Document attached to the procedure		SEC(2010)0884	13/07/2010	EC	
Document attached to the procedure		SEC(2010)0885	13/07/2010	EC	
Committee of the Regions: opinion		CDR0354/2010	31/03/2011	CofR	
Economic and Social Committee: opinion, report		CES0802/2011	04/05/2011	ESC	
Committee draft report		PE464.961	31/05/2011	EP	
Amendments tabled in committee		PE467.241	22/07/2011	EP	
Amendments tabled in committee		PE476.069	21/11/2011	EP	
Specific opinion	JURI	PE473.852	23/11/2011	EP	
Committee opinion	EMPL	PE464.975	12/12/2011	EP	
Amendments tabled in committee		PE529.879	07/03/2014	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0170/2014	12/03/2014	EP	Summary

Text adopted by Parliament, 1st reading/single reading		T7-0369/2014	15/04/2014	EP	Summary
Draft final act		00058/2014/LEX	15/05/2014	CSL	
Commission response to text adopted in plenary		SP(2014)471	09/07/2014	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

Directive 2014/66
OJ L 157 27.05.2014, p. 0001 Summary

Intra-corporate transfer: conditions of entry and residence of third-country nationals

PURPOSE: to introduce a special procedure for third-country nationals applying to reside in the EU for the purpose of an intra-corporate transfer.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: as a result of the globalisation of business, the 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. 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.

The proposal is part of a comprehensive package of measures, proposed in the Policy Plan on Legal Migration of 2005, the European Pact on Immigration and Asylum, adopted in 2008, and further endorsed by the Stockholm Programme, adopted by the European Council in December 2009.

IMPACT ASSESSMENT: the following options were considered:

- Option 1: Status quo. Current developments would continue within the existing legal framework. However, this would mean that the EU would not be attractive for 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. EU legislation would provide a common definition of intra-corporate transferee. 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. 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 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.

LEGAL BASE: Article 79(2)(a) and (b) of the Treaty on the Functioning of the European Union

CONTENT: the aim of this Directive is 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. 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, 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, 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. This permit would also give them favourable conditions for family reunification in the first Member State.

The main points are as follows:

Chapter I: General provisions

Subject-matter: the proposal has two specific purposes:

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;

to 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.

Definitions: ?Intra-corporate transfer? is defined as 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.

Chapter II: Admission criteria

Admission: the text 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;
- 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 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;
- 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;
- third-country nationals who apply to be admitted as a graduate trainee must also 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 simplified scheme for admission of such skilled intra corporate transferees. As primary law prevails, for Member States which happen to apply a transitional period to new Member States, EU preference must however be applied.

Grounds for refusal: the 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. In the event of non-compliance with the conditions laid down, Member States should provide for appropriate sanctions, such as financial sanctions, to be imposed on the host entity, which would be held responsible.

Chapter III: procedure and permit

Residence permit: 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 the text. 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. 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.

Chapter IV: Rights

Rights: in order to ensure equality of treatment with posted workers covered by Directive 96/71/EC, the rights granted to intra-corporate transferees as regards working conditions are aligned on the rights already enjoyed by posted workers. The text also states the areas where equal treatment must be recognised.

Family members: the proposal contains derogations from Directive 2003/86/EC 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. It provides for immediate family reunification in the first State of residence, and also stipulates that possible national integration measures may be imposed only once the family members are on EU territory.

Chapter V: Mobility

Mobility: the proposal 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.

Chapter VI: Final provisions:a chapter lays down the usual provisions are laid down on implementation, annual statistics and national contact points.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.

Intra-corporate transfer: conditions of entry and residence of third-country nationals

Ministers held a first exchange of views on a Commission proposal for a directive on conditions of entry and residence of third-country nationals concerning intra-corporate transfers (regarding managerial and qualified employees for branches and subsidiaries of multinational companies).

Several ministers recalled the right of member states to determine the number of third-country nationals to be admitted to their territories. In this context, they pointed out that the impact on national labour markets should be taken into account. Several ministers also highlighted the need for greater flexibility, for example with reference to the proposed duration of stay or the time limits in which applicants must be given a decision.

Another issue highlighted by several ministers was the question whether the rights accorded to third-country nationals should be equivalent to those enjoyed by nationals of the host member states, in particular with regard to social security benefits.

The Commission underlined that the main goal of the proposal was that once member states decide they need legal immigrants, that equal treatment will be given to those accepted throughout the EU. On the proposal for intra-corporate transferees, favourable conditions were necessary in order to achieve the main objective of the dossier: to attract the qualified personnel needed by the European labour market.

Intra-corporate transfer: conditions of entry and residence of third-country nationals

The Belgian Presidency provided the Council with information (see Council Doc.16929/10) on the following three files which are being examined in the Justice and Home Affairs Council:

- the draft directive on a single application procedure for a single permitfor third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State;
- the draft directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment;
- the draft directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

The intra-corporate transfer and seasonal workers directives are currently being examined by the JHA Council. The Presidency gave information on the provisions of the directive which deal with important subjects for employment, working conditions, rights of workers or social protection, and emphasised the importance of the Employment and Social Affairs Council in discussions about immigration directives.

Intra-corporate transfer: conditions of entry and residence of third-country nationals

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Salvatore IACOLINO (EPP, IT) on the 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 Committee on Employment and Social Affairs, exercising its prerogatives as an associated committee in accordance with Rule 50 of the Rules of Procedure, was also consulted for an opinion on the report.

The committee recommended that Parliaments position in first reading following the ordinary legislative procedure should amend the Commission position as follows:

Scope: this was amended so that the directive would apply to third-country nationals who apply to be admitted to the territory of a Member State in the framework of an intra-corporate transfer as managers, specialists or trainee employees.

The Directive should not apply to third-country nationals who were self-employed workers, or being assigned by employment agencies, or students.

Criteria for admission: a third-country national must do the following, inter alia:

- provide evidence of employment within the same group of undertakings, from at least 3 up to 12 uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least 3 up to 6 uninterrupted months in the case of trainee employees;
- present a work contract;
- evidence that the third-country national would 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.

Member States may require the applicant to present the documents in the language of the Member State concerned.

Based on the documentation provided, Member States may require that the intra-corporate transferee will have sufficient resources during his/her stay to maintain him/herself and his/her family members without having recourse to their social assistance systems.

Trainee employees may be required to present a training agreement which demonstrated that the purpose of stay is to train the employee for career development purposes or in order to obtain training.

Third-country nationals who applied to be admitted as trainee employees should provide evidence of a university degree.

Third-country nationals who were considered to pose a threat to public policy, public security or public health should not be admitted.

Remuneration: the amended text stated that the remuneration granted to the third-country national during the entire transfer must not be less favourable than the remuneration granted to nationals of the host Member State concerned occupying comparable positions.

Recognition of professional qualifications: a Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third-country. This should be without prejudice to any restrictions on access to regulated professions.

Grounds for rejection: the amended text clarified and expanded the grounds for rejection of an application which now include the following: (i) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees; (ii) the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions; (iii) the employer's or the host entity's business was being or had been wound up under national insolvency laws or no economic activity is taking place; (iv) the intent or effect of temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation.

Member States shall withdraw an intra-corporate transferee permit where the intra-corporate transferee is residing for purposes other than those for which he/she was authorised to reside. Similar grounds have been introduced for the withdrawal or non-renewal of the permit.

Volumes of admission: the directive should not affect the right of a Member State to determine the volumes of admission in accordance with the Treaty on the Functioning of the European Union, and an application for an intra-corporate transferee permit may be either considered inadmissible or be rejected.

Sanctions: where the host entity was held responsible for failure to comply with the conditions of admission, stay and mobility, the Member State concerned should provide for sanctions that were effective, proportionate and dissuasive and lay down measures on monitoring, assessment and inspection measures.

Duration of an intra-corporate transfer: the amended text stated that the maximum duration of the transfer should not exceed three years for managers and specialists and one year for trainee employees after which they shall leave the territory of the Member States unless they obtain a residence permit on another basis in accordance with national or Union legislation. Member States may require a period of up to 6 months to pass between the end of the maximum duration of a transfer and another application concerning the same third-country national in the same Member State.

The maximum duration of the transfer encompasses the cumulated durations of consecutively issued intra-corporate permits. A subsequent transfer to the European Union might take place after the return of the third-country national to a third country.

Procedural safeguards: the competent authorities of the Member State concerned shall adopt a decision as soon as possible but no later than 90 days of the complete application being lodged. Reasons for a decision declaring inadmissible or rejecting an application for an intra-corporate transferee permit or refusing renewal should be given in writing. The amended text goes on to state that an applicant should be allowed to lodge an application for renewal before the expiry of the intra-corporate transferee permit. There should be a maximum deadline of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal. Where the validity of the intra-corporate transferee permit expired during the procedure for renewal, the intra-corporate transferee may stay on the territory until the competent authorities had taken a decision on the application.

Fees: payment of fees for handling applications may be required but the level of such fees shall not be excessive or disproportionate.

Equality of treatment: the amended text stated that the Directive did not affect the right of Member States to restrict, under certain conditions, equal treatment in respect of family benefits as the intra-corporate transferee and the accompanying family were staying temporarily in the first Member State. Social security rights should be granted without prejudice to provisions in national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin. However, bilateral agreements or national legislation on social security rights of intra-corporate transferees which were 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 such agreements or national legislation, it may be, for example, in the interest of the intra-corporate transferees to remain affiliated to the social security system of their country of origin if interruption of this affiliation would adversely affect their rights or would result in bearing the costs of double coverage.

Family members: without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, the family members of the intra-corporate transferee who had been granted family reunification should be entitled to have access to employment and self-employed activity, in the territory of the Member State which issued the family member residence permit.

Mobility between Member States: Members inserted a new chapter on this issue and made a distinction between short term and long-term mobility. They stated that the Directive aimed to reduce the administrative burden associated with work assignments in several Member States. For this purpose, it set up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State was 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:

- short term mobility 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 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, a short-term mobility in the same Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to introduce a notification for short term mobility and an application for long term mobility at the same time.

Maintaining the relevant provisions of the Schengen: while the specific mobility scheme established by this Directive should set up autonomous rules regarding the entry and stay for the purpose of work as an intracorporate transferee in Member States other than the one that issued the intracorporate 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.

Intra-corporate transfer: conditions of entry and residence of third-country nationals

The European Parliament adopted by 360 votes to 278 with 38 abstentions, a legislative resolution on the 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.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amend the Commissions proposal as follows:

Purpose: the Directive laid down:

- the conditions of entry to, and residence for more than 90 days in, the territory of the Member States, and the rights, of third-country nationals and of their family members in the framework of an intra-corporate transfer;
- the conditions of entry and residence, and the rights, of third-country nationals, referred to above, in Member States other than the Member State which first granted the third-country national an intra-corporate transferee permit on the basis of the Directive.

Scope: this was amended so that the directive would apply to third-country nationals who applied to be admitted to the territory of a Member State in the framework of an intra-corporate transfer as managers, specialists or trainee employees.

The Directive should not apply to third-country nationals who were self-employed workers, or being assigned by employment agencies, or students.

Criteria for admission: a third-country national must do the following, inter alia:

- provide evidence of employment within the same group of undertakings, from at least 3 up to 12 uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least 3 up to 6 uninterrupted months in the case of trainee employees;
- present a work contract;
- evidence that the third-country national would 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.

Member States may require the applicant to present the documents in the language of the Member State concerned.

Based on the documentation provided, Member States may require that the intra-corporate transferee will have sufficient resources during his/her stay to maintain him/herself and his/her family members without having recourse to their social assistance systems.

Trainee employees may be required to present a training agreement which demonstrated that the purpose of stay is to train the employee for career development purposes or in order to obtain training.

Third-country nationals who applied to be admitted as trainee employees should provide evidence of a university degree.

Third-country nationals who were considered to pose a threat to public policy, public security or public health should not be admitted.

Remuneration: the amended text stated that the remuneration granted to the third-country national during the entire transfer must not be less favourable than the remuneration granted to nationals of the host Member State concerned occupying comparable positions.

Recognition of professional qualifications: a Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third-country.

Grounds for rejection: the amended text clarified and expanded the grounds for rejection of an application which now include the following: (i) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees; (ii) the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions; (iii) the employer's or the host entity's business was being or had been wound up under national insolvency laws or no economic activity is taking place; (iv) the intent or effect of temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation; (v) 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.

Similar grounds have been introduced for the withdrawal or non-renewal of the permit. Volumes of admission: the directive should not affect the right of a Member State to determine the volumes of admission in accordance with the Treaty on the Functioning of the European Union, and an application for an intra-corporate transferee permit may be either considered inadmissible or be rejected on this basis.

Sanctions: where the host entity was held responsible for failure to comply with the conditions of admission, stay and mobility, the Member State concerned should provide for sanctions that were effective, proportionate and dissuasive and lay down measures on monitoring, assessment and inspection measures.

Duration of an intra-corporate transfer: the amended text stated that the maximum duration of the transfer should not exceed three years for managers and specialists and one year for trainee employees after which they shall leave the territory of the Member States unless they obtain a residence permit on another basis in accordance with national or Union legislation. 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. Member States may require a period of up to 6 months to pass between the end of the maximum duration of a transfer and another application concerning the same third-country national in the same Member State.

Procedural safeguards: the competent authorities of the Member State concerned shall adopt a decision as soon as possible but no later than 90 days of the complete application being lodged. Reasons for a decision declaring inadmissible or rejecting an application for an intra-corporate transferee permit or refusing renewal should be given in writing. The amended text goes on to state that an applicant should be allowed to lodge an application for renewal before the expiry of the intra-corporate transferee permit. There should be a maximum deadline of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal. Where the validity of the intra-corporate transferee permit expired during the procedure for renewal, the intra-corporate transferee may stay on the territory until the competent authorities had taken a decision on the application.

Fees: payment of fees for handling applications may be required but the level of such fees shall not be excessive or disproportionate.

Equality of treatment: the amended text stated that the Directive did not affect the right of Member States to restrict, under certain conditions, equal treatment in respect of family benefits as the intra-corporate transferee and the accompanying family were staying temporarily in the first Member State. Social security rights should be granted without prejudice to provisions in national legislation and/or bilateral agreements providing for the application of the social security legislation of the country of origin. However, bilateral agreements or national legislation on social security rights of intra-corporate transferees which were 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 such agreements or national legislation, it may be, for example, in the interest of the intra-corporate transferees to remain affiliated to the social security system of their country of origin if interruption of this affiliation would adversely affect their rights or would result in bearing the costs of double coverage.

Family members: without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, the family members of the intra-corporate transferee who had been granted family reunification should be entitled to have access to employment and self-employed activity, in the territory of the Member State which issued the family member residence permit.

Mobility between Member States: Members inserted a new chapter on this issue and made a distinction between short term and long-term mobility. They stated that the Directive aimed to reduce the administrative burden associated with work assignments in several Member States. For this purpose, it set up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State was 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:

- short term mobility 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 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, a short-term mobility in the same Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to introduce a notification for short term mobility and an application for long term mobility at the same time.

Schengen acquis: while the specific mobility scheme established by the 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 continued to apply.

Interinstitutional declaration: the European Parliament, the Council and the Commission noted that the Directive established an autonomous mobility scheme providing for specific rules regarding the conditions of entry, stay and freedom of movement of a third-country national for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, which were to be considered as a lex specialis with respect to the Schengen acquis.

Parliament and the Council took note of the Commission's intention to examine whether any action needed to be taken in order to enhance legal certainty as regards the interaction between the two legal regimes, and in particular to examine the need for updating the Schengen Handbook.

Intra-corporate transfer: conditions of entry and residence of third-country nationals

PURPOSE: to establish the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

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

CONTENT: thanks to this Directive, multinationals will be able to more easily and more quickly temporarily assign highly qualified employees to subsidiaries in the EU.

The Directive lays down in particular:

- the conditions of entry to, and residence for more than 90 days in, the territory of the Member States, and the rights, of third-country nationals and of their family members in the framework of an intra-corporate transfer;
- the conditions of entry and residence, and the rights, of third-country nationals, referred to above, in Member States other than the Member State which first granted the third-country national an intra-corporate transferee permit on the basis of the Directive.

Scope: the Directive applies to third-country nationals who applied to be admitted to the territory of a Member State in the framework of an intra-corporate transfer as managers, specialists or trainee employees.

Not covered by the Directive (among others) workers posted in the framework of Directive 96/71/EC, the self-employed, temporary workers and students.

Criteria for admission: third-country nationals in the framework of an intra-corporate transfer may not be admitted unless they provide a certain number of proofs including:

- evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;
- 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;
- evidence that the worker has a work contract;
- evidence that the third-country national would 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.

Additional requirements are also provided so that Member States may require the applicant to present the documents in the language of the Member State concerned.

In addition, Member States may require that the intra-corporate transferee will have sufficient resources during his/her stay to maintain him/herself and his/her family members without having recourse to their social assistance systems.

For the trainee employees, it may be required that these last present a training agreement containing a description of the training programme which show that the purpose of stay is to train the employee for career development purposes.

Third-country nationals who apply to be admitted as trainee employees should provide evidence of a university degree.

Note that 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.

Volumes of admission: the Directive would not affect the right of Member States to lay down the number of third country nationals who can be admitted to their territory. On that basis, an application for an intra-corporate transferee permit may either be considered inadmissible or be rejected.

Grounds for rejection: the Directive lists the reasons that be invoked to reject an application for admission in respect of an intra-corporate transfer including (in addition to non-observance of the eligibility criteria):

- where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;
- the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;
- the employer's or the host entity's business was being or had been wound up under national insolvency laws;
- the intent or effect of temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation;
- where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised or where the employer deals with staff working in the black;
- where the maximum duration of stay had been reached.

Similar grounds have been introduced for the withdrawal or non-renewal of the permit of an intra-corporate transfer.

Sanctions: 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. In this case, sanctions should be effective, proportionate and dissuasive.

To avoid abuse, monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice would be provided.

Procedure and permit: the Directive details the procedures applicable in the event of an intra-corporate transfer permit application. The provisions notably include provided information, the arrangements for permit applications (including a simplified application in some cases).

Duration of an intra-corporate transfer: the maximum duration of a transfer in the European Union including mobility between Member States should not exceed three years for managers and specialists and one year for trainee employees. At the end of this period, they should return to 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.

Member States may require a period of up to 6 months to pass between the end of the maximum duration of a transfer and another application concerning the same third-country national in the same Member State.

Procedural safeguards: reasons for a decision declaring inadmissible or rejecting an application for an intra-corporate transferee permit or refusing renewal should be given to the applicant in writing.

The competent authorities of the Member State concerned should adopt a decision on the application for an intra-corporate transferee permit or a renewal of it, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

It is also provided that an applicant should be allowed to lodge an application for renewal before the expiry of the permit (up to 90 days prior to the expiry of the permit). Where the validity of the intra-corporate transferee permit expired during the procedure for renewal, the intra-corporate transferee may stay on the territory until the competent authorities had taken a decision on the application. In such a case, they would issue, where required under national law, national temporary residence permits or equivalent authorisations

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

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:

- the right to enter and stay in the territory of the first Member State;
- free access to the entire territory of the first Member State;

- the right to exercise the specific employment activity authorised under the permit in accordance with national law in any host entity belonging to the undertaking or the group of undertakings in the first Member State;
- the right to equal treatment in a range of areas (freedom of expression, recognition of diplomas, the right to benefit from certain branches of social security in particular, sickness, invalidity, and old age - access to goods and services, etc, except procedures for obtaining housing and rights equivalent to those of posted workers relating to maximum periods of work or security of employment).

Note that Member States could provide an exception to equal treatment with regard to access to branches of social security when the national law or a bilateral agreement with the host Member State stipulates that the laws of the country of origin of the person subject to an intra-corporate transfer shall apply. In addition, Member States may decide not to grant family benefits to those workers who stay less than 9 months in the EU.

It is also provided that the remuneration offered to a third-country national during the entire intra-corporate transfer should not be less favourable than that granted to nationals of the Member State where the work is carried out occupying comparable positions.

Family members: family members of the intra-corporate transferee who had been granted family reunification should be entitled to have access to employment and self-employed activity, in the territory of the Member State which issued the family member residence permit, without prejudice to the principle of preference for Union citizens.

Intra-EU mobility: there are provisions to define the framework to facilitate the mobility of workers benefitting from an intra-corporate transfer permit by making a clear distinction between short and long term stays. To this effect:

- short term mobility should cover stays for a period of up to 90 days per Member State in Member States other than the one that issued the intra-corporate transferee permit;
- long-term mobility should cover stays for more than 90 days per Member State in Member States other than the one that issued the intra-corporate transferee permit.

In order to prevent circumvention of the distinction between short-term and long-term mobility, a short-term mobility in the same Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to introduce a notification for short term mobility and an application for long term mobility at the same time.

N.B.: the conditions applicable to long term mobility (more than 90 days) should be stricter than those applicable to short term mobility (less than 90 days within a period of 180 days).

Maintenance of the relevant Schengen provisions: while the specific mobility scheme established by the 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.

More favourable provisions: the Directive would not affect the right of Member States to adopt or retain more favourable provisions for third-country nationals to whom it applies.

Statistics: Member States should communicate to the Commission statistics on the number of intra-corporate transferee permits and permits for long-term mobility issued for the first time, and, as far as possible, on the number of intra-corporate transferees whose permit has been renewed or withdrawn.

Reports: by 29 November 2019, and thereafter, every three years, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and propose any amendments necessary.

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