

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

2010/0209(COD) - 13/07/2010 - Legislative proposal

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.
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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.