

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

2010/0209(COD) - 15/04/2014 - Text adopted by Parliament, 1st reading/single reading

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 Commission's 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.