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

2010/0209(COD) - 15/05/2014 - Final act

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 transfe**r 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.

ENTRY INTO FORCE: 28.05.2014.

TRANSPOSITION: 29.11.2016.