

GMS Flash Alert

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The Netherlands - Introduction of European Intra-Corporate Transfer Permit

With effect from November 29, 2016, the Netherlands is implementing the European Union (EU) Directive regulating the entry and residence of non-EU nationals who are transferred within a company group.¹

The Netherlands is one of the EU member states to have approved Directive 2014/66/EU (the so-called "ICT Directive").² Only Denmark, Ireland, and the United Kingdom are not participating. The Directive stipulates the conditions that member states may apply to the residence of non-EU nationals within the context of a corporate-group transfer, also known as "intra-corporate transfer" (ICT).

WHY THIS MATTERS

The new ICT permit (as it is known) will facilitate the movement of cross-border workers across the EU and lighten the administrative burden that companies, employees, and their human resources (HR) managers typically experience where intra-EU mobility is concerned. After the transferee obtains an ICT residence permit in one member state, he or she might be able to work at a company group entity in another EU member state.

Furthermore, it is important for global mobility or international HR managers to be aware of the fact that in many cases the ICT permit will be the only available filing category. Indeed, the highly-skilled migrant application may not be possible in cases where the applicant is covered by the scope of the directive.

Background

The objective of the ICT Directive is to harmonize admission regulations of the various EU member states pertaining to transfers within a corporate group and to facilitate the intra-EU mobility of the staff of international groups in order to promote the transfer of knowledge and expertise within companies.

This Directive is aimed at making the EU as a whole more attractive for the international business community and strengthening the competitiveness of the European labor market and economy.

The Directive applies to managers and specialists (key personnel) and trainees who are not nationals of one of the EU member states, who have already been employed by a company resident outside the EU for at least three months and are temporarily transferred, on market terms, to one or more branches of the company within the EU.

KPMG NOTE

Before the introduction of the Directive, each EU member state had its own rules for the admission of staff from international companies. This was confusing, especially for international businesses operating in several EU countries. Such companies were also confronted with cumbersome administrative procedures when they wanted to transfer staff (who were temporarily redeployed to the EU) from one member state to another.

ICT Permit

An ICT permit is valid for both residence and work and must be applied for in the EU member state where the foreigner intends to stay the longest. The ICT permit may be issued for a maximum of three years for key personnel and up to one year for trainees. It is not possible to extend the stay in Europe by virtue of the Directive.

The ICT permit facilitates temporary secondments to entities of the same company in other EU member states that have implemented the Directive subject to fewer and less strict conditions.

Overlap with Highly Skilled Migrant Permit

The target group of the ICT Directive overlaps to a large degree with that of the existing (and immensely popular) national highly-skilled migrant program. However, the applicant for a residence permit cannot choose between the highly-skilled migrant program and the ICT permit. For those falling within the scope of the ICT Directive, the ICT permit offers the only possibility for residence.

Differences between ICT and Highly Skilled Migrant Permits

It is anticipated that those applicants who would qualify for a highly-skilled migrant residence permit but who will now be covered by the ICT Directive will equally qualify for the ICT permit.

KPMG NOTE

Therefore we don't expect that companies should make any changes to their assignment programs in order to still satisfy the immigration requirements.

Table Contrasting ICT and Highly Skilled Migrant Permits

The table below highlights the differences that exist between the two immigration programs.

	Highly-Skilled Migrant permit	ICT permit
Salary requirement	Annually the minimum gross monthly salary is determined. A highly-skilled migrant must at all times satisfy this minimum income requirement.	The new legislation defines that the assignee must be paid 'according to market conditions'. Obviously this leaves room for individual interpretation. However the immigration authorities have stated that they will consider the salary requirement for highly-skilled migrants to be in line with market conditions. In other words – the salary requirements are expected to be equal for both categories.
Maximum duration	Duration is linked to the end date of the contract/assignment up to a maximum of 5 years in cases of open-ended contracts.	Key personnel can obtain a residence permit for a maximum of three years. Trainees can only obtain a one-year residence permit.
Extension possible after reaching maximum duration?	Yes, it's possible to extend the residence permit regardless of previous residence in the Netherlands.	No, after reaching the maximum duration, it's not possible to extend the residence in the Netherlands by virtue of the Directive. Extension of one's residence may only be possible based on a different filing category.
Build-up of residence rights	Yes, a legal stay in the Netherlands on the basis of a highly-skilled migrant application will count for build-up of residence rights in the Netherlands; for instance, to qualify for a residence title for indefinite stay or naturalization procedure	No, this filing category qualifies as a 'temporary purpose of stay' and therefore a legal stay on the basis of the ICT permit doesn't count for build-up of residence rights in the Netherlands.
Requires the support of an 'Authorized Sponsor'?	Yes, the procedure is only open for employers that have first obtained the status of Authorized Sponsor.	No, the procedure is open for both Authorized Sponsors and for regular sponsors. Only Authorized Sponsors will benefit from expedited processing and their applications require less supporting paper-work.
Allows mobility to other EU member state?	No, the Dutch highly-skilled migrant permit is only valid for employment in the Netherlands. Any employment activities undertaken in another EU	Yes, holders of a valid Dutch ICT permit will be allowed, under conditions, to temporarily perform activities at a related group entity that is established in

	member state are subject to the labor restrictions in that jurisdiction.	another EU member state. The conditions vary mostly depending on the duration and the member state of the posting.
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Application Procedure

At present the Dutch immigration authority is still shaping the application procedures. To a certain extent, it is still uncertain what the new application procedure will look like in practice. It is expected that this will become clear in the coming days, before the entry into force on November 29, 2016.

Applications filed under the highly-skilled migrant program that are submitted before the entry-into-force date, in any case will be issued under the highly-skilled migrant program; also if the application is pending at the entry-into-force date.

KPMG NOTE

In comparison to the highly-skilled migrant procedure, there are more criteria that must be assessed for the ICT permit and thus, more supporting paper-work will be required for each application. However, employers that have the status of 'Authorized Sponsor' can also make use of their 'own declaration' for an ICT permit application.

By providing such declaration, the Authorized Sponsor declares amongst others that the applicant satisfies the conditions for the residence permit. This means that for the Authorized Sponsor there will hardly be an impact on required paper-work for the application.

FOOTNOTES:

1 The Dutch Decree transposing the provisions of Directive 2014/66/EU on ICT transfers of non-EU national key personnel was published in the Netherlands' official gazette *Staatsblad* (in Dutch) on November 2, 2016 (Nr. 408). To access the electronic version, click [here](#).

2 For a related story on transposing the EU's ICT Directive into domestic law (in this case, Germany), see GMS [Flash Alert 2016-123](#) (November 1, 2016).

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Contact us

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