

GMS Flash Alert

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European Union - Special Report: Status of Intra-Company Transfer Directive

By April 2017, 11 out of 25 participating European Union (EU) member states had implemented the EU's Intra-Corporate Transfer (ICT) Directive. The Directive defines the entry and residence conditions of third-country nationals in the context of intra-company transfers that exceed 90 days. The proposal for the ICT Directive was adopted by the European Council in 2014.¹

The ICT Directive sets the framework for intra-corporate transfers of non-EU managers, specialists (for up to three years), and trainees (for up to one year) within the EU and aims to harmonize the various national regimes that have heretofore applied across the EU. What is key is the Directive's aims which are to facilitate intra-EU mobility and to ease the requirements with respect to working in more than one EU member state as a transferee.

WHY THIS MATTERS

The availability of the new "ICT permit" allows employees to work as intra-corporate transferees at a company (of the same company group) in another EU member state other than the one which issued the permit. (The application of the ICT Directive requires that both the home country and the host country have implemented the ICT Directive.)

The assignments of today are often "multi-destination" and the ICT Directive is a reaction to that. It aims to make the overall conditions of residence and work transparent in the EU for highly-skilled non-EU employees that cross-borders for work purposes within the same company group inside the EU.

Background and Context

According to the ICT Directive, the ICT permit may be accepted by one EU member state when issued by another EU member state for work performed in that member state for up to 90 days within a rolling period of 180 days (so-called

“short-term” mobility). Member states may only opt to request an additional notification to be filed with the competent authority in the member state, but not an additional permit. Based on the notification, a work authorization exemption will be enabled. An additional permit can only be required if work in the second member state exceeds 90 days (so-called “long-term” mobility). If so, the member state concerned may demand an application for an additional permission known as the “Mobile-ICT” permit in order to work in that country.

Important Distinctions with the EU Blue Card

In general terms, the ICT Directive provides for a new category of permit: the ICT permit. The ICT permit shares a common over-arching goal with the EU Blue Card, which is an approved EU-wide work permit (as per the terms of Council Directive 2009/50/EC) allowing highly-skilled non-EU citizens to work and live in any country within the EU (please note that Denmark, Ireland, and the U.K. are not EU Blue Card participants). Both the ICT permit and the EU Blue Card are essentially permits issued by one EU member state under harmonized conditions. But the ICT permit has broader effects than the EU Blue Card. The effects of an EU Blue Card are strictly limited to the issuing EU member state in terms of the work authorization, and imposes restrictions on moving to another country and changing jobs – only after 18 months may an individual move to a different EU country to work in highly-skilled employment and at that point he or she will have to apply for a new EU Blue Card in the new country. The ICT permit allows for greater flexibility and mobility, under prescribed conditions, although it cannot be transferred to a new job with a new company (one that is not part of the same company group).

Another difference is that the ICT Directive targets highly-skilled personnel, which includes trainees – this is very important – as well as managers and specialists.

ICT Directive Requirements for International Assignments

The assignment needs to meet the following criteria to avail of the ICT Directive:

- The assignee is not an EU citizen and the assignee’s employment contract is with an entity outside the EU (this differentiates the ICT permit from the EU Blue Card as well, which requires a local employment contract with an entity in the EU member state).
- The assignee holds a position as a manager, specialist, or trainee.
- To be eligible for an ICT permit, managers and specialists must have worked at least 3 to 12 uninterrupted months for the multinational company immediately preceding their transfer; for trainee employees, this period is 3 to 6 uninterrupted months. Each EU member state may decide on the required pre-employment period.
- Attaining the market-level salary paid to the local workforce in a comparable position and with comparable educational and professional backgrounds.

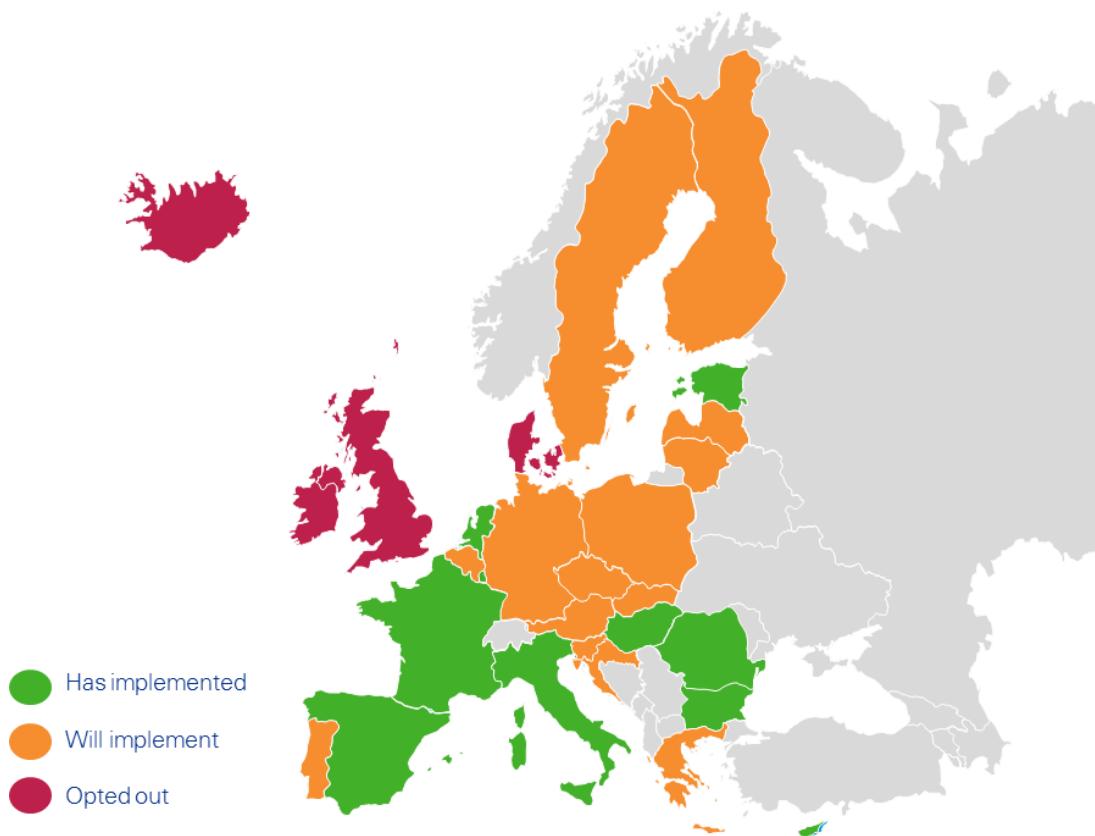
Implementation within EU

All 25 EU member states participating in the ICT Directive had 30 months to implement the Directive in their national legislation. Many of them, however, had difficulty meeting the deadline of 29 November 2016. (The U.K., Ireland, and Denmark are not participating, having opted out of the ICT Directive.) As of April 2017, 11 out of 25 participating countries have implemented the ICT Directive.

The map on the next page illustrates the current status of the EU countries. The table on the next page provides more detailed information on the implementation schedule.

Some countries find it challenging to harmonize the new Directive with their current domestic immigration law or current permit types. Also, some countries have found the timeline of 30 months for implementation too tight and inadequate.

In all 25 EU countries participating, the implementation work has been started on some level. In most countries that have not yet fully implemented the Directive, the local parliaments are preparing laws for a vote. For example, in Finland the actual implementation date is still not set, but the law should be voted on before the summer. It is anticipated that the rest of the participating countries will have their new legislation in force at some point during 2017.



Implementation Schedule

EU Country	Implemented	If not, when?
Austria	No	Target: 1 May 2017
Belgium	No	Law in process, implementation date unknown
Bulgaria	May 2016	n/a
Croatia	No	Law in process, implementation date unknown
Cyprus	February 2017	n/a
Czech Republic	No	Law in process, implementation date unknown
Denmark	No	Will not implement
Estonia	January 2017	n/a
Finland	No	Law in process, implementation date unknown
France	November 2016	n/a
Germany	No	Target: May-August 2017
Greece	No	Law in process, implementation date unknown
Hungary	September 2016	n/a
Ireland	No	Will not implement

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Italy	January 2017	n/a
Latvia	February 2017	n/a
Lithuania	No	Law in process, implementation date unknown
Luxembourg	March 2017	n/a
Malta	n/a	n/a
Netherlands	November 2016	n/a
Poland	n/a	Law in process, implementation date unknown
Portugal	No	n/a
Romania	August 2016	n/a
Slovakia	No	Law in process, implementation date unknown
Slovenia	No	Target: Mid-2017
Spain	November 2016	n/a
Sweden	No	Target: 1 December 2017
United Kingdom	No	Will not implement

Source: KPMG International member firm in Finland. Data validity checked on 13 April 2017.

KPMG NOTE

Non-EU Transferees: When Their Assignment Ends and a New Intra-Company Transfer Is to Start

In general terms, the ICT permit is valid for up to three years (managers and specialists), assuming that the original permit from the home country is valid throughout the stay. After the allowed period of stay, the assignee may need to return to a non-EU country before starting a new intra-company transfer in an EU country. EU member states may require a “cooling-off” period of up to six months between the end of an assignment and a new assignment in an EU member state.

Considerations for Employers

The introduction of the ICT permit and the changes in national legislation to accommodate the new rules should trigger a review by employers of their assignment policies and a consideration of other effects (e.g., on social security). Moreover, employers should be tracking and reviewing the assignment status of their non-EU national employees working in the EU. An assignee population assessment would be recommended as a means of mitigating potential risks to the company.

FOOTNOTE:

1 See: “[Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer](#)” on the EUR-Lex website.

For related coverage in GMS *Flash Alert*, see the following issues: [2017-028](#) (15 February 2017), [2017-021](#) (3 February 2017), and [2016-133](#) (8 November 2016).

Contact us

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* KPMG LLP (U.S.) does not offer immigration services.

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