

EUROPE

INTRA CORPORATE TRANSFER (ICT) DIRECTIVE 2014/66/EU

The new EU ICT Directive offers companies with European operations a strategic route for mobilizing their workforce on short- and long-term assignments. By unifying procedures for multinational companies that are transferring third-country managers, specialists and trainees to affiliated offices, the new Directive alleviates the administrative burdens associated with multiple assignments in several member states. Recognizing that flexible immigration policies contribute to the region's economic development, the new EU ICT Directive enables greater mobility and flexibility for international businesses wishing to foster the transfer of skills, knowledge, and innovation.

EU DIRECTIVE 2014/66

Although the EU member states are implementing the Directive separately and within differing timeframes, this is an exciting policy for global businesses as the Directive aims at allowing multinational companies to efficiently utilise their human capital. Tracking timelines for implementation has proven to be challenging since many countries did not initially meet the Directive's 29 November deadline. However, BAL expects that more countries will implement the ICT rules some time in 2017. This backgrounder is intended to provide guidance on how best to use the new Directive under current rules.

Scope

The new EU Directive rules will apply to non-EU nationals who have an employment contract with a company based outside the EU, and who will be temporarily transferred to one or several entities, belonging to the same corporate group, within the EU. Non-EU nationals with an ICT permit issued in an EU member state of first residence can enter, stay and work in an assigned ICT role in one or several additional member states. There is no separate work permit issued. Rather, the receiving second member state may require documented notification for short-term mobility or alternatively, the issuance of a long-term mobility permit prior to the new transfer.

While the Directive applies to managers, specialists or trainees, it does not provide work authorization to temporary workers or to those who will be placed on local payroll or contract. Furthermore, employees may apply for a visa scheme that is more favorable than the ICT Directive if there is an existing bilateral or multilateral agreement between the EU and the member state under EU law, or on the basis of an agreement by a member state with one or more third countries, which will take precedence over the ICT Directive. Should the ICT applicant not fall within the scope of the Directive, each member state may issue permits other than the ICT.

The Directive is currently not applicable in Denmark, Ireland and the United Kingdom. The Directive is only applicable to employees transferred for over 90 days who will remain on foreign payroll. EU member states are afforded discretion to implement specific rules, which may vary from country to country.

ELIGIBILITY REQUIREMENTS:

The EU ICT permit applies to employees who are managers, specialists, and trainees as defined under Article 3 of the Directive, and who are not nationals of an EU/EEA country, Switzerland or Turkey. Under the Directive "managers" are defined as individuals holding senior positions, those directing the host entity or supervising other managers. "Specialists" are defined as employees possessing specialized knowledge essential to the host entity's business activity, techniques or management. And "Trainees" include recent university graduates transferred for career development.

Additionally applicants under the Directive must:

- Possess an employment contract with an entity established outside the EU and who will temporarily be transferred to one or more branches of the company in one or more of the member states in the EU. Note that the host entity and the entity from where the intra-company transferee is being transferred must belong to the same company or be part of the same corporate group.
- Reside outside of the EU at the time of the application.
- Possess experience with their employer outside of the EU for a minimum period of 3 to 12 uninterrupted months for managers and specialists; and 3 to 6 months for trainees. As the employment period must be immediately prior to the assignee's transfer to the EU, contractors and new hires will not be eligible.

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- Meet the employment conditions of the issuing member state, such as professional experience, education qualifications, or salary requirements. Labor market testing will not be required.

GENERAL BENEFITS WITHIN THE FIRST MEMBERSTATE

The EU ICT permit issued in the first member state will allow holders to work at any affiliated entity within the country issuing the principal permit. The ICT application shall be submitted to the member state where the first stay will take place or to the member state where the longest stay shall occur.

- The permit will be valid for a maximum period of 3 years for managers and specialists, and 1 year for trainees. Should an initial permit be issued for a shorter validity than the maximum, it will be renewable up to the maximum validity period for that permit.
- Once the maximum validity of 3 years has been reached (or 1 year for trainees) the assignee may apply for a national work and/or residence permit in one of the member state per national regulations, or for a new EU ICT permit. However, member states are permitted to enact a 'cooling-off' period and require that the assignee depart the country for a certain amount of time (6 months maximum) before the employee can file for a new EU ICT permit.
- Immediate family members can obtain dependent status for the same duration, which will include work authorization for those of legal working age.

INTRA-COMPANY MOBILITY WITHIN THE EUROPEAN UNION

The most important characteristic of the EU ICT permit is that, under certain conditions, it will provide work authorization in other EU member states in addition to the country issuing the permit. EU member states cannot have competing national schemes with the ICT Directive. With one application system, the new scheme is more simplified with a unified process across all participating jurisdictions, thereby reducing employers' administrative obligations and burdens. However, this benefit is not without limitation; the Directive distinguishes between short- and long-term mobility, and each participating second member state may have differing requirements, such as notification procedures or additional permit approvals. Individual member states are also afforded some flexibility on how to incorporate this provision within their own national legislation.

Short Term Mobility

Under short-term mobility, intra-company transferees with a valid permit may stay for a period of 90 days out of each 180 days in each second or subsequent member states. Short-term mobility does not generally require any (or only minimal) immigration requirements. Individuals with an EU ICT permit will be allowed to start working for an affiliated company in the second member state almost immediately.

Each EU country is permitted to allow short-term mobility to occur freely, without stipulating any notifications. However, the second member state may require some type of notification from the sponsoring host entity in the first member state, including posted worker notifications. The sponsoring entity may also be required to communicate the intention of the transfer and submit documents in the official language of the second member state. However, the EU ICT permit holder will be allowed to begin work in the second member state as soon as the notification is filed. The second member state has 20 days to object according to the reasons set out in the Directive under Article 21.

Long Term Mobility

If the intra-company transferee will be required to stay in the second member state beyond the 90-out-of- 180-days threshold, the rules for Long Term Mobility will apply. In this instance, the second member state can choose to implement the Directive by either:

- 1. Allowing the intra-corporate transferee to enter and work in the second member state on the basis of and for the period of validity of the EU ICT permit issued by the first member state and under the same conditions as described above for short-term mobility; or
2. Alternatively, the second member state can require that the assignee apply for a long-term mobility permit. Adjudication of the additional permit should be no later than 90 days, during which the employee can be allowed to begin working in the second member state. The second member state will need to inform the first member state when a permit for long-term mobility is issued.

Examples

Scenario 1: U.S. Director of Marketing and Shipping from ABC Ltd., USA, will be transferred to ABC's Netherlands office for 2 years and will then be moved to the Spain office, but will remain on U.S. payroll. He is currently in the U.S. and meets the qualifications for an EU ICT permit.

- If the Director will be working in Spain for less than 90 days, he may seek Short Term Mobility without making notification as Spain does not require this.
• If the Director will be working in Spain for more than 90 days, he may seek Long Term Mobility, which will require a permit from the Dirección General de Inmigración.

Scenario 2: An IT Specialist from XYZ Inc., Brasilia, has accepted an assignment at XYZ's subsidiary in Spain for 1 year and will remain on home payroll. While on assignment in Spain, she is asked to assist on a short project (less than 90 days) in France at another of XYZ's office. As the IT Specialist currently holds a long-term EU ICT in Spain, Traslado intraempresarial ICT UE, she may submit notification to the French prefecture before arrival in order to perform work.

COMPARING THE ICT DIRECTIVE WITH EU BLUE CARD

Overall, the EU ICT permit will be a tremendous benefit for multinational companies and their non-EU national employees by providing standardized immigration processes throughout the EU. In comparison to the EU Blue Card, the EU ICT permit not only provides greater mobility for long-term assignments but also allows short-term mobility using a single ICT permit. Responding to service requests or fulfilling work activities in another EU member state for a short duration can be done without any (or few) formalities. Furthermore, while the EU Blue Card was also designed to attract highly skilled workers, it requires a local employment contract and for the employee to be placed on local payroll. On the other hand, the EU ICT permit offers greater flexibility in transferring employees since the employee can remain on the home country's payroll and no new work contract is needed. Some disadvantages to the new rules do exist, including being limited to a maximum duration without possibility for a renewal. Nevertheless, the EU ICT permit provides significant long- term EU mobility benefits for employers.

Table with 2 columns: EU BLUE CARD and EU ICT Directive. Row 1: For non-EU citizen. Row 2: Highly qualified or skilled workers, researchers, vs Managers, specialists, trainees who will

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students, and vocational trainees	temporarily be transferred to one or more branches of the same company or same corporate group
Local Contract and Payroll	Foreign Contract and Payroll
No Tenure	3 to 12 uninterrupted months for managers and specialists; and 3 to 6 months for trainees.
Renewable	Not renewable but may apply for new permit after maximum validity

MEMBER STATE IMPLEMENTATION

BAL will be monitoring for updates and will release any news on the content and/or implementation schedule as they become available.

SPAIN

Spain was the first EU member state to implement the EU ICT Directive. The Directive entered into force on 30 July 2015 and the Spanish government implemented it through the Entrepreneurs Act. In order to be able to apply for the EU ICT permit in Spain (locally referred to as *Traslado intraempresarial ICT UE*), the assignee will be required to have worked for at least 3 months with the sending company immediately prior to the start of assignment in Spain, and must hold a University degree or 3 years of experience in a similar position. This is in addition to meeting the normal requirements of the Directive mentioned above under Eligibility. The process for the EU ICT permit follows the same path as the ICT permit regulated under the Entrepreneurs' Act in terms of documentation, processing time, and allows the assignee to make the application while outside of Spain or while in-country under a legal status. Spain is currently experiencing a processing time of 25-35 working days owing to the heavy volume of applications.

In Spain, to qualify as a Manager the employee must have the title of Director or a more elevated position.

For both short-term and long-term mobility, as a second member state, Spain requires that the employee submit a notification to Unidad de Grandes Empresas y Colectivos Estratégicos (UGEyCE). The General Directorate of Migration may reject the mobility within 20 days if the eligibility conditions are not fulfilled.

NETHERLANDS

The Dutch Decree adopting provisions of the ICT Directive were published on 2 November 2016 and the rules entered into force on 29 November 2016. If the employee qualifies for an EU ICT permit, it will be granted regardless of whether he or she applies for the traditional ICT work permit or under the Highly Skilled Migrant Program (HSMP).

If the employee enters into a local Dutch employment contract with the host subsidiary in the Netherlands, the Directive's EU ICT program is not available, and the company must choose between national programs like the HSMP or the EU Blue Card. However, nationals of countries that have entered into a bilateral trade treaty offering an ICT option, such as the US-NL Friendship Treaty or the Dutch Japanese Treaty on Commerce and Trade, may

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still choose to apply for a residence permit under that program, provided they meet the eligibility requirements. Foreign nationals who are intra-company transferees from a company group entity located within the EU will follow the traditional ICT scheme that is now the ICT-NL scheme or may apply under the HSMP. However, in such instances, they will not benefit from the EU mobility under the new ICT Directive. Employers who are recognized sponsors in the Netherlands will have EU ICT Permits 'Fast tracked,' which takes approximately 2-3 weeks for processing.

The following are the specific qualifying conditions (though there may be others) for transferring an employee to the Netherlands:

- Employee must have been employed by sending company for 3 consecutive months prior to the transfer
- Employee's salary must accord with the threshold stipulated by the IND and UWV for highly skilled migrants
- Specialists and managers must have a university level diploma and professional qualifications; trainees must have a masters diploma
- The host entity may not have been established for the sole purpose of transferring the employee
- Transferee must have spent the longest period in the Netherlands if the ICT permit was issued in the Netherlands
- Transferee must be outside the Netherlands while the ICT application is processing
- After 1 year (for trainees) or after 3 years (for managers or specialists), the employee must leave the Netherlands for at least 6 months before a new residence permit can be applied for in the Netherlands.

Short Term Mobility: For short-term mobility in the Netherlands the employer will have to notify UWV of the short stay. After notifying the UWV the individual may start work.

Long Term Mobility: A Residence permit will be required for the Netherlands. After submitting the application the individual may start work.

FRANCE

The French Decrees transposing provisions of the Directive 2014/66/EU on intra-company transfers were published on 1 November 2016 and took effect the same day. As such, the ICT (Détaché) permit now falls within the scope of the EU ICT Directive. Holders of the ICT (Détaché) permit under the Directive are eligible to undertake short and long-term assignments in other EU member states which have implemented the EU ICT Directive, for the duration of the validity of the ICT (Détaché) permit under simplified procedures. Employees, who meet the eligibility requirements under the EU ICT Directive, will need to apply for the ICT (Détaché) under one of the 4 different categories of ICT:

1. ICT Seconded: this is for ICTs on foreign payroll coming to a French affiliate in a senior management position or to contribute expertise. They must have at least three months' continuous tenure in the group. There is no minimum salary required, but the salary must be consistent with type of employment, and the applicant may need to show sufficient means of support. The maximum duration of the permit is up to three years, after which the holder cannot renew it in country, but must apply for a new permit. Currently, France does not impose a cooling-off period.

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2. ICT Mobile Seconded: this option is available for foreign nationals holding EU ICT permits issued by another EU country who are assigned to France as an ICT for longer than 90 days.
3. ICT Trainee: this is for employees participating in an internship under an internship agreement. The ICT trainee permit is a temporary residence permit that is valid for up to one year, and allows up to 90 days in another EU country.
4. ICT Mobile Trainee: this option is available for foreign nationals holding an EU ICT trainee card issued by another EU country. It allows stays of more than 90 days for intra-company transfers.

Short Term Mobility: EU ICT permits will be issued to individuals holding an EU ICT permit in another EU/EEA country and transferring to France on a similar type of work permit. If they already hold an ICT residence permit in another EU/ EEA country for more than 90 days, they may work in France short-term (up to 90 days) by submitting notification to the French prefecture before arrival.

Long Term Mobility: Individuals holding an EU ICT permit in another EEA country for more than 90 days may transfer to France for longer than 90 days (e.g. ICT Mobile Seconded and ICT Mobile Trainee). They must meet certain conditions such as job function and tenure with the company and they must apply for a Mobile ICT residence permit in France. (They may begin work upon arrival and for up to 90 days as long as they intend to apply for the Mobile ICT permit upon expiration of the 90 days.)

ITALY

Implementation of the EU Directive occurred with Legislative Decree No. 253/2016 on 11 January 2017. Guidelines are expected soon that will clarify ICT permit application procedures and whether employers may continue to use the existing ICT work permit route when assigning ICTs to Italy. Until further notice, the existing non-quota Highly Skilled Workers scheme for ICTs remains in place.

- New permits may only be requested after the employee has departed Italy for a three-month period upon expiration of an existing ICT permit
- Family members are eligible for family permits matching the duration of the principal's permit (even if less than one year)
- Processing will take a minimum of three months, including 45 days for issuing an ICT work permit and 45 days for issuing an ICT resident permit
- ICTs must comply with social security requirements unless a social security agreement applies.

Short Term Mobility: Individuals holding ICT permits from another EU country may work for an affiliated office in Italy for up to 90 days upon notifying the authorities.

Long Term Mobility: If longer than 90 days, the individual must apply for an ICT work and residence permit but is exempt from applying for a work visa.

BULGARIA

As of 21 May 2016, Bulgaria has implemented the Directive in Bulgarian law. Once the maximum validity period has been reached (3 years for managers and specialists or 1 year for trainees), the employee must remain outside of the Republic of Bulgaria for a continuous three-month period before applying for a new permit.

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Short Term Mobility: Intra-corporate transferees with a valid EU ICT permit issued by the first member state has the right to stay in the Republic of Bulgaria as a second member state for up to 90 days within any period of 180 days. Bulgaria requires no formalities or notifications.

Long Term Mobility: Intra-corporate transferee with a valid EU ICT permit issued by the first member state has the right to stay for more than 90 days in the territory of the Republic of Bulgaria as a second member state if the employee meets the conditions for access to the labor market under the Law on Labor Migration and Labor Mobility. An application for ICT Mobility Authorization should be submitted to the Employment Agency in accordance with Regulation (EC) № 1030/2002 of the Council. The current processing time is a minimum of 3 weeks and the employee may not work until the permit is approved. Once the authorization is issued by the Employment Agency, the employee may then apply for a residence permit with the immigration authorities.

HUNGARY

The Directive was implemented on 30 September 2016 in Hungary. In accordance with the Directive, the employee must apply for the EU ICT permit if he or she fulfills all eligibility requirements. The processing time can take up to 60 days by law.

Short Term Mobility: For employees working in any member state outside of Hungary holding an EU ICT permit, the Hungarian employer must submit a notification to the Labor Office and submit a form to the Immigration Office (along with a PoA, signed on behalf of the Hungarian entity).

Long Term Mobility: A Long Term Mobility Permit will be issued for third-country nationals residing in any member state outside of Hungary holding an EU ICT permit from another EU member state. The Long Term Mobility permit should be issued within 21 days as the Labor Office is not involved in the process. Once the permit is issued, the employee may start his or her assignment. The employee will need to submit the permit application to the host EU country's Hungarian Consulate, where he or she currently holds an EU ICT permit.

GERMANY

Germany has submitted to Parliament a draft law in order to implement the new EU ICT Directive. As of 12 January 2017, the draft law has not been published. There is no clear timeline when the draft will be published, as the German elections will not be held until September 2017. It is likely that the law will not be published before the election. The following has been proposed in regards to the implementation of the ICT Directive for Germany in addition to the regular eligibility requirements stipulated by the Directive. There are three different work authorizations under the Directive:

1. **German EU ICT Card** - If Germany is the main country of residence and the ICT assignment will be for more than 90 days:

- The employee needs to have been employed with the sending company for at least 6 months prior to his or her assignment.
- An assignment letter must be provided, indicating work place, job description, role, working hours, salary etc.
- For new ICT permits, a six months cooling-off period (counted from the last actual day of the previous assignment) will apply to managers, specialists and trainees, even for individuals re-assigned to a new role.
- Application must be filed with Federal Employment Agency (FEA) for pre-work approval.

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- Once the pre-approval is issued, an application must be filed with Immigration authorities for the final ICT permit.

2. Short Term Mobility (Notification) - For short-term assignments not longer than 90 days within a 180-day period, the Federal Office of Migration and Refugees (FOEMR) must be notified thereof. A special department for the notification process will be created in the FOEMR. The same documents will be required that were filed for the ICT permit in the first member state, as German authorities need to confirm that the employee meets German employment law and that the salary meets the German salary requirements. The FOEMR will then issue an approval of the notification letter and the employee will need to carry the letter when entering Germany. If the FOEMR does not reach a decision to either reject or approve the notification within 20 days, it must issue an approval.

3. Long Term Mobility (ICT Mobility Card) - For Assignments longer than 90 days, an application must be made with the FEA to issue a pre-approval for the work authorization. The immigration authorities will then issue the long term ICT Mobility card. This ICT Mobility Card only applies to employees who are already holding an EU ICT card from another member state and where the main country of residence is not Germany.

If the application is made 20 days before the assignment, the activities in Germany are permitted under the 90 days within 180 days rule until a final decision is made by the immigration authorities. In case notification for a short-term assignment was already made, the applicant must file for the long-term mobility application 20 days before the end of the assignment to be granted the mobility permit.

ROMANIA

The government in Romania has adopted the ICT Directive as of August 2016. However, the immigration authorities are still reviewing the requirements and procedures, as the Directive has only been recently implemented.

CZECH REPUBLIC

New ICT Directive will likely take effect in the first half of 2017; however, the government has not published any confirmed dates.

LATVIA

The ICT Directive has been published and integrated into Latvian law but has not gone into effect. Currently, the Directive is slated to go into effect starting 1 March 2017.

AUSTRIA

The expected implementation is scheduled for 1 April 2017. The current legal draft has not been passed by the Austrian parliament.

BELGIUM

There will be different implementations in Brussels, Flanders, Wallonia and the German-speaking territory, which will likely to be delayed for later in 2017.

SLOVENIA

Implementation is scheduled for 1 January 2018, but this has not yet been officially confirmed.

FINLAND

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Finnish authorities are currently working on updates to the legislation in regards the ICT type permits.

PROCESSING CONSIDERATIONS

As each EU nation begins to adopt and enforce the EU ICT Directive within its own national legislature, BAL is waiting to see how the new harmonized process will modify existing visa procedures. Challenges remain, however, for example, several member states will have to create an intra-company transfer process from scratch. Furthermore, BAL has encountered different embassies and consulates applying the newly implemented visa requirements and procedures with significant variance. BAL has already noted differences in document requirements and procedures among foreign missions around the world during ICT applications. While such discrepancies are not unusual when a country adopts a new rule or regulation, they have been multiplied in that new Directive 2014/66 affects numerous countries. If planning to use the Directive 2014/66 strategically for your company's intra-Europe mobility, we recommend that you contact your BAL representative for more information on how to use the ICT category to your advantage for both short- and long-term assignments.