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Summary of the Impact Asssment

Accompanying document to 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

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1. PROBLEM DEFINITION

As a result of the globalisation of business and skills demand, movements of managerial and technical employees of branches and subsidiaries of multinational corporations, temporarily relocated for short assignments to other units of the company, have in recent years become more crucial. However, a number of factors currently limit the scope for international companies to rely on mobility of third-country national intra-corporate transferees (ICTs): the lack of clear specific schemes, the complexity and diversity of visa or work permit requirements, rigidities, costs and delays in transferring foreign ICTs from one European corporate headquarters to another and the difficulties with securing family reunification. In practice, there is general agreement among EU Member States (MS) on the categories admitted as ICTs, generally identified as ‘key personnel’, but the admission criteria and the duration of work permits vary widely across EU MS and in some cases the procedures for admission can be particularly long or difficult. In addition, rights granted to ICTs are highly variable between MS. The lack of data does not allow a complete and objective picture. Available data show, however, that the number of ICTs in individual EU MS (e.g. around 4 500 third-country nationals in Germany, 3 000 in the Netherlands, 2 000 in France and 1 000 in Spain, Italy and Slovenia) is much lower than in non-EU countries such as Canada, Japan and the United States.

This situation is likely to influence the inflows of ICTs into the EU MS, leading to loss of the potential benefits that they could bring (innovation, competition, expansion of activities, putting the EU in a stronger position in its relationships with international partners and, ultimately, creation of wealth and growth), and could have an adverse impact on investment location.

In addition, these rigidities hamper effective implementation of GATS commitments relating to ‘mode 4’, which do not cover conditions of entry, stay and work, and also limit companies’ ability to harness their potential.

2. SUBSIDIARITY PRINCIPLE

The main reasons for common action at EU level stem from the following issues:

- **Facilitating intra-EU mobility.** Rigidities in transferring foreign ICTs from one European corporate headquarters to another take on particular relevance for multinational companies. Action at EU level is the only way to remove these rigidities, by facilitating intra-EU mobility (in the framework of intra-corporate movements), which requires a common system for admission of such workers.
- **Enhancing the attractiveness of the EU as a whole.** The treatment granted to ICTs along with the conditions and procedures governing their movements influence the extent to which multinational companies decide to do business or invest in a certain area. Therefore, action at EU level could help to make the EU as a whole more attractive for foreign investments and send a clear message to third-country national ICTs.
- Promotion of such transnational movements requires a climate of **fair competition**. In this connection, there is a need to lay down common working conditions and other rights for ICTs.

- **Facilitating the EU’s international commitments in the context of the WTO.** Action at EU level (rather than at MS level) on entry and residence conditions for ICTs could better ensure full **consistency and complementarity between immigration policy and the common commercial policy.**

EU added value

The added value lies in the following aspects in particular:

- Third-country national ICTs and foreign companies would benefit from a common, transparent and attractive European framework for key personnel, reinforcing the EU knowledge economy, allowing better use of human resources of multinational companies and fostering investment.
- A common legal framework laying down common conditions of admission and stay for ICTs would guarantee fair competition.

3. OBJECTIVES

The overall goal that possible EU action should pursue is to support economic development of EU businesses by responding better to their needs for intra-corporate transfers of skills, while contributing to guaranteeing fair competition.

This objective is consistent with the EU 2020 Strategy, which sets the Community the objective of becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists or graduate trainees to enter Europe in the framework of an intra-corporate transfer should be seen in this broader context.

The specific immediate objectives of possible EU action are:

1. to provide a transparent legal framework, including a set of common conditions of admission for third-country national ICTs entering the EU;
2. to create more attractive conditions of stay for ICTs and their family;
3. to facilitate (intra-EU) mobility of third-country ICTs;
4. to guarantee fair competition, including a secure legal status for ICTs;
5. to facilitate the EU’s international commitments in the context of the GATS.

4. POLICY OPTIONS

The following options were considered:

Option 1: Status quo. Current developments in Member States would continue within the existing legal framework. However, this would mean that the EU as a whole would not be attractive for enterprises and companies, which would still face difficulties in making best use of their staff, although the need for highly qualified resources would be increasing.

Option 2: Directive dealing with the conditions of entry and residence of intra-corporate transferees. The EU legislation would provide a common definition of intra-corporate transferee, either targeting some specific positions within the transnational corporation (2A), or identifying key personnel through salary and qualifications criteria (2B), as in the Blue Card Directive. It would also lay down harmonised criteria for entry, a common set of rights, possibly including a range of social and economic rights (2C) in addition to basic working conditions (2D), and a maximum duration of stay. This option would create a more transparent legal environment. However, the rules would still vary between Member States in terms of procedure and family rights and EU mobility would not be provided.

Option 3: Directive providing for intra-EU mobility for intra-corporate transferees. In addition to the points covered by option 2, provisions would be introduced to allow intra-corporate transferees to move within the EU and work in several establishments located in different Member States. Swift and simple transfer from third-country to EU companies would, however, not be ensured and family issues would not be tackled.

Option 4: Directive facilitating family reunification and access to work for spouses. By way of derogation from Directive 2003/86/EC, family reunification would not be made dependent on obtaining the right to permanent residence and on the intra-corporate transferee having a minimum period of residence. Residence permits for family members would be granted more rapidly. Moreover, in respect of access to the labour market, the time limit of 12 months could possibly be removed. As a result, companies would be able to attract intra-corporate transferees more easily. However, the right to work for spouses could put the members of the family of ICTs in a more favourable situation than the members of the family of nationals of new Member States subject to transitional measures.

Option 5: Directive laying down common admission procedures. A single document allowing the holder to work as an intra-corporate transferee and to reside on the territory of the Member State would be issued. In parallel, a maximum time for processing applications would be set (e.g. 1 month). This option would significantly improve the ability to transfer key personnel easily and rapidly and reduce the time and costs for attracting intra-corporate transferees.

Option 6: Communication, coordination and cooperation among Member States. This option would contribute, to a certain extent, to approximating national practices on intra-corporate transfers from third-country nationals across the EU and creating a more harmonised legal framework. However, the impact is likely to be very limited if the measures are not mandatory.

5. COMPARING THE OPTIONS

Table 1: Comparison between policy options — Intra-corporate transferees

Assessment criteria		PO 2A	PO 2B	PO 2C	PO 2D	PO 3	PO4	PO5	PO6
Relevance to global objective		VVV	VVV	VVV	VV	VVV	VVV	VVV	V
Impacts	Economic impacts at EU level	VVV	VV	VVV	VV	VVV	VVV	VVV	0/V
	Social impacts at EU level	VV	VV	VV	V	VV	V	VV	0/V
	Impacts on third countries	VVV	VV	VV	VV	VV	VV	VV	0
	Impacts on fundamental rights	VV	VVV	VVV	VV	VV	VVV	VV	0
Feasibility	Administrative burdens	-V V	-V	VV	V	-VV	-VV	-V (business)/-VV (MS)	0
	Difficulty/risks of transposition	-VVV	-VV	- VVV	- VVV	-VV	-VV	-VVV	0
	Financial impact	-V	-VV	-VV	-V	-V	-V	-V (business)/-VV (MS)	-VVV

6. THE PREFERRED OPTION

Comparing the options and their impact, the preferred option is a combination of options 2, 3, 4 and 5. A harmonised definition of intra-corporate transferee based on the specific positions occupied by ICTs within the group of undertakings (option 2A), enlarged social and economic rights (option 2C), intra-EU mobility (option 3), enhanced family rights (option 4, without access to the labour market for partners) and fast-track procedures (option 5) would contribute to better allocation of intra-corporate staff across third-country and EU entities and make the EU more attractive for third-country national key personnel of multinational corporations, while offering guarantees against unfair competition.

Table 2: Intra-corporate transferees — Preferred policy option

Main field of EU action	Key feature of the preferred policy option	Policy options and sub-options considered
Definition of ICTs	Common definition based on the specific positions occupied by ICTs (managers, specialists and graduate trainees)	PO 2A
Conditions of admission	Work contract with a company located in a third-country and belonging to the multinational corporation	PO 2A
	A duration of prior employment, if required	
	Professional qualifications in line with the position taken	
	Higher education qualifications and a training plan for graduate trainees	
	No labour market test	
Conditions of residence	A common set of rights including working conditions as referred to in Directive 1996/71 and an enlarged set of further socio-economic rights	PO 2C
	Intra-EU mobility	PO 3
	Family reunification	PO 4
Admission procedure	Single permit for work and residence	PO 5
	Maximum time for processing applications	PO 5

Main advantages

Common conditions of admission are an advantage to the competitiveness and attractiveness of EU enterprises belonging to transnational corporations, while the reference to working conditions laid down by Directive 96/71 and the application of equal treatment in a series of rights principle ensures a fair competition between EU workers and third country national intra-corporate transferees.

Facilitating family reunification for ICTs' spouses (without access to work) and supporting intra-EU mobility strengthen the attractiveness of EU for ICTs.

The single permit for work and residence, joint with the maximum time for processing applications contribute to a rapid application and facilitates the transfers of key personnel.

All the above-mentioned advantages will contribute to the EU's competitiveness and attractiveness for enterprises and investments by facilitating movement of ICTs.

Main disadvantages

The main disadvantage of the preferred policy option will be the costs involved: Member States will have to make modifications to their legislative frameworks in order to adapt to the provisions of the preferred policy option, mainly concerning the common definition, the

single permit and intra-EU mobility. From the employers' perspective, additional time and resources will also be involved to comply with the new conditions of admission, but the simplifications flowing from a common framework will far outweigh this necessary investment.

Administrative costs

The number of ICTs is estimated to be roughly 16500 a year. The hourly tariffs of MS personnel are estimated at €23. Examination of an application takes six hours.

The preferred option would give rise to the following additional administrative costs for MS authorities: start-up costs in the first two years for familiarisation with the obligations (one working day and 50 officials per Member State concerned); costs for processing an application and issuing a residence permit (most of these costs connected with processing the application already arise at present); costs resulting from the coordination needed for intra-EU mobility; obligation to submit annual statistics to the Commission and other MS on the numbers of residence permits or visas issued to third-country national ICTs (10 hours per Member State).

7. MONITORING AND EVALUATION

Monitoring and evaluation arrangements will take the form of a Commission evaluation report three years after the deadline for transposition of the Directive, based on Member States' reports. Member States would also be required to send the Commission and the other Member States statistics on the numbers of third-country nationals who were granted a single permit or had their permit renewed or withdrawn during the previous calendar year, indicating their nationality and their occupation.