

Intragroup mobility of third country nationals: easier, faster, and lawful (3/38/19)

Nationals of a third-country such as Belarus holding a Latvian work permit are not allowed to work in other EU member states. This article explores how third-country nationals can lawfully move within multinational enterprises across the EU.

The Intra-Corporate Transfer (ICT) card

The EU has adopted rules to govern and facilitate the intragroup movement of third-country nationals across the EU. The most significant piece of legislation is 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, which the member states were to pass into their national law by 29 November 2016.

The Directive introduces a new type of residence permit, the Intra-Corporate Transfer card, which carries the acronym ICT and allows its holder to stay and work in the first member state and, in specified cases, also in other member states.¹

An ICT card should be taken out by an employee planning to transfer from a company registered in a third country (e.g. Kazakhstan, Russia, or India) to a company registered in a member state (e.g. Latvia, the Czech Republic, or the Netherlands) within the same group.

When applying for an ICT card, the employee should file the following documents with the consular office of the member state where the first stay is intended:²

1. Evidence that both the host entity and the company doing business in the third country are within the same group;
2. Evidence that the company employed the person for at least 3-12 consecutive months in the case of managers and specialists or 3-6 months in the case of interns before the ICT;
3. A contract of employment that specifies the length of the transfer as well as the employee's position and remuneration during that period;
4. Evidence that the employee has the professional qualification and experience required by the host entity.

Under article 12 of the Directive and section 23(1) of the Immigration Act, which passes the Directive's provisions into Latvian law, an ICT in the case of managers and specialists is limited to three years, with one year for interns. Section 23(11) of the Immigration Act allows the employee being transferred to renew a temporary residence permit as ICT employee no earlier than six months after the previous permit expired.

Mobility of third-country nationals across the EU

Multinational groups often transfer third-country nationals for short-term assignments to several related companies in various member states. Such mobility is typical of audit service providers as well as IT, transport, logistics and other professionals. For example, during the audit season an employee of a

Belarus-registered company may transfer to a related company in Lithuania and later to one in Latvia. If the employee holds a Lithuanian work permit, is a Latvian work permit also necessary?

If the employee holds an ordinary Lithuanian temporary residence permit with the right to employment, they are allowed to travel within the Schengen area but are not allowed to be employed in other member states. For lawful employment in Latvia, the employee should take out a work permit from Latvian migration authorities.

It is possible that one of the EU basic freedoms – free movement of workers – is abused. After obtaining a work permit in one member state, the worker moves to another member state and is employed there without a local work permit. That would happen if a Belarus audit service provider holding a Lithuanian work permit entered Latvia for employment in the group company without a Latvian work permit.

Such behaviour may have administrative liability implications for the Latvian company.³

To facilitate intragroup mobility of third-country nationals, article 21 of the Directive provides that a third-country national holding a valid ICT card issued by the first member state is allowed to stay in any second member state and work in any other entity within the same group of companies for up to 90 days in a given 180-day period.⁴

So the Belarus audit service provider holding an ICT card issued by Lithuanian migration authorities is allowed to work in a Latvian company within the same group for up to 90 days in a given 180-day period. If the length of work in Latvia under the Lithuanian ICT card exceeds this limit, the worker should apply for a Latvian work permit under Latvian law.

¹ Article 3(i) of the Directive

² Article 5(1) of the Directive

³ Under section 189.2 of the Administrative Offences Code, employing one or more (up to five) persons without a work permit attracts a fine of 140–430 euros on the individuals or a board member, with or without removing the right to act as board member. Employing more than five persons without a work permit attracts a fine of 430–700 euros on the individuals or a board member, with or without removing the right to act as board member.

⁴ This condition of the Directive has been included in section 9(3)(8) of the Immigration Act.