



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senate of the Czech Republic for its opinion on the proposal for a Directive on intra-corporate transferees (ICTs) {COM(2010) 378 final}.

First of all, the Commission is pleased to note that the Czech Senate shares its objective to set up harmonised conditions for admission of third-country national intra-corporate transferees, with a view to strengthening the EU economy and its competitiveness.

Further, the Commission takes note of the requests from the Senate of the Czech Republic aiming to further clarify the rules for movements of intra-corporate transferees across the EU and to add security criteria for assessing the credibility of companies according to Article 10 (7) of the proposal.

In response to the remarks of the Czech Senate on the duplication of insurance payments and the definition of a 'specialist', the Commission would like to make the following comments.

As regards the provisions of the proposal relating to social security issues, the Commission would like to clarify that the proposal aims to grant intra-corporate transferees an extended set of rights, in accordance with the objective stated in the Stockholm Programme of ensuring fair treatment of third-country nationals protected by rights comparable to those of EU citizens. These rights must also be consistent with those already granted to other migrants. Moreover, the proposed scheme should prevent, as far as possible, companies employing third-country national workers from benefiting from any competitive advantage, through downgraded and cheaper rights.

As a result, the proposals provide that third-country national intra-corporate transferees enjoy equal treatment with nationals of the host Member State as regards social security rights. This means that those third-country nationals are protected, under the same conditions as nationals of the Member States, against the risks listed under Article 3 of Regulation 883/2004 and that they benefit, in particular, from sickness, invalidity, accidents at work, family and old-age benefits during their stay in the EU.

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PRAGUE 1*

Intra-corporate transferees may have an insurance against these risks in their country of origin and wish to maintain such insurance for the limited period of their assignment in the EU. However, they need to be protected as well as regards the risks relating to their stay in the territory of the EU. Indeed, third-country national workers, regardless of their duration of stay and the place where their work contract was signed, should enjoy adequate protection just as other workers when they are working on the territory of the EU.

Such a principle, however, does not necessarily lead to duplication of insurance payments, as bilateral agreements on social security signed by Member States precisely aim to avoid such situations.

As regards the category of 'specialist', the Commission would like to underline that skilled staff are crucially needed as these skills are not available in the national labour market. Moreover, the definition of 'specialist' should remain flexible enough to adapt to the diversity of business needs.

The proposal defines the specialist as a person possessing uncommon knowledge essential and specific to the host entity. In the absence of specific rules applying to the profession in question, his/her uncommon skills and high level of qualification could be demonstrated by formal qualifications and/or professional experience relevant to the profession or sector concerned. As a result, in order to qualify under the scheme as a 'specialist', the third-country national must provide not only evidence that he or she has rare skills, but also that those skills are closely related to the group of undertakings in which he or she is working.

Therefore, the knowledge of a 'specialist' under the proposal cannot be general and held commonly throughout the industry. It may for example involve a person's familiarity with a product or unusual business process.

I hope that these clarifications address the issues raised in your opinion and look forward to continuing our dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*