

TRANSLATION OF LETTER

From: President of the Bundesrat
To: President of the European Commission
Dated: 24 September 2010
Subject: **Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer**

COM(2010) 378 final; Council document 12211/10

Dear Mr Barroso,

At its 874th sitting on 24 September 2010 the Bundesrat decided to send the Resolution in the Annex to the Commission.

(complimentary close)

signed

Resolution of the Bundesrat

Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

COM(2010) 378 final; Council document 12211/10

At its 874th sitting on 24 September 2010 the Bundesrat adopted the following position pursuant to Sections 3 and 5 EUZBLG (Act on cooperation between the Federal State and the Länder in matters relating to the European Union):

1. The Bundesrat recognises the Commission's efforts to take account of the demand from multinational companies for managerial and qualified employees and graduate trainees from third countries for their branches and subsidiaries in order to facilitate the intra-corporate transfer of this category of workers in the EU and hence increase the attractiveness of the EU as a location for multinationals. It regards the introduction of a uniform procedure and the application of common criteria for the admission of this group of people to be a suitable means of controlled and demand-driven immigration in the light of economic and demographic trends. It is important to maintain the jurisdiction of the Member States for regulating access to national labour markets. In this context it should be noted that the right of the Member States to set an admission quota for third-country nationals is not affected by the proposal.
2. The Bundesrat calls on the Federal Government to ensure during the substantive negotiations at European level that the degree of regulation of the proposed Directive does not go further than is necessary to achieve its purpose.
3. The Bundesrat takes the view that the proposal for a Directive needs amending in some places so that the objective can be attained more clearly and internally consistent rules can be adopted. The Bundesrat therefore calls on the Federal Government to make the following points during the negotiations at European level:
4. The Bundesrat suggests using the term '*Aufenthaltserlaubnis für konzernintern entsandte Arbeitnehmer*' for the issued permit. The term used in the proposal, '*Aufenthalts- und Arbeitserlaubnis für konzernintern entsandte Arbeitnehmer*', gives the impression that two permits are required, although in the proposal for a Directive the Commission deliberately avoids using the additional requirement of a work permit.* The suggested term would correspond to German law, under which '*Aufenthaltstitel zur Ausübung einer Beschäftigung*' (residence permits for the purpose of employment) are issued rather than '*Arbeitserlaubnisse*' (work permits).
5. The statement in the Explanatory Memorandum that no binding legal right for third-country nationals to the issue of a residence permit is created should be included in the legislative part of the proposed Directive for the sake of clarification. In this regard, it could be underlined at an appropriate place that discretion will be used to decide on the issue of a residence permit.
6. The Bundesrat sees no need to introduce a simplified procedure for groups of undertakings which have been recognised for that purpose. The principal objective of the

* Note from translator: the term 'intra-corporate transferee permit' is used in the English version of the proposal for a Directive.

proposed Directive is to establish a rapid procedure with the minimum of red tape for all intra-corporate transfers of third-country nationals. However, the necessary national control mechanisms for preventing abuse and circumvention of the rules must be guaranteed. The Bundesrat therefore takes the view that a further procedural simplification is out of the question; nor should it be necessary.

7. The Bundesrat would point out that the proposal for a Directive contains different statements about the duration of the permit for managers and specialists. (Explanatory Memorandum on Articles 9-12: duration of three years; Article 11(2): extended to three years;[†] Article 16(3): Maximum duration of three years). The Bundesrat calls on the Federal Government to work towards a uniform duration.

8. The Bundesrat takes the view that the requirement set out in Article 12 (Procedural Safeguards) for the competent authorities of the Member State to adopt a decision within 30 days of the complete application being lodged is too short and cannot be objectively justified. A period of 90 days within which the decision must be taken reflects practice more closely and would also be consistent with Directive 2009/50/EC ('EU Blue Card'). The proposed tight processing deadline would therefore also lead to unjustifiable differences in the treatment of applications from other third-country nationals seeking entry.

9. The Bundesrat also favours a clarification to the effect that the application for a permit does not give rise to constructive approval or a claim for compensation if the deadline is not met. It calls on the Federal Government in the discussions at European level to work towards supplementing the proposal for a Directive so that the consequences of a decision on an application not being taken within the deadline should be assessed under national law.

10. The Bundesrat welcomes the reference to Directive 2003/86/EC from the perspective of consistency. However, the deadline for processing applications for residence permits for family members set out in Article 15(4) is too short in view of the increased amount of work involved. The Bundesrat is in favour of a deadline at least as long as that for processing an application by an inter-corporate transferee.

11. The Bundesrat takes the view that the procedure suggested by the Commission for transfer to another Member State is not suited as it stands to achieving an efficient solution that meets needs. That applies in particular to the list procedure described in Article 11(4) and the rules in Article 16. Access to the labour market is regulated by national jurisdiction. The Bundesrat sees a need in the Directive for a clear delimitation of powers that establishes to what extent Member States may take decisions whose consequences also include the ability to work in other Member States. The Bundesrat believes that such a power of decision should encompass short-term transfers to other Member States at most.

12. In order to find a coherent solution, the Bundesrat suggests aligning the rules for transfer to other Member States essentially on those for third-country nationals entitled to long-term residence. The permit issued should entitle the holder to transfer to another Member State for up to three months and also include the right to short-term assignments. A new application procedure for the issue of a residence permit in the respective Member State should apply to assignments longer than three months and to a

[†] Note from translator: '*Verlängerung um drei Jahre*' translates into English as 'extended by three years'.

change in the main transfer to another Member State. This would maintain the Member States' powers to the greatest possible extent, avoid overlapping jurisdiction and reduce the risk of abuse. For the sake of clarity, all the provisions concerning a transfer to other Member States should be grouped together in the proposal for a Directive.

13. The Bundesrat would point out that the requirement for the Member States to keep statistics must be kept within the scope of a reasonable level of expenditure. The data required by the current version of Article 17 are excessive, in particular with regard to the required disaggregation. The Bundesrat therefore suggests that the requirement to provide statistics be limited to the number of permits issued and citizenship.

14. The Bundesrat is sending this opinion directly to the Commission.