Brussels,02/03/2011
C/2011/1146

Dear President,

Thank you very much for transmitting the Bundesrat's position on the Commission's Proposal for a directive of the European Parliament and the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer – COM (2010) 378.

The Commission is pleased to note that the Bundesrat shares its objective to set up an attractive scheme laying down harmonised conditions for admission for third-country national intra-corporate transferees, with a view to strengthening EU economy and competitiveness.

Moreover, the Commission welcomes the concrete suggestions from the Bundesrat aiming to further simplify and clarify the rules for intra-corporate transferees.

Further, the Commission would like to reassure the Bundesrat that, in accordance with the Lisbon Treaty and as explicitly stated in Article 6(3) and Recital 17 of the proposal, this specific scheme does not impinge on Member States' power to determine the volumes of admission of third-country nationals coming to their territory in order to seek work.

More broadly, the Commission recognises that the principle of subsidiarity is a guiding principle in exercising its power of initiative whenever the proposals do not fall under the exclusive competence of the Union. This principle has been carefully taken into account as regards this proposal as well.

The Commission takes note of the change of wording suggested by the Bundesrat as regards the name of the specific permit issued to intra-corporate transferees. The Commission agrees that this name must not give the impression that two permits are required, since the residence and work permits are to be combined in a single document.

As regards the right for third-country national intra-corporate transferees to be issued a residence permit, the Commission would like to clarify that, as stated in the explanatory memorandum, the proposal on intra-corporate transferees does not create per se the right of admission. Indeed, it is for the Member State concerned to apply the requirements and to decide on the application lodged by the third-country national. Therefore, it is for national authorities to verify whether the conditions provided by Article 5 are met and to assess against national law, among others, whether the third-country national applicant has the professional qualifications required for the position concerned, meets the national conditions as regards the

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remuneration and does not represent a threat to public policy, public security or public health. Moreover, even if all the necessary checks have been positively concluded, Member States remain free to reject the application on the grounds of volumes of admission of third-country nationals.

However, if the third-country national fulfils all the conditions provided in Article 5 and is not refused a permit on one of the grounds listed in Article 6, the Member State concerned should grant him/her a permit as stated in Article 11. Indeed, as recalled above, the aim of this proposal is to set up a framework which is transparent and based on the principle of legal certainty. This aim would be undermined if the criteria for admission or grounds for refusal could be extended in a discretionary way.

The Bundesrat takes the view that procedural simplification for certain groups of undertakings is neither necessary nor desirable.

The Commission would like to underline that the rules included in Article 10 providing for an accelerated procedure as regards the issuance of permits and visas for certain groups of undertakings bring added value to European businesses and contribute to fostering the attractiveness of the scheme for trustworthy business partners. In parallel, the Commission agrees that the need remains to carry out certain checks in order to ensure that the rules are properly applied and that the Directive is not abused. As a result, this optional simplified procedure is restricted to transnational corporations presenting sufficient credentials and is accompanied by appropriate sanctions. In any event, these facilitations cannot lead to lifting any requirement for admission.

Turning to the duration of the permit, the Commission would like to clarify that the maximum duration of the ICT permit is three years for managers and specialists and one year for graduate trainees, as stated notably in Articles 11(2) and 16(3). The unfortunate translation mistake will be duly corrected.

As regards the 30-day time limit to handle the applications, the Commission believes that this short deadline is a crucial element for competitiveness of businesses, as highlighted by many stakeholders. Indeed, the ability of EU companies to better and more quickly match supply and demand in key internal personnel is of utmost importance for many international companies. Taken account of the temporary stay of intra-corporate transferees, the Commission believes that their situation cannot be compared to that of the Blue Card holders and that this difference in the time-limit is justified by these specific circumstances.

In the absence of any specification on that issue, the Commission's interpretation is that the consequences of a decision not being taken within the deadline are to be assessed under national law.

Speeding up family reunification was identified by stakeholders as a key driver to attract intra-corporate transferees. The choice of the 2-month period of time to process the applications for residence permits for family members should allow a balance to be struck between the objective of swift family reunification and the need to give the Member States sufficient time to carry out the necessary checks before granting the family the right of entry into their territory.

Setting up a mechanism facilitating intra-EU movements for intra-corporate transferees is one of the most important elements ensuring attractiveness of the proposed scheme. In that regard,

the Commission welcomes the Bundesrat's constructive views on intra-EU mobility. However, it would like to underline the specific needs of intra-corporate transferees in this area, which require enhanced mobility compared to the procedure put in place for long-term residents.

As regards statistics, the Commission would like to stress the need to closely monitor the implementation and impacts of the Directive. The proposed disaggregation under Article 17 has to be read in the light of this objective.

I am looking forward to continuing our policy dialogue.

Yours faithfully,

/-/ Maroš Šefčovič