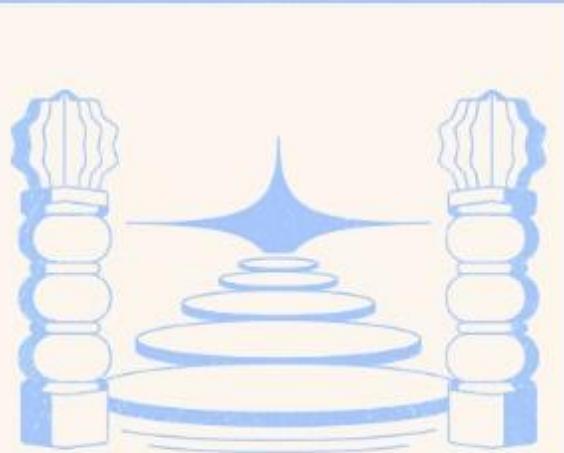




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Trusted guidance
to build bridges.



The ICT Directive*

December 21, 2022

[Directive 2014/66/EU of the European Parliament and of the Council, of May 15, 2014, on the conditions of entry and residence of nationals of third countries in the framework of an intra-corporate transfer \(ICT\)](#)

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I. The Basics

What is meant by intra-corporate transfer?

Whom does it apply to?

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The definition

'Intra-corporate transfer' means the **temporary secondment for occupational or training purposes of a third-country national** who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third- country national is bound by a **work contract** prior to and during the transfer, to an entity belonging to the **undertaking or to the same group of undertakings which is established in that Member State**, and, where applicable, the mobility between host entities established in one or several second Member States.



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People concerned

- For the purpose of this Directive, intra-corporate transferees should encompass **managers, specialists and trainee employees**.
- At the center of attention: the rights, of third-country nationals and of their **family members** in the framework of an intra-corporate transfer.
- **Directive does not apply** to researchers, self-employed, admitted as full-time students or undergoing a short-term supervised practical training as part of their studies.



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II. When and on what terms one can apply?

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Criteria for admission

- **Applicable travel documents**
- **The host entity** and the undertaking established in a third country must **belong to the same undertaking or group of undertakings**.
- **Employment within the same undertaking**, from at least **three up to twelve uninterrupted months** immediately preceding the date of the ICT in the case of managers and specialists, and from at least **three up to six uninterrupted months** in the case of trainee employees.
- **Work contract** and, if necessary, an **assignment letter** from the employer containing the following: (i) details of the duration of the transfer and the location of the host entity or entities; (ii) evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities; (iii) the remuneration as well as other terms and conditions of employment; (iv) evidence that the third-country national will be able to transfer back to an entity belonging to that undertaking or group of undertakings and established in a third country.
- **Professional qualifications and experience** needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a trainee employee, the **university degree** required.

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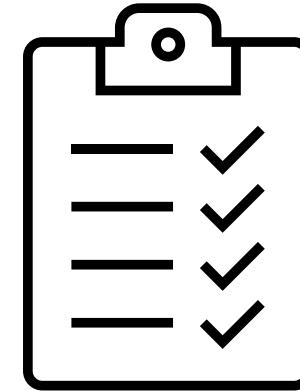




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For trainees



- **University degree.**
- It may be required to present a **training agreement**, including a description of the training programme, which demonstrates that the purpose of the stay is to train the trainee employee for career development purposes or in order to obtain training in business techniques or methods, its duration and the conditions under which the trainee employee is supervised during the programme.
- Proof that they will benefit from **genuine training** and not be used as normal workers.

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DENIED

Grounds for rejection, withdrawal, and non-renewal

- **With a view to fighting possible abuses**, Member States can refuse, withdraw or not renew an ICT permit where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees and/or does not have a genuine activity.
- Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.
- **Sanctions**. Member States may hold the host entity responsible for failure to comply with the ICT conditions of admission, stay and mobility.



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DENIED

Grounds for rejection, withdrawal, and non-renewal

Transferee-specific

- Documents presented were fraudulently acquired, or falsified, or tampered with.
- The intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorized to reside or is not complying with the general mobility rules set out in the Directive.
- The maximum duration of stay has been reached.

Company-specific

- The host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.
- The host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions.
- The host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place.
- The intent or effect of the temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation.



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III. Steps and procedures

Towards receiving an intra-corporate transferee permit

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How and when to apply?



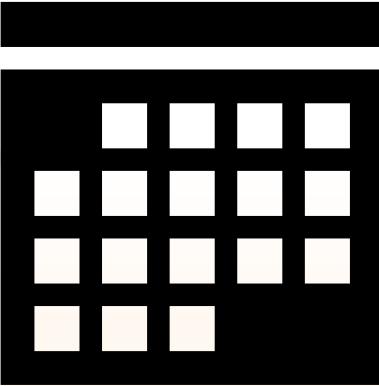
- The application for an intra-corporate transferee permit shall be submitted to the authorities of the Member State where the first stay takes place. Where the first stay is not the longest, the application shall be submitted to the authorities of the Member State where the longest overall stay is to take place during the transfer.
- Member States shall determine whether an application is to be submitted by the third-country national or by the host entity.
- The application for an intra-corporate transferee permit shall be submitted when the third-country national is residing outside the territory of the Member State to which admission is sought.
- Fees may be applied.

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Procedural safeguards

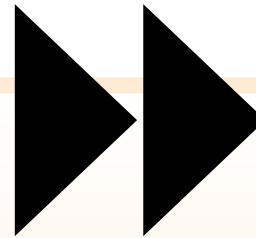
- The competent authorities shall **adopt a decision** on the application for an ICT permit or a renewal of it and notify the applicant in writing **not later than 90 days** from the date of the submission.
- Member States may set a **maximum deadline of 90 days prior to the expiry of the ICT permit** for applying for renewal.
- Reasons for a decision declaring inadmissible or rejecting an application or refusing renewal shall be given to the applicant **in writing**. Reasons for a decision withdrawing an intra-corporate transferee permit shall be given in writing to the intra-corporate transferee and to the host entity.
- Where the validity of the intra-corporate transferee permit expires during the procedure for renewal, Member States shall **allow the intra-corporate transferee to stay on their territory** until the competent authorities have taken a decision on the application → temporary residence permits.
- Any decision declaring inadmissible or rejecting the application, refusing renewal, or withdrawing an intra-corporate transferee permit shall be **open to legal challenge in the Member State concerned**. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.

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Simplified procedures

- ICT permit through a single application procedure: residence + work.
- A simplified procedure for entities or groups of undertakings which have been recognized for that purpose by Member States in accordance with their national law or administrative practice. Recognition should be regularly assessed:
 - exempting the applicant from presenting some of the evidence.
 - fast-track admission procedure allowing intra-corporate transferee permits and permits for long-term mobility to be issued within a shorter time.
 - facilitated and/ or accelerated procedures in relation to the issue of the requisite visas.

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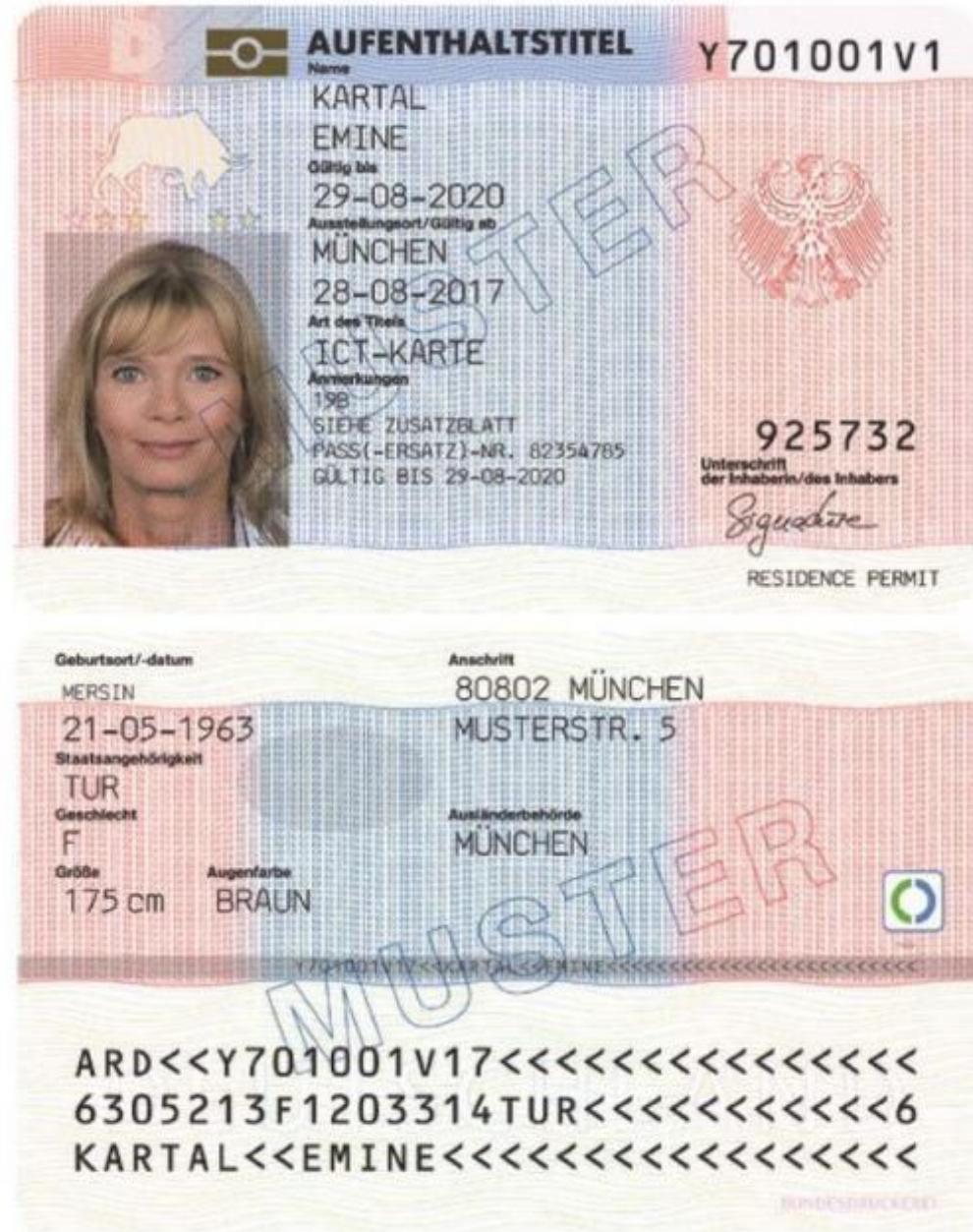


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IV. The permit has been issued!

What now?





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Rights to move and work



Residence & Mobility

- **Three basic rights:** (a) the right to enter and stay in the territory of the first Member State; (b) free access to the entire territory of the first Member State; (c) the right to exercise the specific employment activity authorized in any host entity belonging to the undertaking or the group of undertakings.
- **Duration:** one transfer to the Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for trainee employees after which they should leave for a third country unless they obtain a residence permit on another basis.
- Member States concerning the same third-country national in the same **may require a period of up to six months to elapse between the end of the maximum duration of a transfer and another application** Member State.

Renumeration & Social protections

- Remuneration granted to the third-country national during the entire intra-corporate transfer **cannot be less favorable** than the remuneration granted to nationals of the Member State where the work is carried out occupying comparable positions.
- It may be, for example, in the interests of the intra-corporate transferees to **remain affiliated to the social security system of their country of origin** if an interruption of their affiliation would adversely affect their rights or if their affiliation would result in their bearing the costs of double coverage.
- Member States should always retain the possibility to grant more favorable social security rights to ICTs.



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Other rights & freedoms

Rule of a thumb: equal treatment with MS nationals and posted workers →

Freedom of association and affiliation and membership of an organisation representing workers or employers.

Recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures.

Provisions in national law regarding the branches of **social security** (unless the law of the country of origin applies by virtue of bilateral agreements or the national law of the Member State where the work is carried out) ensuring that the **intra-corporate transferee is covered by the social security legislation in one of those countries**.

Payment of old-age, invalidity and death statutory pensions based on the intra-corporate transferees' previous employment and acquired by intra-corporate transferees moving to a third country, **under the same conditions and at the same rates as the nationals of the Member State**.

Access to goods and services and the supply of goods and services made available to the public (except procedures for obtaining housing as provided for by national law, and services afforded by public employment offices).



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Mobility of family members



- ICTs should be granted **favorable conditions for family reunification** in the Member State which issued the ICT permit or allowed long-term mobility.
- Family reunification shall not be made dependent on the requirement that the holder of the permit has reasonable prospects of obtaining the right of permanent residence and has a minimum period of residence.
- Family members' **access to the labour market** should be facilitated.
- The competent authority of the Member State shall **process the residence permit application for the ICT's family members at the same time** as the application for the ICT permit or the permit for long-term mobility.
- The duration of validity of the residence permits of family members in a Member State shall, as a rule, end on the date of expiry of the ICT permit or the long-term mobility permit.

→ **the upside:** ICT permit grants more favorable conditions for family reunification than Directive 2003/86/EC

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Family benefits



In many Member States, the right to family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive should not affect the right of a Member State to restrict, under certain conditions, equal treatment in respect of family benefits, since the intra-corporate transferee and the accompanying family members are staying temporarily in that Member State.

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V. Intra-EU mobility of ICT permit holders

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Specific schemes

The Directive sets up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State is allowed to enter, to stay and to work in one or more Member States:

- **Short-term mobility** covers stays in Member States other than the one that issued the intra-corporate transferee permit for a period of up to 90 days per Member State. It is limited to a maximum of 90 days in any 180-day period.
- **Long term mobility** – 90+ days. Where the need for long- term mobility arises after the short-term mobility, the second Member State may request that the application be submitted at least 20 days before the end of the short-term mobility period.
- It is not possible to submit a notification for short-term mobility and an application for long-term mobility at the same time.



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Short-term intra-EU mobility

The **second Member State may require the host entity in the first Member State to notify the first Member State and the second Member State** of the intention of the intra-corporate transferee to work in an entity established in the second Member State. → Based on the notification, the second Member State may object to the mobility of the intra-corporate transferee to its territory within 20 days from having received the notification.

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Long-term intra-EU mobility

- The second Member State allow the intra-corporate transferee to stay and work on its territory based on and during the period of validity of the intra-corporate transferee permit issued by the first Member State; or **may require the applicant to transmit some or all the documents required for an initial application.**
- The intra-corporate transferee shall be allowed to work in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that: (i) the period of validity of the intra-corporate transferee permit issued by the first Member State has not expired; and (ii) if the second Member State so requires, the complete application has been submitted at least **20 days before the long-term mobility starts.**
- Where the second Member State takes a positive decision on the application for long-term mobility as referred to in paragraph 2, **the intra-corporate transferee shall be issued with a permit for long-term mobility allowing the intra-corporate transferee to stay and work in its territory.**

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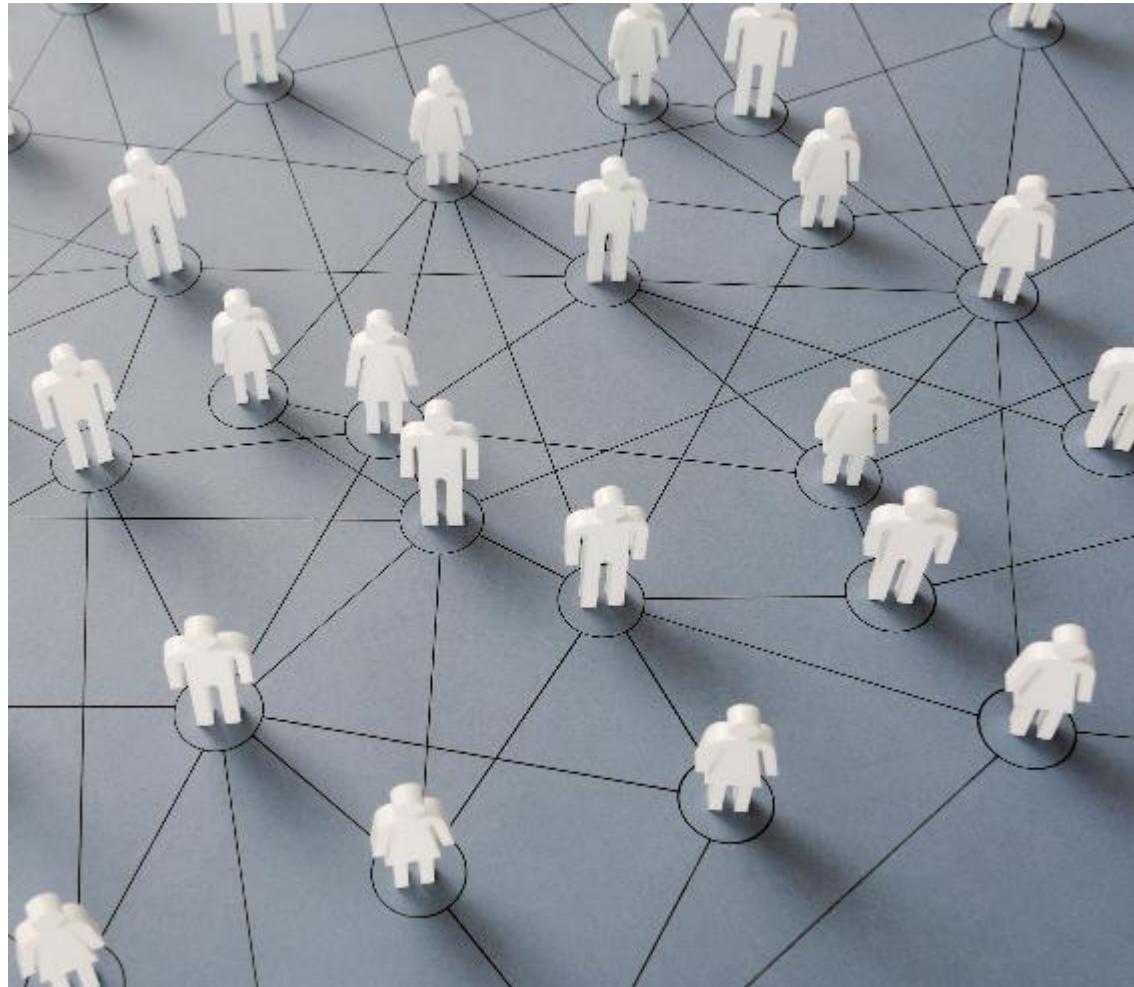


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The challenge – social security coordination

- As a general principle, an employee is subject to the social security scheme of the country in which they perform their professional activities (i.e., “work state principle”).
- While the **ICT Directive** foresees general regulations for immigration aspects of intra-EU mobility, i.e., a notification and an application for a mobile ICT permit, it does not provide a set of rules for social security coordination with intra-EU mobility. Short- and long-term mobility to another EU Member State can be perceived as an additional assignment from the first host EU member state to the second one. This situation may result in an additional secondment or a so-called simultaneous employment situation within the EU, and the applicability of the EU coordination rules on social security.
- There may be several practical challenges with this scenario, e.g., when the home country is not willing to issue a second notification, or when the home country concluded a bi-lateral treaty with only one of the two EU Member States involved.



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VI. Contextualizing the Directive

Stakeholders, motivations, and the legal context

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Cumbersome negotiations and compromises



- **Stakeholders:** global businesses, third-country talents, Member States and the European Commission + labour migration consultancies
- **Aim:** Intra-corporate transfers offer multinational companies the ability to employ their non-EU employees in multiple EU member states simultaneously, while at the same time simplifying the required immigration formalities.
- **Elements of circular migration:** the Directive may also benefit countries of origin as ICT may foster transfers of skills, knowledge, technology and know-how.
 - In fact, the EU ICT scheme is frequently used for putting staff at the disposal of the EU based group entity to help with the delivery of a service contract between the EU based entity and the client based in the same country or several other MS (Minderhoud & Lange, 2018).

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Road to the Directive

- **The Stockholm Programme** (2009) recognized that in the context of the important demographic challenges in the future and, consequently, an increased demand for labour, **flexible immigration policies** will make an important contribution to the Union's economic development in the longer term.
- EC COMM 'Europe 2020: A strategy for smart, sustainable and inclusive growth' (2010) set the objective of reducing the administrative burden on companies and better matching labour supply with demand.

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ICT and trade agreements

- ICT commitments also made under **General Agreement on Trade in Services (GATS)** and **bilateral trade agreements**:
 - EU-CARIFORUM agreement (2008)
 - EU-JAPAN agreement (2019)
 - Since those commitments do not cover conditions of entry, stay and work, the **Directive seeks to complement and facilitate their application**.
 - **The main issue** - the international commitments clearly cover ICT mobility shorter than 90 days, whereas the EU-Directive has a scope that starts from 90 days.
- To prevent possible conflict with the trade agreements, the Directive specifically provides that it applies without prejudice to **more favorable provisions of the trade agreements**.
- Due to the need to implement the EU-ICT Directive, **ICT is probably the category of the trade agreements** that is most recognized as well as most implemented.





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Types of ICT entry routes used in the Member States (Lange, Tans & Azhar, 2021)

Name of the country/Type	Specific entry route for ICT available	Entry route based on general reference to the trade agreements	ICT entry route available as provided in the EU ICT Directive
Austria (AT)			■
Belgium (BE)			■
Bulgaria (BG)	■		
Croatia (HR)		■	
Czech Republic (CZ)	■		
Cyprus (CY)			
Denmark (DK)			
Estonia (EE)			■
France (FR)	■		
Finland (FI)	■		
Germany (DE)		■	■
Greece (EL)			■
Hungary (HU)			■
Ireland (IE)	■		
Italy (IT)	■		
Latvia (LV)	■		

Name of the country/Type	Specific entry route for ICT available	Entry route based on general reference to the trade agreements	ICT entry route available as provided in the EU ICT Directive
Lithuania (LT)	■		
Luxembourg (LU)	■		
Malta (MT)	■		
Netherlands (NL)			■
Poland (PL)			■
Portugal (PT)	■		
Romania (RO)	■		
Slovakia (SK)	■		
Slovenia (SI)			■
Spain (ES)			■
Sweden (SE)			■

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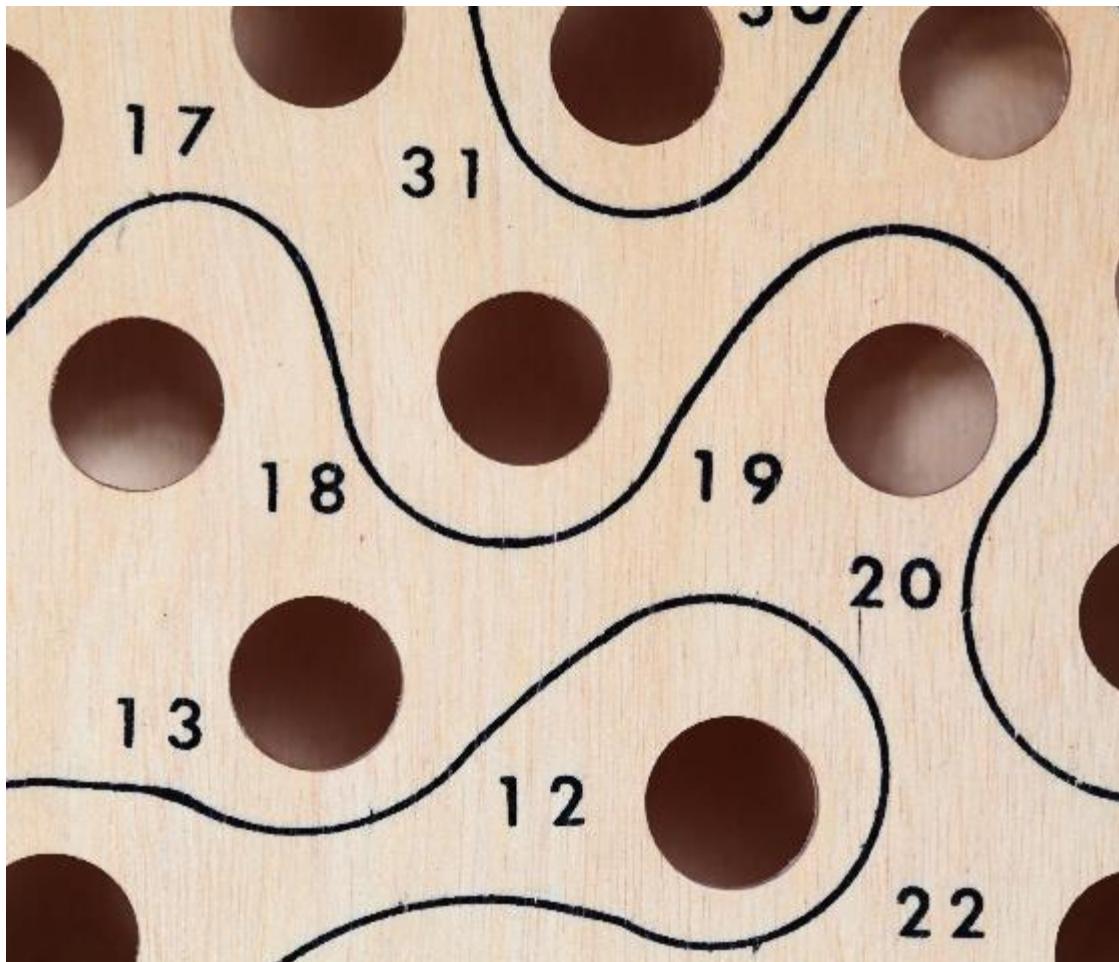


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Challenges from the MS perspective (Töttos, 2018)

- A **new target group** chosen by the Commission and the reasons why EU harmonization is considered necessary.
- Identifying ICT group in relation to other groups, such as **highly-skilled migrants and posted workers** → social security issues/ family benefits/ social security agreements.
- A new detailed **autonomous regime of intra-EU mobility**.





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VII. 9 years after

What good has the ICT directive done?

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How many ICTs have relocated to the EU so far?

Intra-corporate transferee permits issued
(Eurostat, 2022)

TIME	2017 ↓	2018 ⚡	2019 ⚡	2020 ⚡	2021 ⚡
GEO ⚡					
France	1 872	3 022	2 862	:	:
Hungary	177	:	:	:	1 248
Luxembourg	133	248	223	46	155
Latvia	6	6	6	4	12
Lithuania	1	29	45	31	9
Netherlands	0	4 507	4 375	1 871	:
Belgium	:	:	0	:	0
Bulgaria	:	:	:	:	0
Czechia	:	:	:	:	:
Germany (until 1990 former territory of the FRG)	:	:	:	:	648
Estonia	:	0	0	0	0
Greece	:	:	:	1	0
Spain	:	:	:	:	:
Croatia	:	0	0	:	45
Italy	:	:	:	67	:
Cyprus	:	25	36	6	27
Malta	:	11	5	0	0
Austria	:	150	118	142	61
Poland	:	:	3	:	0
Portugal	:	:	:	0	0
Romania	:	30	151	:	52
Slovenia	:	46	17	:	12
Slovakia	:	22	50	23	:
Finland	:	:	29	18	:
Sweden	:	:	:	:	:

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Overviewing transposition across the EU

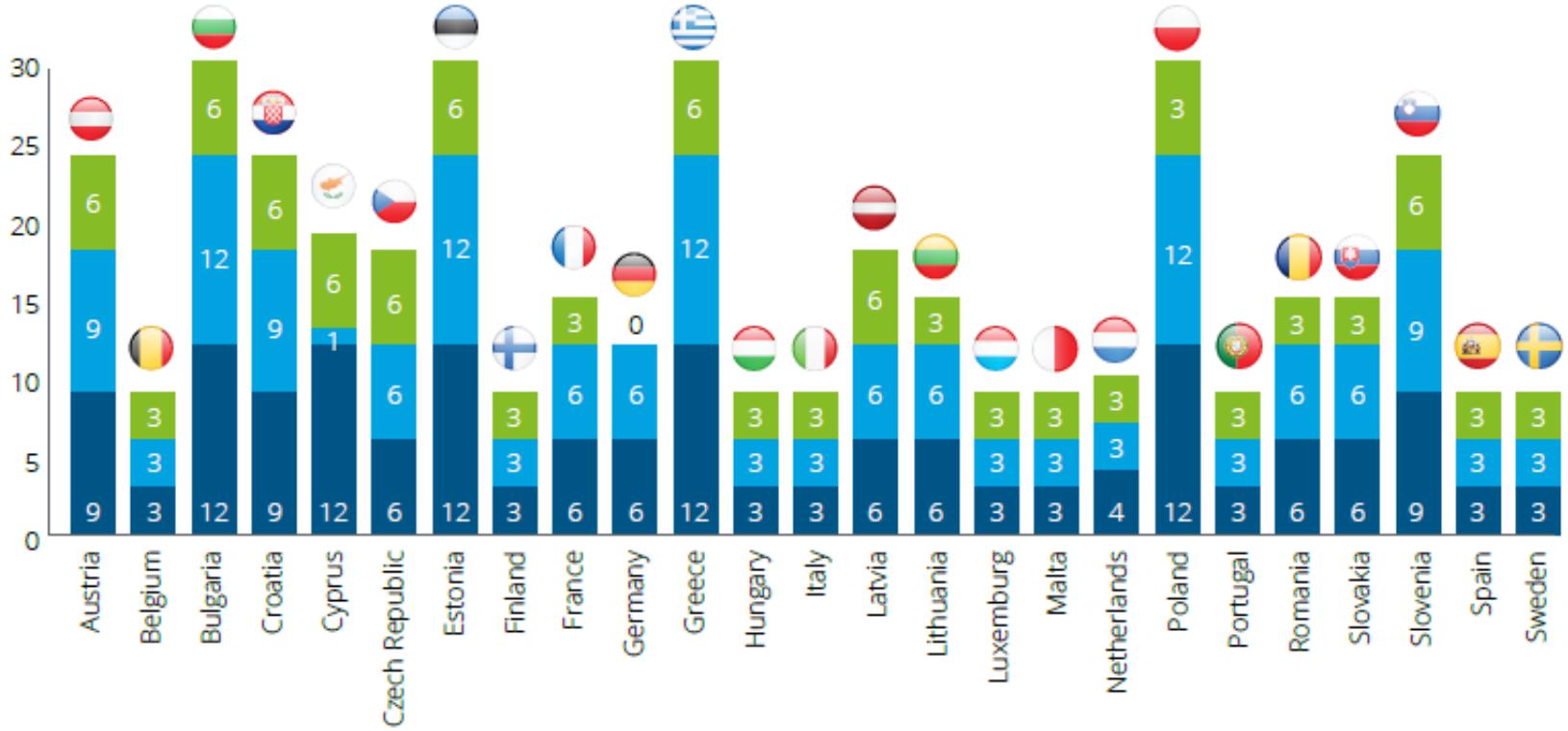
- Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **29 November 2016**, however:
 - Denmark and Ireland is not taking part in the ICT Directive.
 - Number of countries took longer/ are still in the process of transposition.
- Significant **divergences** exist in the implementation of the EU ICT scheme at domestic level.
 - Originate from the many 'may' and 'multiple-choice' clauses the Directive contains, but also from the varied legal migration traditions and political climates of MS.
 - **Business community tends to overlook the added value** the Directive creates and rather focuses on the persisting barriers to intra-EU mobility and the additional burden at national level (Antoons, Ghimis & Sullivan, 2018)

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Preceding employment requirement

- Minimum months of directly preceding employment with the entity/group of entities - Managers
- Minimum months of directly preceding employment with the entity/group of entities - Specialists
- Minimum months of directly preceding employment with the entity/group of entities - Trainees

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Source: Deloitte, 2021



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Diverging qualification requirements hamper intra-EU mobility

Diploma is required in following EU Member States:

Managers		Specialists		Mobile ICT	
Belgium		Latvia		Belgium	
Cyprus		Lithuania		Cyprus	
Estonia		Luxemburg		Estonia	
France		Malta		France	
Greece		Poland		Greece	
Hungary		Portugal		Hungary	
Italy		Romania		Italy	
Spain		Latvia		Spain	

Diploma is not required in following EU Member States:

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Source: Deloitte, 2021

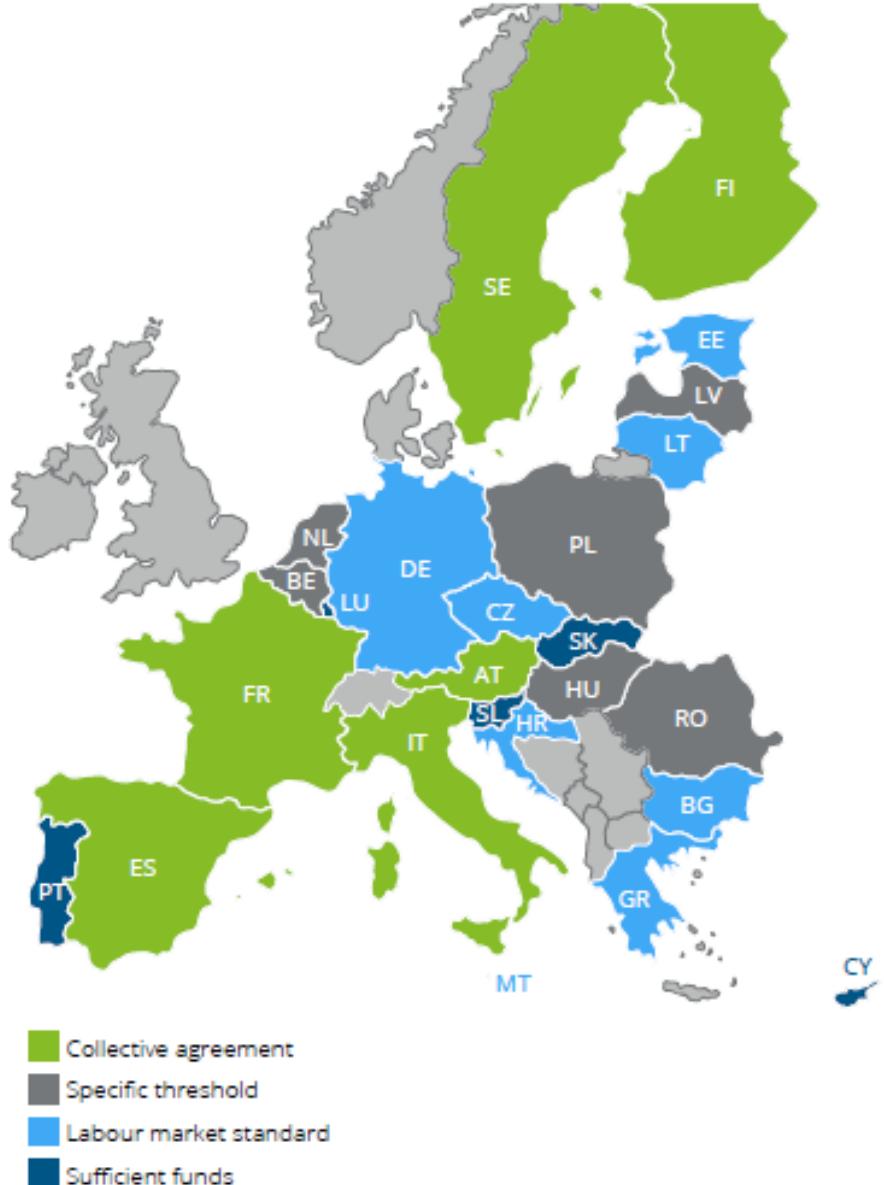


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Renumeration

- Broadly defined in the Directive as being '**not less favorable**' than the remuneration of a local employee.
- In practice, companies must consider various interpretations of this concept and **consult different resources in each Member State** to verify the exact requirements on the remuneration.





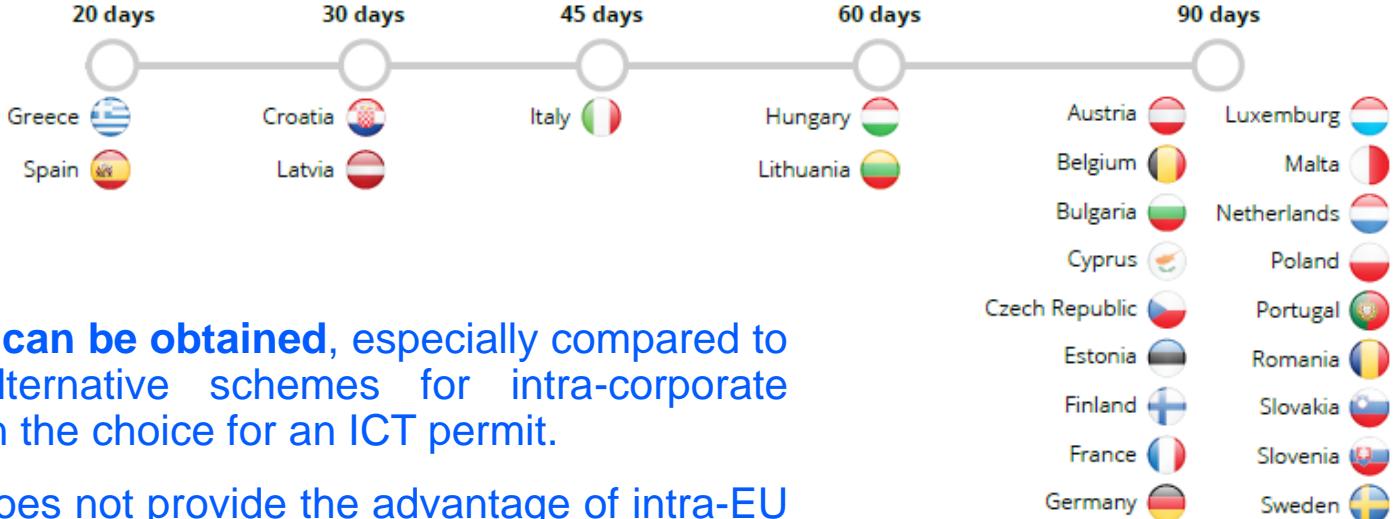
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Processing times

- The **speed with which an ICT permit can be obtained**, especially compared to the potentially existing national alternative schemes for intra-corporate transferees, is often a decisive factor in the choice for an ICT permit.
- While a **national alternative permit** does not provide the advantage of intra-EU mobility rights, this benefit of an ICT permit often does not compensate the disadvantage caused by too long processing times of an ICT permit.
- Only a few Member States offer a **fast-track procedure**, while Italy, the Netherlands, Portugal and Slovakia have a system of recognized sponsors that reduces either the number of required supporting documents or the overall processing times.

Legal processing time of an ICT permit application





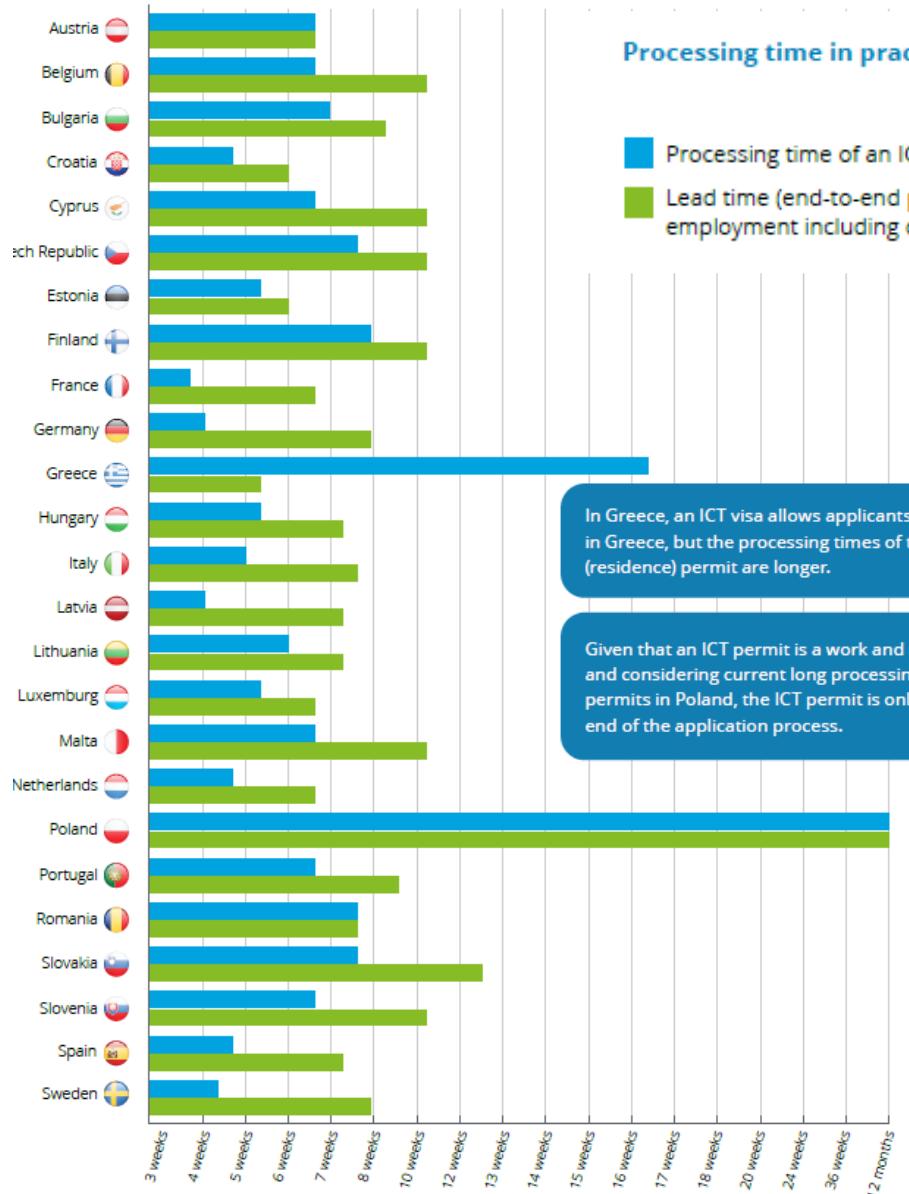
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Are other schemes available to intra-corporate
transferees?



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Processing time in practice

- Processing time of an ICT permit application once submitted (weeks)
- Lead time (end-to-end process from initiation of the case to actual start of employment including documents gathering and visa application) (weeks)

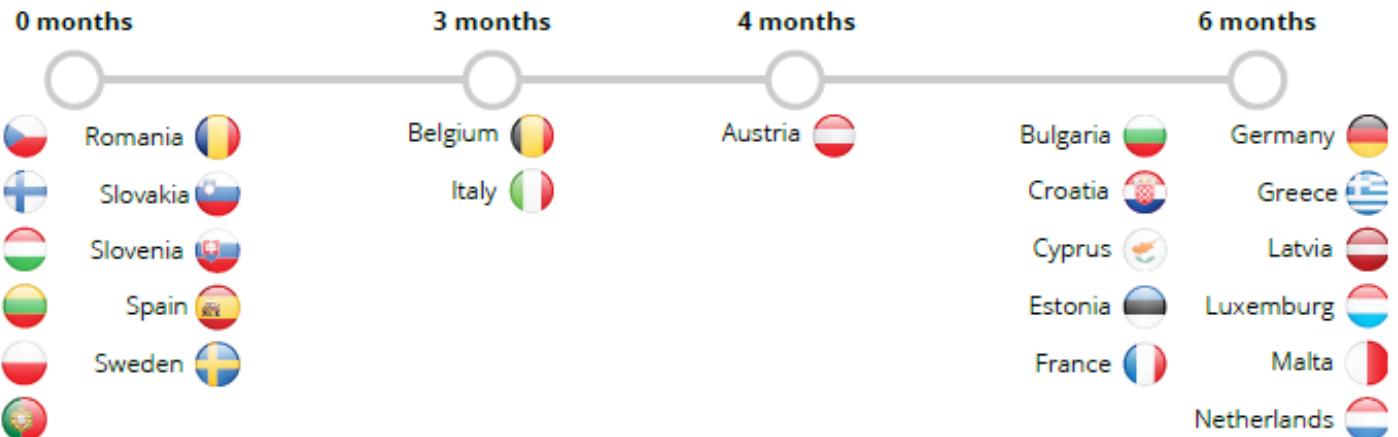
In Greece, an ICT visa allows applicants to start working in Greece, but the processing times of the actual ICT (residence) permit are longer.

Given that an ICT permit is a work and residence permit and considering current long processing times of residence permits in Poland, the ICT permit is only delivered at the end of the application process.

Source: Deloitte, 2021



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- A **cooling-off period** that must be respected after the maximum validity of a permit is absorbed, i.e., 3 years for managers and specialist and 1 year for trainees, requires employees to leave the territory of the EU to apply for another ICT permit.

It also varies in MS and increases the need for an alternative permit in some of them.



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Another layer of complexity: Posted Workers Directive

- The definition of a posted worker is one who, for a limited period, operates in an EU Member State other than that in which they normally do. Thus, an **ICT working on a short- or long-term mobility basis, falls within the scope of the Posted Workers Directive 96/71/EC**
- Among the various employer obligations and, such as guaranteeing equal pay for equal work, the PWD directive brings a **requirement to notify the responsible authorities of a posting**. The obligation consists of a simple declaration, i.e., a Posted Worker Notification (PWN), at the start of service provision at the latest, containing relevant information needed to allow factual verification at the workplace.
- Most Member States consider an intra-EU mobility assignment as a posting within the EU and will consequently require compliance with their local PWN. With short-term mobility, most Member States only require an ICT notification, while others include the PWN in the ICT notification and vice versa.
- For long-term mobility, an overwhelming majority of Member States require both a mobile ICT permit application and a PWN.

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Source: Deloitte, 2021

	Short-term mobility				Long-term mobility		
	No PWN is required, only an ICT notification	The ICT notification includes the PWN	The PWN includes the ICT notification	Both ICT notification and a PWN are required	Mobile ICT permit application and a PWN are required	Mobile ICT permit application includes the PWN	No PWN is required, only the mobile ICT permit application
Austria			✓			✓	
Belgium			✓		✓		
Bulgaria		✓				✓	
Croatia			✓		✓		
Cyprus				✓			✓
Czech Republic				✓			✓
Estonia		✓				✓	
Finland				✓	✓		
France				✓	✓		
Germany	✓						✓
Greece		✓			✓		
Hungary	✓				✓		

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Italy	✓					✓
Latvia		✓			✓	
Lithuania	✓				✓	
Luxemburg	✓				✓	
Malta		✓				✓
Netherlands	✓				✓	
Poland	✓				✓	
Portugal	✓					✓
Romania	✓				✓	
Slovakia	✓				✓	
Slovenia	✓				✓	
Spain	✓				✓	
Sweden	✓				✓	

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Rights of family members/ dependents

- While the ICT Directive establishes the right to access the labour market, a **'dependent' is not a homogenous concept across the EU.**
- Some dependents, such as **same-sex and factual partners**, are facing issues that can stem from either the fact that it is more difficult for them to obtain the dependent status, or from the restrictive nature of the alternative migration status that they do receive.
- **Self-employment** is another area that is often restricted for dependents.



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Country		
Hungary		●
Italy	●	
Latvia	●	
Lithuania	●	
Luxemburg		●
Malta		●
Netherlands	●	
Poland	●	
Portugal	●	
Romania		●
Slovakia	●	
Slovenia		●
Spain	●	
Sweden	●	

	Dependents have access to the labour market, but further conditions might apply	Dependents have no access to the labour market and have to apply for a work permit or change their immigration status
Austria		●
Belgium	●	
Bulgaria	●	
Croatia		●
Cyprus	●	
Czech Republic	●	
Estonia	●	
Finland	●	
France		
Germany	●	
Greece	●	

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VIII. Outlook

Should we expect any significant changes in regulation and/ or implementation?

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Next steps

- On general terms, the ICT directive is considered as a **success story** of EU legal migration governance.
- Given that the ICT scheme is relatively new, EU Member States are yet to establish practice with respect to **social security coordination rules** in the context of intra-EU mobility.
- With late adopters (for instance, Belgium) only recently transposing the directive, **case law** may be an important future factor in clarifying some of the broad, 'multiple-choice' clauses of the Directive.

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More sync with FTAs (Lange, Tans & Azhar, 2021)

- EU legal migration directives, including the ICT Directive, allow for the use of numerical quota. **Numerical quota** may not, however, be imposed under the trade commitments, unless scheduled. As only Bulgaria has scheduled a quota in relation to ICT, it is not possible for the Member States to introduce quota without contradicting their GATS commitments.
- As the trade agreements simply allow access for ICT for a period of one day up to three years (one year in the case of graduate trainees) **under the conditions of the trade commitments, ICT up to 90 days should be clearly covered as well**. As this is not the case in all Member States, this remains a gap in EU legislation.



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Thank you for your attention!

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Selected further readings

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