



**COUNCIL OF
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"I/A" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (**first reading**)

- Adoption of the legislative act (**LA + S**)
- = Statements

Statement by the Council, the Parliament and the Commission

This Directive establishes an autonomous mobility scheme providing for specific rules, adopted on the basis of Article 79(2), points (a) and (b) TFEU, regarding the conditions of entry, stay and freedom of movement of a third-country national for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, which are to be considered as a *lex specialis* with respect to the Schengen acquis.

The European Parliament and the Council take note of the Commission's intention to examine whether any action needs to be taken in order to enhance legal certainty as regards the interaction between the two legal regimes, and in particular to examine the need for updating the Schengen Handbook.

Statements by the Commission

- on the definition of "specialist"

The Commission considers that the definition of "specialist" in Article 3 (f) of this Directive is in line with the equivalent definition ("person possessing uncommon knowledge") used in the EU's schedule of specific commitments of the WTO's General Agreement on Trade in Services (GATS). The use of the word "specialised" instead of "uncommon" does not entail any change or extension of the GATS definition and is only adapted to the language now in use.

- on the bilateral agreements referred to in Article 18(2), points c) and d)

The Commission will monitor the implementation of Article 18(2), points (c) and (d), of this Directive in order to assess the possible impact of the bilateral agreements referred to in that Article on the treatment of intra-corporate transferees and on the application of Regulation (EC) No 1231/2010 and take, where necessary, any appropriate measure.

Statement by Hungary

Hungary expresses its serious disappointment regarding the adopted text in Article 18(2) and Recital (38) since it precludes the practical applicability of bilateral social security agreements and limits Member States in their competence when concluding such agreements.

Based on the Treaties social security policy belongs to the competence of Member States. We believe that the purpose of all secondary legislation should respect this. The aim of equal treatment harmonisation is to be interpreted in light of the competence rules of the Treaties. This Directive cannot restrict, nor impair the sovereignty of Member States in this area.

In addition in our view the reference to more favourable provisions in bilateral social security agreements is ambiguous, and thus does not ensure legal certainty. Finally Hungary regrets that the compromise text adopted could create a situation with significant negative impact on the investment readiness in certain economic relations. This may harm economic recovery, could hinder the stimulation of growth and the enhancement of competitiveness, which is a common priority for the EU.

Statement by Austria

Austria has repeatedly raised severe objections to the way equal treatment in the field of social security is dealt with under the “Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.” We did not succeed in formulating a text which is consistent with the other EU instruments and the wording contained in the text might give rise to many problems for national transposition, misunderstandings and misinterpretation at national and EU level. Especially in the field of family benefits the text does not sufficiently reflect the necessity for third country nationals of having acquired the necessary integration into the society of the host member state before entitlement to benefits have to be opened. Therefore, we request a detailed examination of all existing and any future texts concerning equal treatment in the field of social security before we can agree on such provisions. Austria therefore abstains from voting on the directive.