



GMS Flash Alert

Immigration Edition

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Belgium - Intra-Corporate Transfer Permit - Finally on Its Way

On 28 August 2020, the Law of 31 July 2020 regarding access to the territory, residence, settlement, and the removal of foreign nationals was published in the Belgian official gazette (*Belgish Staatsblad/Moniteur Belge*).¹

The Law of 31 July 2020, which came into force on 1 September 2020, foresees a partial transposition of Directive 2011/98/EU² regarding a single application procedure for a single permit for third-country nationals to reside and work in the territory of a member state. Also covered are a common set of rights for third-country workers legally residing in a member state and Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT).³

The Royal Decree providing the detailed provisions is still needed to enable the regional authorities to finally deliver the ICT permit.

WHY THIS MATTERS

Directive 2014/66/EU (the ICT Directive) establishes the framework for intra-corporate transfers of third-country managers, specialists, and trainees within the European Union (EU). (For related coverage, see [GMS Flash Alert 2017-085](#) (4 May 2017).) The aim of the ICT Directive is to facilitate intra-EU mobility and to ease the requirements for transferees working in more than one EU member state.

The 31 July law is welcome news for employers who have been awaiting the implementation of the ICT permit in Belgium for many years already. The introduction of the ICT permit in Belgium will have a large impact on globally operating companies engaging third-country nationals in the EU. International HR managers should be preparing for implementing this new legislation, which is intended to reduce the administrative burden associated with work assignments in several EU member states.

Background

The objective of the ICT Directive is to harmonise the regulations of various EU member states pertaining to transfers within a corporate group and to facilitate the intra-EU mobility of the staff of international groups in order to promote the transfer of knowledge and expertise within companies. The ICT Directive had to be implemented into domestic law by 29 November 2016. Belgium, however, failed to implement the legislation by the stipulated due date. The ICT Directive applies to managers, specialists and trainees who are not nationals of one of the EU member states; who have already been employed by a company resident outside the EU for at least six or three months; and who are temporarily transferred, on market terms, to one or more branches of the group company within the EU.

Short-Term Mobility

Short-term mobility is considered as a period of stay in EU member states, other than the one that issued the ICT permit, up to 90 days (in any 180-day period) per member state. Belgium already adopted the exemption for short-term-mobility provided that the individual has a valid passport or equivalent travel document and a valid ICT permit issued by the first EU member state that sent the employee for a short-term stay to Belgium. This ICT permit should be valid until the end of the period considered under the short-term-mobility exemption.

Long-Term Mobility

For long-term-mobility, as stipulated in the Law of 31 July 2020, the Royal Decree defining the provisions still needs to be published. Once the Royal Decree is published, employers will be able to apply for an ICT permit for Belgium for their third-country managers, specialists and trainees.

It is important to note that in previous regional legislation the Flemish, Walloon and Brussels Regions have defined different conditions for the ICT permit, such as different salary levels for each region, differences in accepted seniority, etc. (We cite to the relevant legislation of each region in the footnote below.⁴)

KPMG NOTE

The ICT permit is valid for a period up to three years for managers and specialists. After the allowed period of stay, the employee can only apply for a new intra-company transfer in an EU country after a “cooling-off” period of 90 days.

The KPMG International member firm in Belgium intends to provide an update when the Royal Decree is published.

FOOTNOTES:

1 For the Law of 31 July 2020 (*Loi portant dispositions urgentes diverses en matière de justice / Wet houdende diverse dringende bepalingen inzake justitie*) published on 28 August 2020, see: <http://www.ejustice.just.fgov.be/eli/wet/2020/07/31/2020015282/justel> or <http://www.ejustice.just.fgov.be/eli/loi/2020/07/31/2020015282/justel>.

2 See [Directive 2011/98/EU](#) on the EUR-Lex website.

3 See [Directive 2014/66/EU](#) on the EUR-Lex website.

FOOTNOTES continued:

4 See *Besluit van de Brusselse Hoofdstedelijke Regering van 16 mei 2019 tot wijziging van het koninklijk besluit van 9 juni 1999 houdende de uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers, wat betreft de toelating tot arbeid voor activiteiten gevoerd in het kader van een overplaatsing binnen een onderneming, van een seizoenarbeider, van een onderzoeker, van een stagiair, van een vrijwilliger, of in het kader van de Europese blauwe kaart* (in Dutch) at:

http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=19-06-04&numac=2019012781 for the Brussels Region; see *Arrêté du Gouvernement wallon du relatif à l'occupation des travailleurs étrangers et abrogeant l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers* (in French) at:

http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&pub_date=2019-06-19&caller=summary&numac=2019202870 for the Walloon Region; and see *Besluit van de Vlaamse Regering houdende uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers Zie wijziging(en)* (in Dutch) at: <http://www.ejustice.just.fgov.be/eli/besluit/2018/12/07/2018015432/justel> for the Flemish Region.

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in Belgium:



Nele Godefroid
Director,
KPMG-Belgium
Tel. +32 2 708 38 46
ngodefroid@kpmg.com



Saâdia Abdi
Senior Manager,
KPMG-Belgium
Tel. +32 2 708 36 50
sabdi@kpmg.com

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The information contained in this newsletter was submitted by the KPMG International member firm Belgium.

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