

WORKERS MOBILITY WITHIN SCHENGEN: A COMPARATIVE STUDY OF 17 COUNTRIES REQUIREMENTS

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ABSTRACT: *The article is aimed to provide a summary of current EU provisions regulating the mobility for third-country nationals (“TCNs”) performing working activities within the Schengen Area.*

KEYWORDS: Schengen, visas, workers, mobility

Most immigration provisions implemented by the EU are Directives. While EU Regulations automatically apply across the EU and do not need any act of implementation by Member States, Directives are a legislative act that sets out a goal and objectives that all EU countries must achieve. Each individual Member State will then decide on how to devise its own laws on how to reach these goals. Therefore, each Member State will need to adopt local legislation to implement the provisions set forth in the Directive.

For business or tourism stays up to 90 days in any 180-day period, TCNs who hold a valid residence permit or visa have the right to move freely within the Schengen area. Working activities are on the other hand regulated by specific provisions of each Schengen country and therefore it will be necessary to check local regulations if TCN wants to work in a different country also for short periods (i.e. less than 90 days).

The right to extend the stay for more than 3 months, work and eventually obtain permanent residency in another country is subject to specific conditions and provisions set forth in national legislations. The most important EU Directives that contain mobility provisions for TCNs and their families are:

- **long-term residents** (Directive 2003/109)
- Blue Card permits for **highly qualified workers** (Directive 2009/50)
- workers transferred in the framework of an **intra-company transfer** (Directive 2014/66)
- workers temporarily ‘posted’ to perform work from one Member State (so called “**van der Elst permits**”) (Directive 1996/71 and 2014/67)
- **researchers** (Directive 2005/71)

Long-term residents in another Member State

Under Directive 2003/109, TCNs who hold long-term resident permits in one EU Member State have the right to reside for more than three months in a second Member State to exercise an economic activity, to pursue studies or for any other purpose, subject to certain conditions being met.

A TCN holding a long-term residence in another Member State can apply for a residence permit in another Member State without applying for a new visa. The right extends to their family members as long as the family was already constituted in the first Member State and they can present evidence they have stable and regular resources which are sufficient to maintain themselves without recourse to the social assistance of the Member State concerned.

Directive 2003/109 provides Member States with greater discretion to apply additional measures to regulate the numbers of mobile TCNs entitled to be granted right of residence. These areas of discretion include the

possibility of applying a labour market test, apply quotas, require to show evidence to have “appropriate accommodation”, to comply with integration measures and also to provide evidence that they have stable and regular financial resources and sickness insurance.

Subject to meeting the applicable conditions, long-term residents can obtain a residence title following simplified procedures as compared to the procedures that would apply to TCNs arriving to the EU for the first time, and may apply from within the territory of the second Member State without holding a visa if an application is made within three months of entering the host country.

| | LABOUR MARKET TEST | QUOTAS | HOUSING | LANGUAGE TEST | PROOF OF FINANCIAL RESOURCES | POLICE CLEARANCE | FAMILY MEMBERS CAN WORK | SOCIAL SECURITY + HEALTHCARE |
|--------------------|--------------------|--------|---------|---------------|------------------------------|------------------|-------------------------|------------------------------|
| Austria | YES | YES | YES | YES | YES | YES | YES | YES |
| Belgium | NO | NO | YES | NO | NO | YES | YES | YES |
| Czech Rep | YES | NO | YES | NO | YES | UPON REQ | YES | YES |
| Denmark(**) | -- | -- | -- | -- | -- | -- | -- | -- |
| France | YES | NO | YES | YES | YES | YES | YES | YES |
| Germany | POSSIBLE | NO | YES | NO | YES | NO | YES | YES |
| Greece | NO | YES | YES | YES | YES | YES | YES | YES |
| Holland | YES | NO | NO | POSSIBLE | YES | NO | YES | YES |
| Hungary | NO | NO | YES | NO | YES | YES | NO | YES |
| Italy | NO | YES | YES | YES | YES | YES | YES | YES |
| Malta | NO | YES | YES | YES | YES | YES | YES | YES |
| Poland | YES | NO | NO | NO | YES | NO | NO | YES |
| Portugal | YES | NO | YES | NO | YES | YES | NO | YES |
| Romania | YES | YES | YES | NO | YES | YES | YES | YES |
| Slovakia | NO | NO | YES | NO | YES | YES | YES | YES |
| Spain | NO | NO | YES | NO | YES | NO | YES | YES |
| Sweden | NO | NO | NO | NO | YES | NO | YES | NO |

Table 1 - Long-term residents in another Member State- answers may be subject to conditions and/or limitations

(**) Denmark opted out

Highly Qualified Workers: EU Blue Card holders

Directive 2009/50/EC sets out the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (i.e. EU Blue Card holders), and of their family members, for stays of more than three months in the territory of an EU Member State. Denmark, Ireland and United Kingdom are not bound by the Directive.

The main requirements to obtain a Blue Card permit, according to article 5 of the Directive are: (i) a work contract or binding job offer with a salary of at least 1.5 times the average gross annual salary paid in the Member State concerned (Member States may lower the salary threshold to 1.2 for certain professions where there is a particular need for third-country workers); (ii) for regulated professions, documents establishing that the worker meets the legal requirements of the country; (iii) for unregulated professions, documents establishing the relevant higher professional qualifications. Higher professional qualifications can be attested by a higher education qualification (i.e. diploma attesting the completion of a post-secondary higher education program of at least three years) or by having at least five years of professional experience in a level comparable to higher education qualifications and which is relevant in the position offered in the job contract.

Blue Card holders can move to another Member State once they have legally resided in a first Member State for a minimum period of eighteen months, and in practical terms, all of the conditions set out in Article 5, which are determined in national legislation, must be reassessed and met in the second Member State. The mobility of EU Blue Card holders is also restricted to employment with one specific employer.

EU Blue Card holders are however allowed to accumulate periods of residence in different Member States, which count towards fulfilment of the requirements for long-term resident status. The conditions for admission under Article 5 are governed by the national laws and the Directive has been implemented with variable conditions amongst Member States.

| | LABOUR MARKET TEST | MINIMUM SALARY TRESHOLD | HOUSING | UNIVERSITY DEGREE | VALIDATION OF PROFESSIONAL QUALIFICATION | EXPERIENCE Vs DIPLOMA | FAMILY MEMBERS CAN WORK |
|--------------------|--------------------|-------------------------|---------|-------------------|------------------------------------------|-----------------------|-------------------------|
| Austria | YES | € 59,718 | NO | YES | YES | NO | YES |
| Belgium | NO | € 51,882 | YES | YES | NO | NO | YES |
| Czech Rep | YES | € 17,640 | YES | YES | UPON REQUEST | DIPLOMA | YES |
| Denmark(**) | --- | --- | --- | --- | --- | --- | --- |
| France | NO | €53,836 | YES | YES | YES | YES | YES |
| Germany | YES | € 50,800 | YES | YES | YES | NO | YES |
| Greece | YES | € 18,000 | YES | YES | YES | NO | YES |
| Holland | NO | € 60,792 | NO | YES | YES | NO | YES |
| Hungary | YES | € 14,400 | YES | NO | YES | YES | NO |
| Italy | YES | € 24,789 | YES | YES | YES | NO | YES |
| Malta | NO | € 24,123 | YES | YES | YES | NO | NO |
| Poland | YES | € 16,800 | YES | YES | YES | YES | YES |
| Portugal | NO | € 17,695 | YES | NO | YES | NO | NO |
| Romania | NO | € 28,596 | YES | YES | YES | YES | YES |
| Slovakia | YES | € 11,376 | YES | YES | YES | NO | YES |
| Spain | YES | € 33,908 | YES | YES | NO | YES | YES |
| Sweden | NO | € 57,000 | NO | YES | YES | YES | YES |

Table 2 - Highly Qualified Workers: EU Blue Card holders - - Answers may be subject to conditions and/or limitations; salary can be subject to variable conditions

(**) Denmark opted out

Intra-company transfers

Directive 2014/66 set forth the conditions of entry and residence of TCNs in the framework of an intra-corporate transfer. The Directive's goal is to make it easier and quicker for multinational companies to temporarily assign highly skilled employees to subsidiaries situated in the EU. Moreover, the Directive aims to facilitate mobility of intra-corporate transferees between Member States during their assignments and lays down a common set of rights for intra-corporate transferees when working in the EU in order to avoid their exploitation and distortion of competition.

The Directive's main goals are:

- (i) facilitation of intra-corporate transfers of managers, specialists and trainee employees to the EU. To be eligible for an intra-corporate permit, managers and specialists must have worked at least 3 up to 12 uninterrupted months for the multinational company immediately preceding their transfer. Member States retain the right to set the volumes of admission of intra-corporate transferees who apply to be admitted to their territory. The permit will be valid for a maximum of 3 years in the case of managers and specialists and 1 year for trainee employees;
- (ii) intra-corporate transferees are exempted from the Schengen visa obligations. Subject to a number of conditions, they can enter, stay and work in Member States other than the one to which they were initially admitted with little or no interruption to their assignments. The conditions for long-term mobility (more than 90 days) are stricter than those for short-term mobility (less than 90 days in any 180-day period);
- (iii) family members will be able to accompany the intra-corporate transferee from the start of the assignment if they apply at the same time. They also have the right to be employed or self-employed in the host member state throughout the duration of the transfer;
- (iv) Member States must require, as a ground for admission, that the remuneration granted to the intra-corporate transferee is not less favourable than the remuneration granted to nationals occupying comparable positions. Equal treatment between intracorporate transferees and nationals applies to branches of social security, in practice, in particular to benefits related to sickness, invalidity and old-age.

| | NEW VISA | MINIMUM SENIORITY/PREVIOUS EXPERIENCE IN THE SAME SECTOR | QUOTA LIMITATIONS | LABOUR MARKET TEST | DIPLOMA | PERMISSION TO WORK FOR FAMILY MEMBERS |
|---------------|----------|----------------------------------------------------------|-------------------|--------------------|----------|---------------------------------------|
| Austria | YES | YES | NO | NO | NO | YES |
| Belgium (*) | YES | NO | NO | NO | YES | YES |
| Denmark (**) | --- | --- | --- | --- | --- | --- |
| Czech Rep (*) | YES | NO | NO | YES | POSSIBLE | YES |
| France | NO | YES | NO | NO | POSSIBLE | YES |
| Germany (*) | YES | YES | NO | NO | YES | YES |
| Greece | YES | NO | YES | YES | YES | YES |
| Holland | Yes | YES | NO | NO | NO | YES |
| Hungary | YES | NO | NO | NO | NO | NO |
| Italy | NO | YES | NO | NO | YES | YES |
| Malta | ---- | YES | NO | NO | ---- | NO |
| Poland | YES | NO | NO | NO | NO | NO |
| Portugal | NO | YES | NO | NO | ---- | NO |
| Romania | YES | YES | YES | NO | YES | NO |
| Slovakia | NO | NO | NO | NO | YES | YES |
| Spain | NO | YES | NO | NO | YES | YES |
| Sweden | YES | NO | NO | NO | YES | YES |

Table 3 - Intra-company transfers - - answers may be subject to conditions and/or limitations

(*) Directive not yet implemented

(**) Denmark opted out

Posted workers (Van der Elst permits)

A "posted worker" is an employee who is sent by his employer to carry out a service in another EU Member State **on a temporary basis**. The posting of workers in the framework of the provision of services is regulated by Directive 96/71 and 2014/67 which defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers. In particular: **(i)** to guarantee that these rights and working conditions are protected throughout the EU; **(ii)** to avoid "social dumping" where foreign service providers can undercut local service providers because their labour standards are lower.

These rules establish that, even though workers posted to another Member State are still employed by the sending company and therefore subject to the law of that Member State, they are entitled by law to a set of core rights in force in the host Member State.

A milestone decision of the European Court of Justice (the so-called Van der Elst case), established in 1994 the principle that Member States may not impose administrative formalities or additional conditions on posted workers who are TCNS when they are lawfully employed by a service provider established in another Member State.

The principle established by the ECJ has been incorporated and implemented in different ways by Member States. In many Member States, posted TCNs are exempted from obtaining a new work permit but certain conditions can apply. These include: meeting the national wage and working conditions as well as social insurance provisions, have a lawful right to residence of over three months in the first Member State and must be legally authorised to work there and hold a regular employment contract, to undertake the same type of work as in sending Member State; to return to the country of residence (or origin) at the end of the period of posted employment.

| | NEW WORK PERMIT | NEW CONTRACT | SUBJECT TO QUOTAS | PROOF OF SUFFICIENT INCOME | MINIMUM QUALIFICATION LEVEL | ADEQUATE HOUSING | FAMILY ALLOWED |
|-----------------------|-----------------|--------------|-------------------|----------------------------|-----------------------------|------------------|----------------|
| Austria | NO | NO | NO | YES | NO | YES | NO |
| Belgium | NO | YES | NO | YES | NO | YES | YES |
| Denmark | YES | YES | NO | YES | DEPENDS | YES | YES |
| Czech Republic | NO | NO | NO | YES | DEPENDS | YES | YES |
| France | NO | NO | NO | YES | NO | YES | NO |
| Germany | NO | NO | NO | YES | NO | YES | YES |
| Greece | NO | YES | YES | NO | YES | YES | YES |
| Holland | YES | NO | NO | YES | NO | No | YES |
| Hungary | YES | YES | NO | YES | NO | YES | YES |
| Italy | NO | YES | NO | YES | NO | YES | YES |
| Malta | NO | NO | NO | YES | NO | YES | NO |
| Poland | NO | NO | NO | NO | NO | NO | NO |
| Portugal | NO | NO | NO | YES | DEPENDS | YES | YES |
| Romania | NO | NO | NO | NO | NO | YES | YES |
| Slovakia | NO | NO | NO | NO | NO | YES | YES |
| Spain | NO | NO | NO | YES | NO | NO | NO |
| Sweden | YES | NO | NO | YES | NO | NO | YES |

Table 4 - Posted workers (Van der Elst permits) - - answers may be subject to conditions and/or limitations

Researchers

Mobility provisions for TCN researchers are governed by Directive 2005/71 and **Directive 2016/801**. If the researcher stays only up to three months in the second Member State, research may be carried out on the basis of the hosting agreement concluded in the first Member State. If the duration of stay exceeds three months, then the Member State may require a new hosting agreement, subject to the fulfilment of the same conditions that the researcher was asked to fulfill when he applied in the first Member State.

| | NEW WORK PERMIT | NEW CONTRACT | MEDICAL OR CRIMINAL RECORD | PROOF OF SUFFICIENT INCOME | ADEQUATE HOUSING | PERMISSION TO WORK FOR FAMILY MEMBERS |
|---------------------|--------------------------------|-------------------------|-------------------------------------------|-------------------------------------------|-----------------------------|----------------------------------------------------------|
| Austria | NO | YES | YES | YES | YES | NO |
| Belgium | NO | YES | YES | YES | YES | YES |
| Czech Rep | NO | YES | UPON REQUEST | NO | NO | YES |
| Denmark (**) | --- | --- | --- | --- | --- | --- |
| France | YES | YES | NO | NO | YES | YES |
| Germany | YES | YES | NO | YES | YES | YES |
| Greece | YES | YES | YES | YES | YES | YES |
| Holland | YES | YES | NO | YES | NO | YES |
| Hungary | NO | YES | YES | YES | YES | NO |
| Italy | YES | YES | NO | YES | YES | YES |
| Malta | NO | YES | YES | YES | YES | YES |
| Poland | NO | YES | YES | YES | NO | YES |
| Portugal | YES | YES | YES | YES | YES | NO |
| Romania | NO | YES | YES | YES | YES | YES |
| Slovakia | POSSIBLE | NO | YES | YES | YES | YES |
| Spain | YES | YES | YES | YES | NO | YES |
| Sweden | YES | YES | NO | YES | NO | YES |

Table 5 – Researchers - - answers may be subject to conditions and/or limitations

(**) Denmark opted out

Acknowledgements

The country summaries were prepared thanks to the information provided by: Elmar Drabek (Austria); Bernard Caris (Belgium); Tommy Angermair (Denmark); Karl Waheed (France); Kalypso Kontogianni (Greece); Marcel Reurs (The Netherlands); Bettina Offer (Germany); David Kiss (Hungary); Jean Philippe Chetcuti (Malta); Karolina Schiffter (Poland); Ricardo Rodrigues Lopes (Portugal) Ileana Lucian (Romania); Veronika Pleskova (Czech Republic and Slovakia); Ana Garicano (Spain); Jonas Lindblad (Sweden)

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