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ICT Permit Study

Facilitating Intra-Corporate Transfers in the EU

December 2021

Contents

List of abbreviations

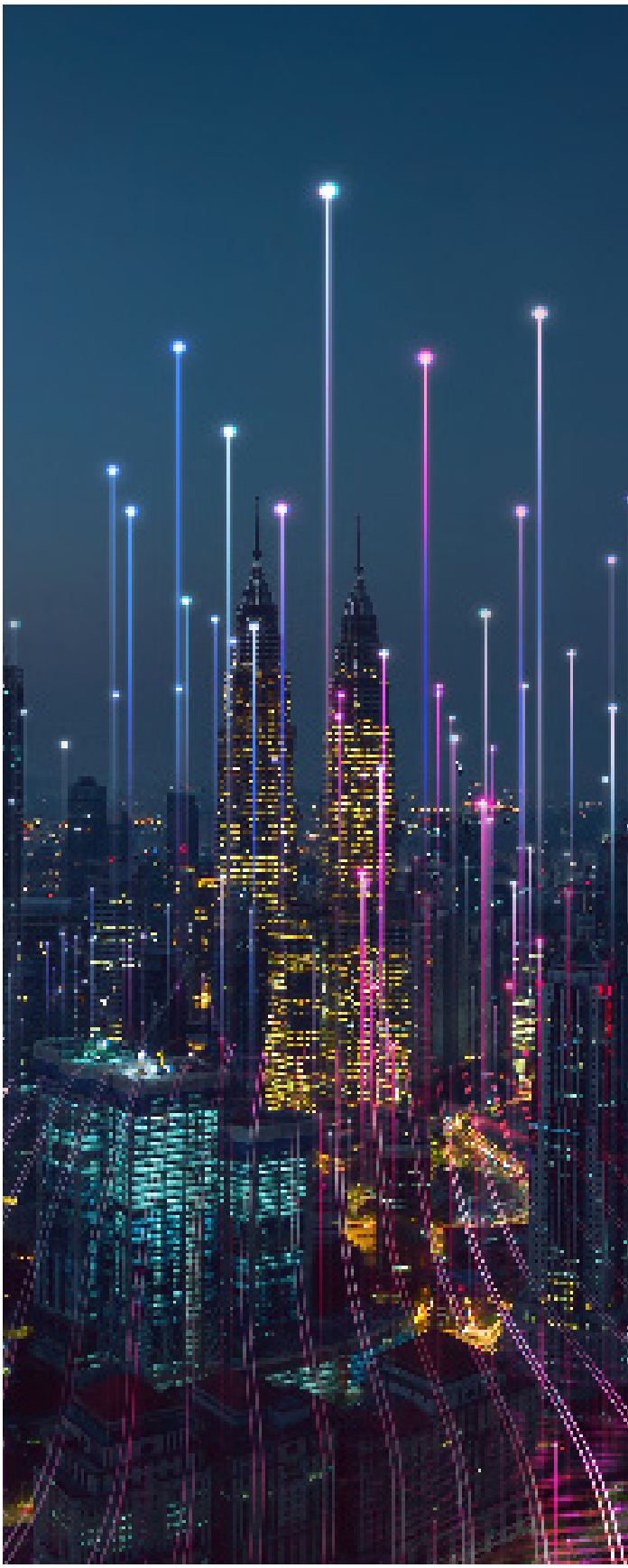
ICT Directive Intra-Corporate Transferees Directive

ICT permit Intra-Corporate Transferee permit

PWD Posted Workers Directive

PWN Posted Workers Notification

EP4EW Equal Pay for Equal Work



Executive Summary

While the ICT scheme was intended to meet the need of multinational companies to efficiently deploy executives, personnel with specific knowledge and trainees in different entities of the same group across the EU based on only one permit, **conditions** imposed by the EU Member States to qualify for an ICT permit are sometimes too restrictive to meet that objective.

In addition to the **preceding employment requirement** that varies across the EU Member States, companies must take into account significant differences with respect to **qualification requirements,** which exclude in many countries specialists from an ICT permit who have specific/unique skills, but who do not hold a degree of higher education. In addition to increased alertness in this respect, this difference can limit the intra-EU mobility rights in practice when an ICT permit holder is confronted with more restrictive requirements in the second EU Member State.

The remuneration requirement is rather broadly defined in the Directive as being 'not less favorable' than the remuneration of a local employee. In practice, companies must take into account various interpretations of this concept and consult different resources in each Member State to verify the exact requirements on the remuneration, such as average salary in a specific sector or collective bargaining agreements. Depending on the availability of the information concerning this requirement, openness of sources, such as available statistics, and the scrutiny during the process, this requirement can be experienced as more or less problematic in view of an ICT permit application.

Also **processing times** are an extremely important aspect in the assessment of the attractiveness of the ICT permit. 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.

The **intra-EU mobility** rights that allow ICT permit holders to be employed within the same company group in an EU Member State different from the EU Member State that issued the ICT permit, are a very attractive feature of the scheme. However, the interlinks between social security coordination, labour law and taxation, naturally triggered by a multi-state cross-border employment, are not explicitly nor intrinsically addressed by the ICT Directive. Consequently, the general rules must be applied in this respect causing possible inconsistencies and potentially leading to double social security payments and increased labour costs. Moreover, companies must take into account notification requirements under the Posted Workers Directive (PWD), which are not identical in all EU Member States and can increase complexity and the risk of non-compliance.

The ICT scheme offers the possibility to work at **client sites** in most Member States. This is a positive asset for companies delivering services to their clients across the EU leaning on human resources from the entire company group, which allows better planning and cost efficiency.

At the same time, a **cooling-off** period that must be respected after the maximum validity period 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. This increases the need for an alternative permit that can be obtained in the country – an option which is available in about half of the EU Member States. As result, the cooling-off period can be a factor determining the choice for an ICT permit or another national scheme from the outset of the assignment.

Finally, this study has examined the access of **dependents** to the labour market considering that the family members often accompany the ICT permit applicants. 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.

When reading through the study, you will notice that the different ways in which the countries have implemented the ICT Directive at times complicate the use and the benefits of the EU mobility rights, but also offer opportunities for multinational companies that need to move their employees within the EU. Indeed, the flexible implementation of the ICT Directive in some countries **offers opportunities to create gateways to the EU** for non-EU employees.

Introduction

The EU ICT Directive was initially welcomed as a 'holy grail' for corporate immigration within the EU when it introduced a favourable scheme for intra-corporate transfers.

The ICT permit allows intra-corporate transferees – managers, specialists and trainees – to be assigned from a company outside the EU to a company of the same group in the EU. With an ICT permit issued in one EU member state, an ICT permit holders can also work with companies of the same group in other EU Member States under more lenient conditions.

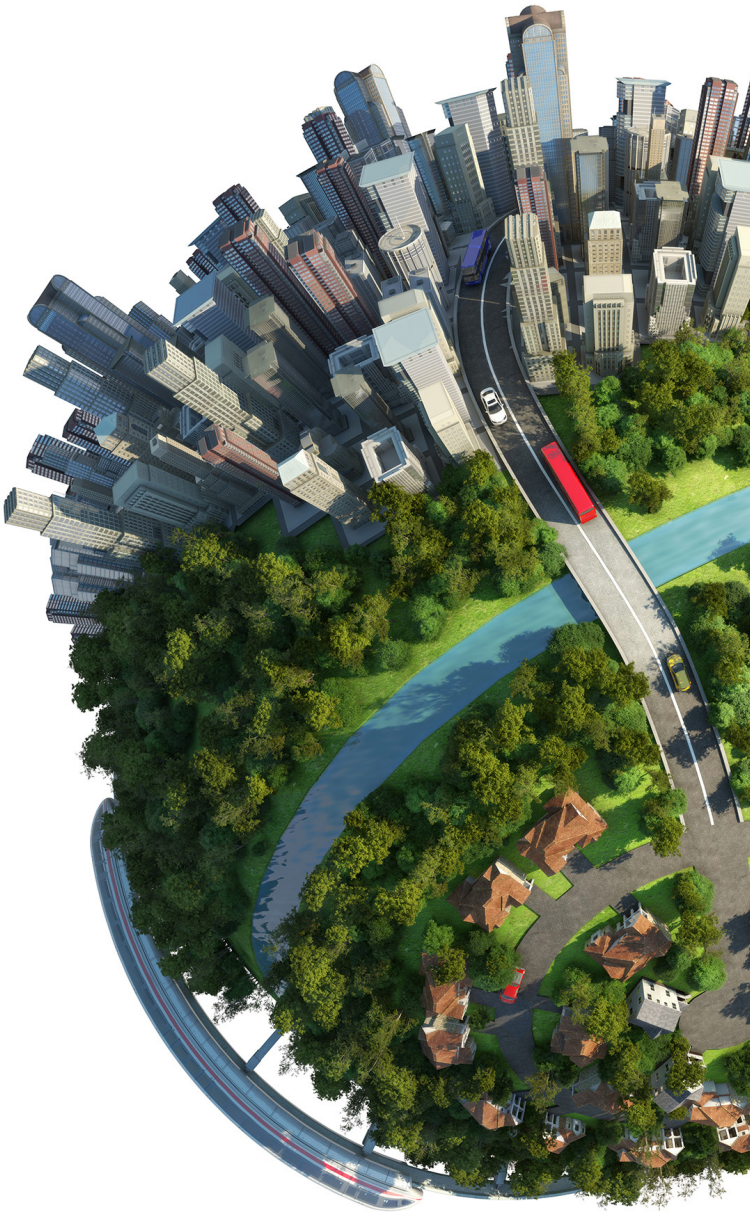
Since the introduction of the ICT permit in 2016, practice has evolved increasing links between immigration, social security and labour law (e.g. PWD, EP4EW, EU social security coordination). This prompted our reflection on proceeding with further research as a continuation on our initial study on the implementation of the EU ICT Directive published by Deloitte in 2018.

It is however the changed mobility landscape, where employees are increasingly working from home, or working in multiple locations, and certainly on more diverse projects for different entities within one group, that ultimately triggered the publication of this new 2021 ICT Permit Study.

Our 2021 study examines how the ICT Directive is implemented in practice across the EU, with specific details on the main concerns raised over the first few years after implementation. The availability of alternative national schemes, the interpretation of set conditions for an ICT permit, processing times of applications and the possibility to work at client sites are all more closely examined.

This study also digs deeper into the different aspects of intra-EU mobility. If you can work with your ICT permit in another EU country, how does this impact the employee's social security status, what is the link with the Posted Workers Directive and is there a need to observe specific rules around remuneration (the 'equal pay for equal work' principle)?

We hope that this study will provide some useful insights, and will help you navigate the EU immigration rules as implemented by different EU Member States.

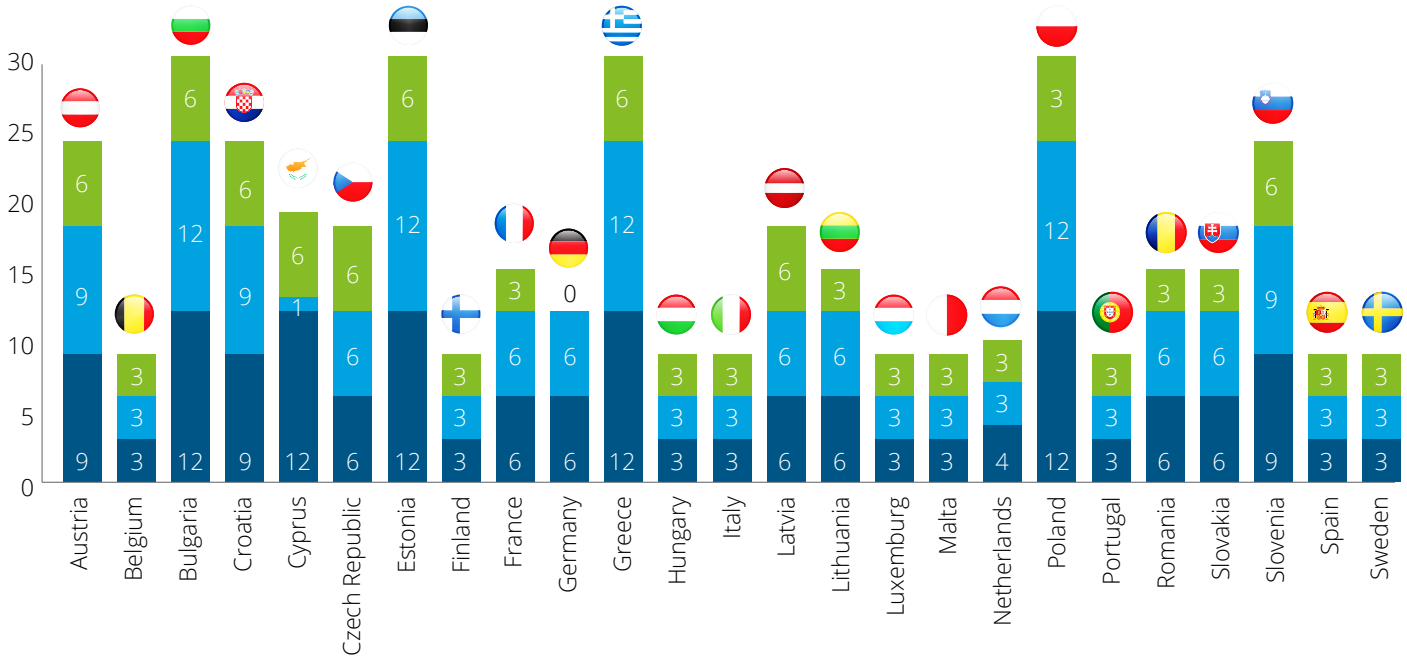


Editors
Matthias Lommers
Joke Braam
Rimma Abadjan

Conditions

Preceding employment

The EU ICT Directive allowed Member States to condition the granting of an ICT permit to preceding employment with the company group outside the EU prior to the posting the EU. The seniority requirement for managers, specialists and trainees differs substantially from one Member State to another, which can affect the ICT permit's attractiveness and/or availability for an intra-corporate transfer.



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

Qualifications

According to the ICT Directive, trainees applying for an ICT Permit must be in possession of a university degree. Proof of qualifications can be requested from specialists and managers, although this proof does not necessarily have to be a university degree.

In Member States where a degree is required, this requirement is not always formally stipulated in the respective national legislation, but often results from the ICT application process in practice.

Furthermore, the requirement of a diploma or a certain type of qualification can cause difficulties when a mobile ICT permit is required in the second Member State. Where the first Member State does not impose the requirement of a diploma, and the second Member State does require one, an employee might be unable to use the right to intra-EU mobility in practice.

In the majority of countries, a Bachelor degree is not required for a specialist and manager ICT permit. Where it is indicated that a degree is required, it can be that the requirement is not formally imposed by the legislation, but it results from the practice. The qualification can be proven by a CV, affidavit or declaration form the employer, certificates, attestations, high school degree, etc.

Diploma is required in following EU Member States:

Managers

- Belgium
- Cyprus
- Estonia
- France
- Greece
- Hungary
- Italy
- Latvia
- Lithuania
- Luxemburg
- Malta
- Poland
- Portugal
- Romania
- Spain

Specialists

- Belgium
- Cyprus
- Estonia
- France
- Greece
- Hungary
- Italy
- Latvia
- Lithuania
- Luxemburg
- Malta
- Poland
- Portugal
- Romania
- Slovenia
- Spain

Mobile ICT

- Estonia
- France
- Greece
- Hungary
- Italy
- Luxemburg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovenia
- Spain

Diploma is not required in following EU Member States:

Managers

- Austria
- Bulgaria
- Croatia
- Czech Republic
- Finland
- Germany
- Netherlands
- Slovakia
- Slovenia
- Sweden

Specialists

- Austria
- Bulgaria
- Croatia
- Czech Republic
- Finland
- Germany
- Netherlands
- Slovakia
- Sweden

Mobile ICT

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Finland
- Germany
- Latvia
- Lithuania
- Slovakia
- Sweden

Remuneration

According to the Directive, salary granted to an intra-corporate transferee cannot be less favourable than salary granted to a national in a comparable position of the Member State in which they operate.

This requirement is adhered to by Member States in different ways. Largely and from a migration perspective, national authorities apply the following standards:

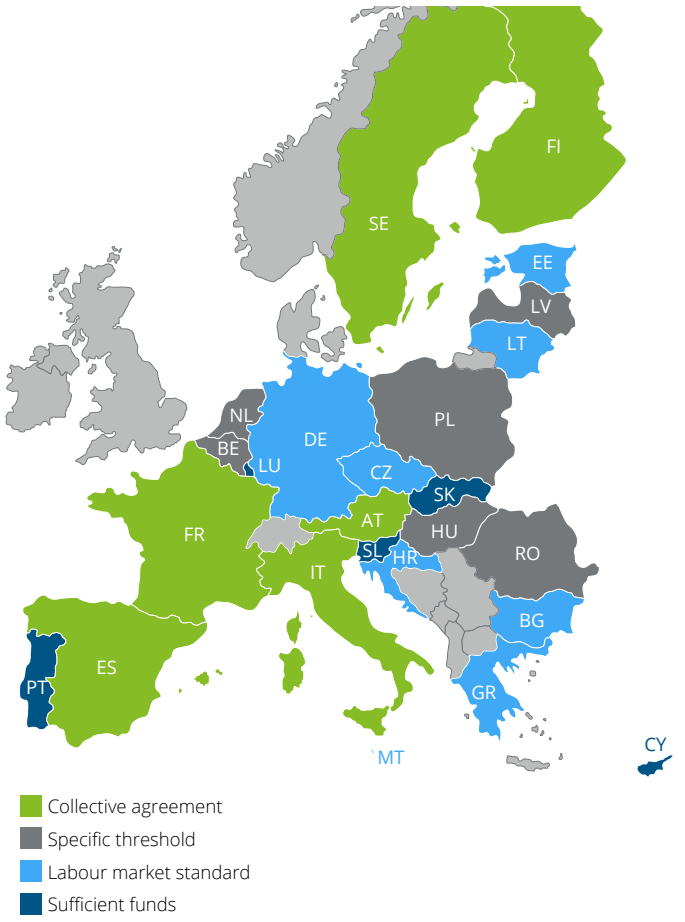
- Collective agreement: refers to what is established in a collective agreement at company or sector level;
- Labour market standard: refers to remuneration comparable to that of a local employee in a similar job function;
- Specific threshold: refers to salary thresholds that are considered high enough to cover the 'not less favourable' remuneration requirement;
- Sufficient funds: refers to an amount that prevents dependence on social funds in the respective country.

Most Member States have additional mechanisms to verify the applicable standard, such as publicly available statistics on salaries across different sectors, which help discern the 'labour market standard'.

Furthermore, the level of scrutiny required from both employer and the authorities varies significantly, given that the salary requirement does not always have an impact on the immigration procedure as such. In some Member States, it is enough to prove that the minimum wages are respected in order to fulfil the salary requirement. In contrast, other Member States require the salary requirement check by labour authorities or by trade unions as part of the immigration process.

In view of the 'Equal Pay for Equal Work' principle's introduction, compliance with the rules in relation to remuneration granted to an intra-corporate transferee becomes even more important.

In most countries additional mechanisms serve as a tool to verify the exact requirements, e.g. publicly available statistics on salaries in different sectors or publicly accessible collective agreements.



Processing times

In most Member States, the maximum legal processing times are in line with the maximum processing times set in the ICT Directive, i.e. 90 days.

In practice, processing times vary significantly. The total time required before effectively starting operations in the host Member State is generally considerably longer, given that the gathering of documents in the required format, and obtaining a visa before travelling to the EU, is usually time-consuming.

The processing times as indicated in the table are the maximum (and can thus be shorter).

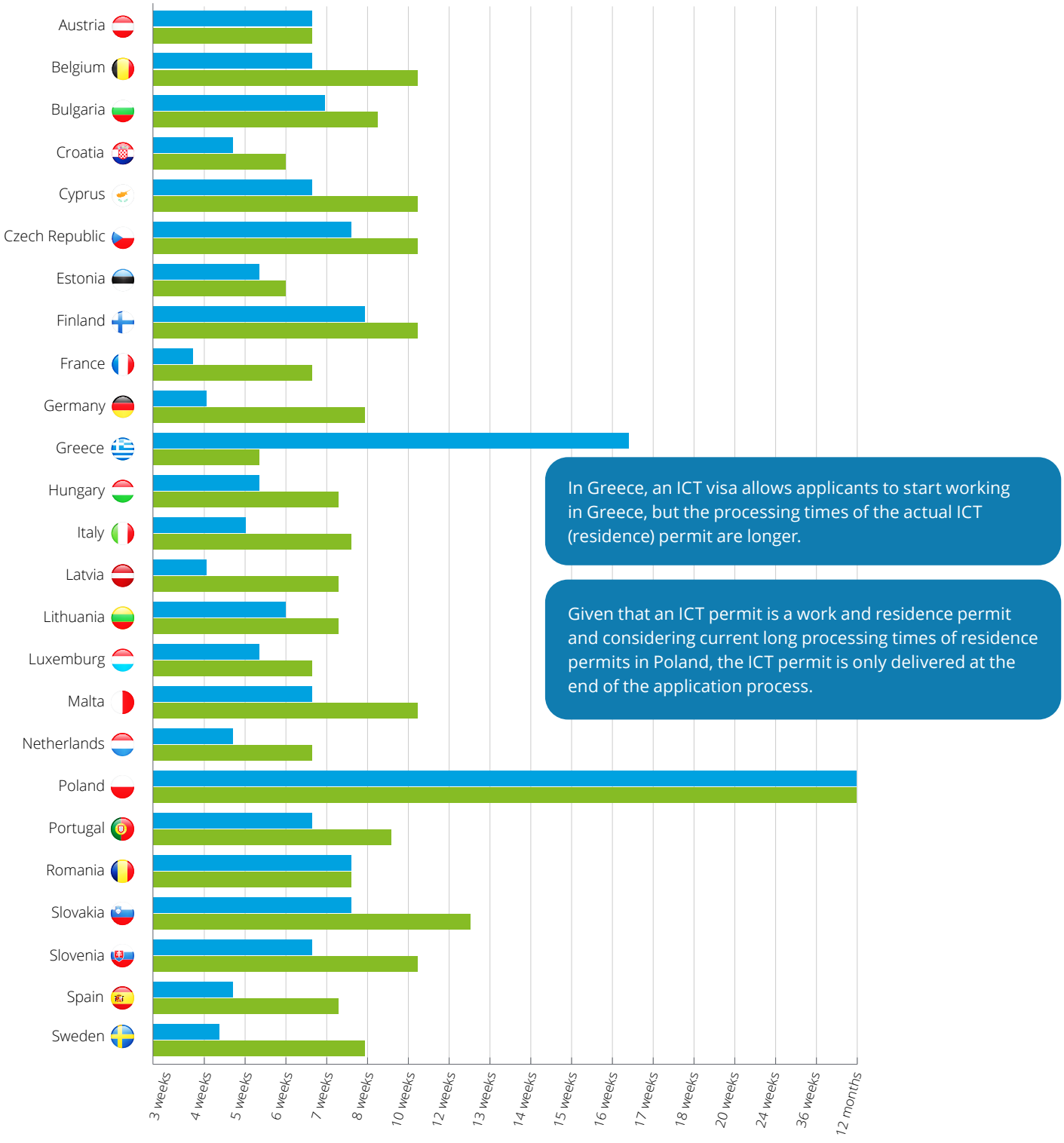
Only a few Member States offer a fast-track procedure, while Italy, the Netherlands, Portugal and Slovakia have a system of recognised sponsors that reduces either the number of required supporting documents or the overall processing times.

Legal processing time of an ICT permit application

Processing time in practice

Processing time of an ICT permit application once submitted (weeks)

Lead time (end-to-end process from intiation 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.

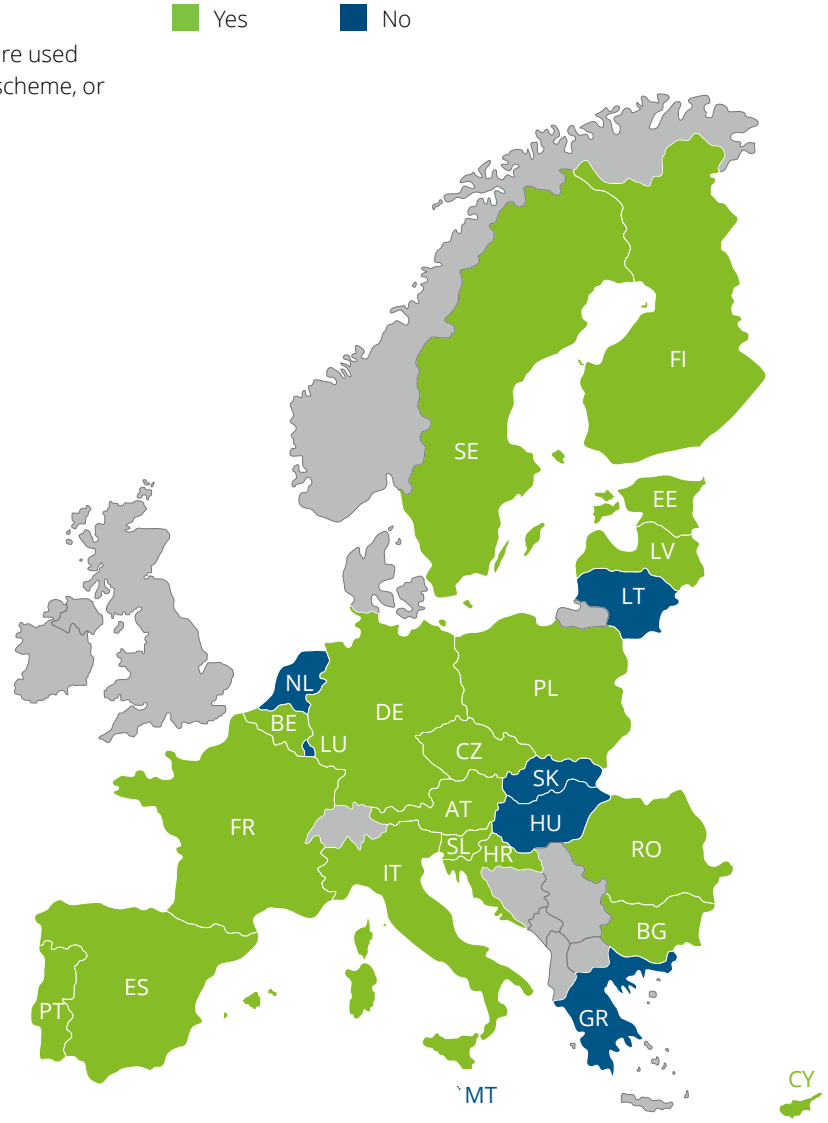
Given that an ICT permit is a work and residence permit and considering current long processing times of residence permits in Poland, the ICT permit is only delivered at the end of the application process.

Implementation

In most Member States, an alternative national scheme for intra-corporate transferees is available in addition to the ICT permit. However, the alternative scheme is usually less attractive than the ICT permit due to several reasons, such as the national scheme's complexity, longer processing times or specific conditions that need to be fulfilled.

In a few Member States however, the national schemes are used more often due to a restrictive interpretation of the ICT scheme, or because it takes longer to obtain such an ICT permit.

Are other schemes available to intra-corporate transferees?



Intra-EU mobility

An employee already in the EU, based on an ICT permit, is able to use intra-EU mobility rights stemming from the ICT Directive.

The ICT Directive introduces short- and long-term mobility based on a valid permit. Short-term mobility enables residence and work in a second Member State, for up to 90 days within a 180 days period. Long-term mobility enables residence and work in another Member State for more than 90 days.

Based on the ICT Directive, Member States can require a notification or an application for a mobile ICT permit in the second EU Member State, where intra-EU mobility rights are exercised. The employee must always be in possession of a valid ICT permit to make use of short- or long-term mobility, as the initial ICT permit specifically serves as the basis for exercising mobility rights.

While the ICT Directive offers intra-EU mobility rights, it does not address the question of social security coordination in this set-up, which creates particular legal challenges. Moreover, additional formalities might apply in view of a notification within the Posted Workers Directive framework.

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").

However, based on either a bilateral social security treaty concluded between the home and host countries, or a piece of national legislation in the host country allowing this option, the employee may remain subject to the social security scheme of their home country during their intra-company transfer.

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 (as laid down in Regulation 883/2004).

In other words, the transfer will be regarded as an assignment from a country outside of the EU to a country within. The fact that the employee is or has been working in the first EU Member State, where the initial ICT permit was issued, would not be taken into account for social security coordination.

In such scenario, the second EU Member State will verify what rules apply to coordinate social security with the employee's home country. If the second EU Member State has a bilateral treaty with the employee's home country, a Certificate of Coverage should be available to prove that the employee is subject to the home country's social security scheme, exempting the employee from the second EU Member State's scheme. Consequently, the intra-corporate transferee remains subject to their home social security scheme.

There may be several practical challenges with this scenario, e.g. when the home country is not willing to issue a second COC, or when the home country concluded a bi-lateral treaty with only one of the two EU Member States involved.

The presence of an employee in different Member States can consequently trigger a change in the applicable social security scheme.

Different scenarios can be distinguished:

First scenario:
In this scenario, EU rules on social security coordination would be applied. As the employee is working in the second Member State on a short- or long-term mobility basis, the situation can be treated as an assignment or simultaneous employment (depending on the facts), with formal proof by means of an A1 certificate.

This can be challenging if the employee is not subject to the social security scheme in the first EU Member State but remains subject to the social security scheme of their home country, e.g. assignment from the US or Japan to Belgium or France.

Second scenario:
The second host EU Member State, in which the employee is working on a short- or long-term mobility basis, will treat the situation as if the assignment takes place from the employee's original home country.

Third scenario:
EU Member States could also opt for a different approach in line with the ICT Directive's philosophy. Intra-EU mobility allows to increase the mobility of employees from global companies across the EU, and reduce the administrative burden associated with work assignments in several EU Member States. From this point of view, the question of social security coordination could be considered to remain a competence of the first EU Member State, where the ICT permit is requested. Subsequent use of intra-EU mobility rights would not trigger a reassessment of the social security coordination rules in the second EU Member State. This means that all other Member States where mobility would occur, would accept the outcome of the social security coordination rules' assessment in the initial Member State, where the ICT permit was requested.

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. It is noteworthy however, that the second scenario – whereby the Member State in which intra-EU mobility rights are exercised is assessing social security rules, as if the assignment is taking place directly from the employee's home country – is likely to be applied in most Member States.

In practice and for some Member States, the social security coordination rules will not impact the immigration process. For others however, social security related documents such as the COC/A1 form are required to apply for a mobile ICT permit, and will hence have a direct and immediate impact on the immigration process.

Given the lack of established practice and the multitude of possible scenarios applicable from a legal perspective, a case-by-case analysis is necessary to determine what social security legislation is applicable and what obligations it entails in each situation.

Posted Workers Directive

The EU Posted Workers Directive (PWD) has been implemented in all EU Member States to guarantee that rights and working conditions of posted employees are protected throughout the EU. 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.

Consequently, an intra-corporate transferee working in an EU country on a short- or long-term mobility basis, falls within the scope of the Posted Workers Directive.

Among the various employer obligations and liabilities laid down by the PWD, such as guaranteeing equal pay for equal work, the directive brings a correlated 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.

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

Employment at client sites

Work at a client site is common within various industrial sectors. Companies seeking to maximise the use of the ICT scheme, allowing effective assignment planning in multiple EU Member States, are often dependent on the possibility to allow client work under this migration scheme. Most countries allow work at a client site with an ICT permit. Moreover, they allow work at different client sites under certain conditions, such as a required preemptive notification to the authorities.

It is worth noting that this possibility to work with a client should be placed in the perspective of applicable labour rules. In various Member States, work at a client site might be subject to specific labour law rules around the "putting at disposal" concept.

Unlimited or limited to one client site

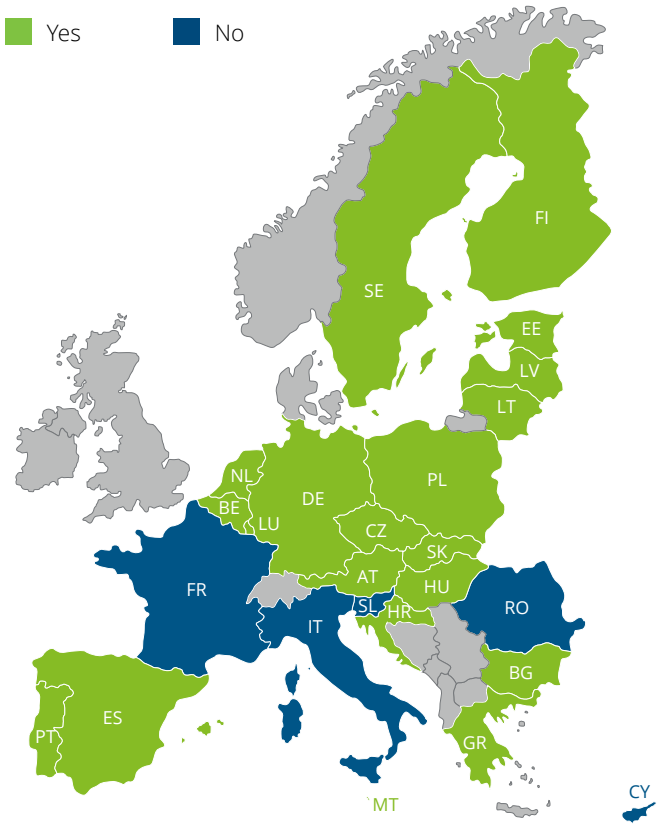
Unlimited

- Austria
- Croatia
- Czech Republic
- Estonia
- Finland
- Germany
- Greece
- Hungary
- Latvia
- Lithuania
- Luxemburg
- Malta
- Netherlands
- Poland
- Slovakia
- Spain
- Sweden

Limited

- Belgium
- Bulgaria

Does the ICT pemit allow work at a client site?



Cooling-off period

As a rule, an ICT permit is valid for maximum 3 years for managers and specialists, and maximum 1 year for trainees. After this period, an extension of that same ICT permit is not possible. Member States can at their discretion apply a cooling-off period (whereby the individual needs to leave the country) before the employee can re-apply for a new ICT permit.

How long is the cooling-off period?

0 months

- Czech Republic
- Finland
- Hungary
- Lithuania
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

3 months

- Belgium
- Italy

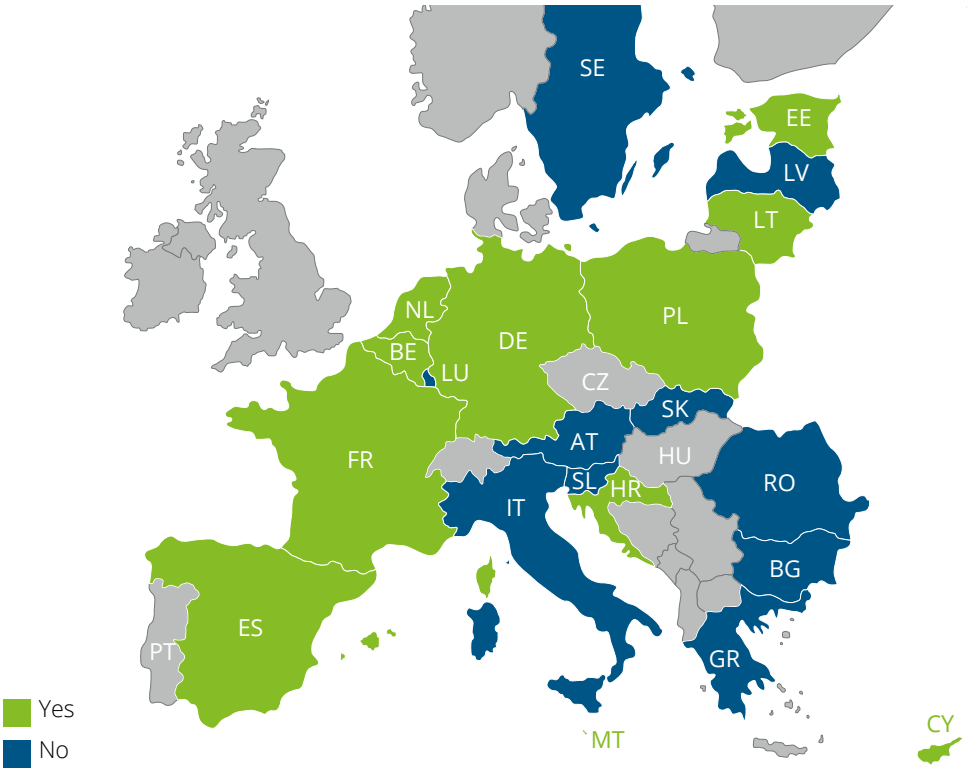
4 months

- Austria

6 months

- Bulgaria
- Croatia
- Cyprus
- Estonia
- France
- Germany
- Greece
- Latvia
- Luxemburg
- Malta
- Netherlands

Alternatives during the cooling-off period?



While half of Member States apply a cooling-off period, these countries often offer alternative immigration schemes that are available. Even in Member States where no cooling-off period applies, an alternative scheme is often a good option, since the application for a new ICT is typically done outside of the EU.

Employment rights of dependents

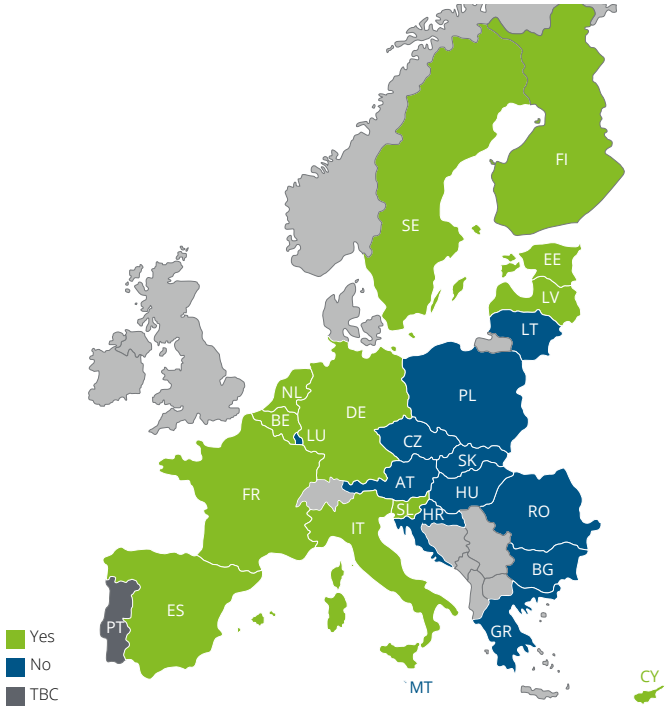
The ICT Directive also aimed at facilitating the migration process for dependents of employees, and guaranteeing their access to the labour market.

In most Member States, dependents can work based on their status.

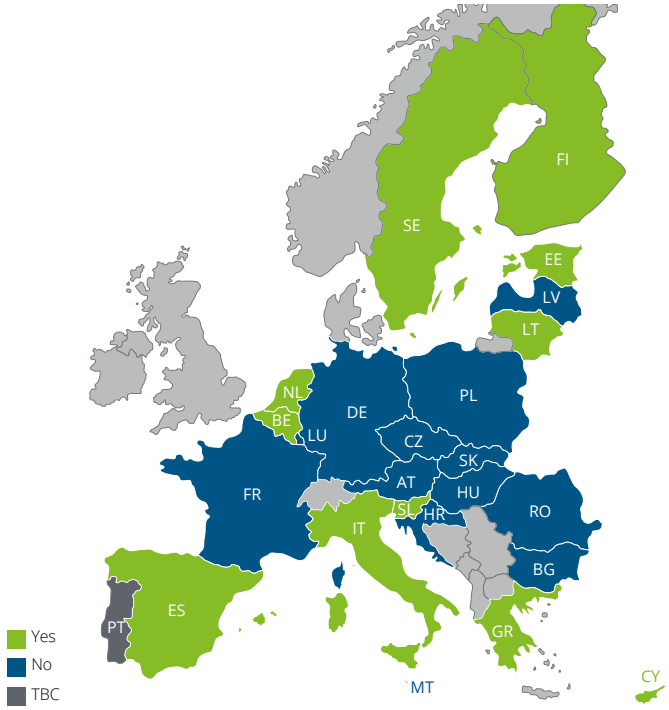
Unfortunately, a dependent is not a homogenous concept across the EU, and some dependents are increasingly facing issues in accessing the labour market. In particular, same-sex and factual partners face concerns that can stem from either the fact that it is more difficult to obtain dependent status, or from the restrictive nature of alternative migration status.

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

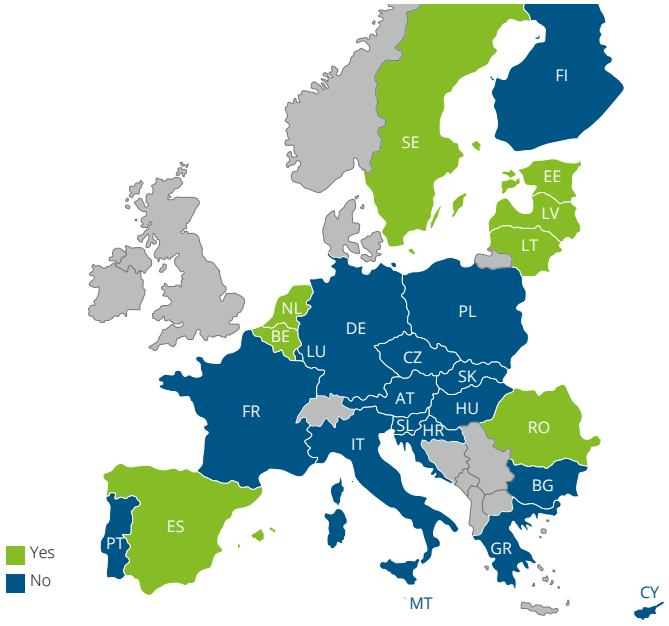
Same-sex marriages access to employment



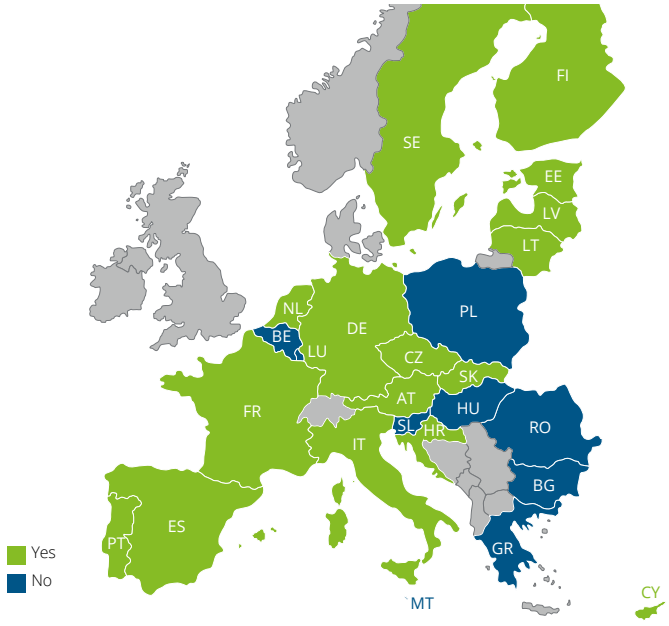
Registered partners access to employment



Factual partners access employment



Access to self-employment



Conclusion

The ICT scheme offers 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.

The EU ICT scheme addresses the increasing need for flexible international employment across EU borders and offers options and solutions for multinational companies who need to move their employees within the EU.

The ICT scheme is already intensively used for intra-corporate assignments in some EU Member States, however in others the advantages have not yet fully realized. While advantages of the ICT scheme largely exceed the disadvantages, it will be crucial to continue to review the scheme and its implementation in a holistic way, considering the employment (PWD, EP4EW), social security and tax aspects of international employment.

Contacts

For more information please contact:

Matthias Lommers
mlommers@deloitte.com
+ 32 2 600 65 44

Joke Braam
jbraam@deloitte.com
+32 2 600 62 86

Rimma Abadjan
rabadjan@deloitte.com
+ 32 2 800 70 81

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