

Project

**Accelerated Procedure for Intra-Corporate
Transfers of Foreign Investors' Employees**

The project was prepared by the Ministry of Industry and Trade in cooperation with the Ministry of the Interior, the Ministry of Labour and Social Affairs, and the Ministry of Foreign Affairs, with the aim of addressing the current needs of employers – international firms and Czech businesses in the Czech Republic – arising from the lack of sufficiently flexible legislation for intra-corporate transfers of employees.

Full project name

Accelerated procedure for intra-corporate transfers of foreign investors' employees

Responsible authority

Ministry of Industry and Trade of the Czech Republic

Co-responsible authorities

Ministry of the Interior, Ministry of Labour and Social Affairs, Ministry of Foreign Affairs

Project commencement / termination (revision)

2012 / 2015 or until the legislation governing intra-corporate transfers takes effect, as appropriate.

Project evaluation

On a half-year basis in the first year and on an annual basis afterwards. The project will be evaluated by the Ministry of Industry and Trade in cooperation with co-responsible authorities.

Financial costs

None. Accelerated delivery from foreign countries is paid by the applicant. The project will require no new human resources if the number of project participants is kept at an adequate level.

Project position

On 30 January 2012, the project was approved by the Coordinating Body for the Protection of the Czech Republic's State Borders, and will be submitted to the Government of the Czech Republic for its information. On request from the responsible authority or from some of the co-responsible authorities, the project may be suspended in order to be reconfigured. Changes to the project are subject to the approval of the Coordinating Body for the Protection of the Czech Republic's State Borders. There is no legal right to the inclusion of an application into the project.

Project objective

The project lays down the rules and deadlines for the accelerated transfers of intra-corporate employees of foreign investors (major undertakings operating internationally, innovative undertakings, production undertakings, major undertakings operating in services) for the employees to work in the Czech Republic.

The objective of the project is to streamline the procedure of the entry by and employment of foreigners from third countries in the Czech Republic under intra-corporate transfers (what is known as the posting of employees), thus providing the Czech Republic with enough of skilled workforce to maintain and increase its competitiveness.

Target group of the project

Managers and specialists temporarily posted within their respective companies to a unit based in the Czech Republic. These employees are nationals of non-EU Member States and work under a group composed of companies linked by capital.

“Manager” – a person working in a senior position, who principally directs the management of the company, department, section or other unit of that company, supervises other employees who carry out supervision, professional checks or management checks, including the powers to recruit or dismiss employees or to recommend their recruitment, dismissal or other personnel measures.

“Specialist” – a person possessing uncommon knowledge and skills essential to the activities, technologies or management of the undertaking, taking account not only of the knowledge specific to this company but also of the high level of achieved qualifications of that person referring to a type of work or trade requiring specific technical knowledge.

Justification

The reason for submitting this project is the lack of reasonable legislation for intra-corporate transfers of employees that would reflect the actual needs of employers, thus responding to the current needs of international firms and Czech businesses in the Czech Republic. Employment flexibility is part of numerous policies, and the impossibility of such flexibility reduces the Czech Republic’s competitiveness.

Principles of the project:

The project is based on the principles of applicable legislation (notably Act No 326/1999 Coll., on the Residence of Aliens in the Territory of the Czech Republic and on Amendments to Certain Acts, as amended, what is known as the Aliens Act; Act No 262/2006 Coll., the Labour Code, as amended; Act No 435/2004 Coll., on Employment, as amended). It also reflects the Czech Republic’s approved initiatives (The Strategy of International Competitiveness – Project Card: Skilled Staff Migration Policy, adopted by the Government of the Czech Republic on 27 September 2011), EU legislation under preparation (the Directive on Intra-corporate Transfers), as well as other strategic documents of the Czech Republic, such as the Framework of the Czech Republic’s Competitiveness Strategy by the Government’s National

Economic Council (NERV), New System of Economic Migration – the principal strategic document of the state’s migration policy (Resolution No 48 of the Government of the Czech Republic of 19 January 2011 on measures to control economic migration, to protect the rights of people migrating for work and on the practice of returns), etc.

The experience from the project implementation might be used in the preparation of the new law on the entry by and residence of aliens in the territory of the Czech Republic, which is expected to take effect no later than 1 January 2015.

With the implementation of the project, employment permits will be issued to employees who are subject to intra-corporate transfers after they meet statutory conditions, and subsequently they will obtain long-stay visas within the shortest possible period so that they could be transferred for the temporary performance of work in the Czech Republic as soon as possible. The long-stay visa is granted for 6 months with a specific period of residence for which the foreigner is entitled to reside in the territory of the Czech Republic and consequently within the Schengen area. The period of legal residence in the territory corresponds to the period for which the Public Employment Service of the Czech Republic has issued an employment permit to the foreigner.

<u>Criteria for including a company into the project:</u>
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The company must comply with the following mandatory criteria:

- 1) The companies are linked by capital as follows: parent – subsidiary, group, holding or trust, or a division of an undertaking with a unit in the Czech Republic (including all subsidiaries, divisions in the territory of the Czech Republic) that globally employ more than 1,000 employees, at least 250 of them in the Czech Republic. No more than 10% of these employees in the Czech Republic shall be those transferred under the project.
- 2) The company has been doing business in the territory of the Czech Republic for at least two years and is an income tax payer in the Czech Republic pursuant to Act No 586/92 Coll., on Income Taxes.
- 3) The company’s obligations to the Czech Republic have been settled¹.

¹ See Article 46 of Act No 455/1991 Coll. the Trade Licensing Act: the Company has no tax arrears in respect of its business (the document to be issued by the relevant local tax office; the document must not be older than 6 months), the Company has no arrears in social security insurance contributions and in the state employment policy contributions (the document to be issued by the Czech Social Security Administration Authority (ČSSZ); the document must not be older than 6 months), the Company has no arrears in public health insurance

- 4) The company is registered in the Czech Republic as a payer of health and social insurance.
- 5) The company's annual turnover in the Czech Republic is at least CZK 250 million according to its financial statements for a past accounting period and the minimum amount of tax paid for the past accounting period is CZK 1 million (both direct and indirect taxes).
- 6) The company meets the criterion in respect of the amount invested in the Czech Republic as specified below:

Production undertakings – investments in non-current tangible assets for at least CZK 50 million on a cumulative basis for the period of the company's activities in the Czech Republic as at the end of the last fiscal/calendar year.

Undertakings operating in services – investments in non-current tangible and intangible assets for at least CZK 5 million on a cumulative basis for the period of the company's activities in the Czech Republic as at the end of the last fiscal/calendar year; the condition of the total wage cost of CZK 175 million paid in respect of all employees for the last 2 years must concurrently be met.

- 7) For 2 years prior to applying for including a job into the project, the company was not repeatedly fined for breaching its legislation-based obligations monitored by the Public Employment Service of the Czech Republic, the State Labour Inspection Office or District Labour Inspectorates.

The project may also include an application submitted by a company of regional importance with more than 150 employees in the Czech Republic (this includes production companies, IT companies and centres of shared services). The inclusion of such an application into the project will be decided by the Ministry of Industry and Trade, on the basis of CzechInvest's opinion. A precondition of the participation in the project is the minimum amount of CZK 130 million in wages paid in respect of employees in the Czech Republic for the last two years and the compliance with the above criteria except for the criterion in item 1, stipulating that the company must

contributions (the documents to be issued by the relevant insurers; the document must not be older than 6 months).

employ at least 250 people in the Czech Republic, the criterion in item 5, and the criterion in item 6, stipulating the minimum wage costs by undertakings operating in services.

Benefits of the project

- 1) Cost reduction by firms in relation to their expansion in the Czech Republic
- 2) Preliminary verification of the principles of newly prepared EU legislation in respect of economic migration
- 3) Gaining a competitive edge vis-à-vis other countries in attracting investors, transfer of know-how and building new positions in the market (head quarters)

Foreign firms will be allowed to use two ways of transferring a foreign worker:

a) Accelerated procedure for intra-corporate transfers of employees

Put in place by this project, it will be used for the intra-corporate transfers of employees of foreign investors in the Czech Republic. In the event of the positive result of the relevant application assessment, these employees will obtain employment permits and long-stay visas for 6 months. In that event, there will be an accelerated labour market test procedure, and the long-stay visa procedure will be completed within 30 calendar days.

b) Existing super-fast track procedure: A procedure arising from existing legislation. If an employee is posted by a foreign firm and the performance of the employee's work in the territory of the Czech Republic does not exceed 7 consecutive calendar days (or a total of 30 days within a calendar year) and if, in the Czech Republic, the person takes care of the supply of goods or services or supplies such goods, or carries out an assembly under a commercial contract or, where appropriate, carries out guarantee and repair work, neither an employment permit nor a labour market test is required.² The Schengen

² Article 98 of the Employment Act – An employment permit or a green/blue card is not required to employ a foreigner: whose work in the territory of the Czech Republic will not exceed 7 consecutive calendar days or a total of 30 days within a calendar year and the person is concurrently a performer, educational worker, academic worker of a higher education institution, a scientific, research or development worker taking part in a scientific meeting, a pupil or a student of up to 26 years of age, a sports person or a person who, in the Czech Republic, takes care of the supply of goods or services or supplies such goods, or carries out an assembly under a commercial contract or, where appropriate, carries out guarantee and repair work.

short-stay visa, valid for up to 90 days, will be arranged for such a worker.³ The short-stay visa application procedure is completed within 7–15 days in most of the ordinary cases.

Time saved:

- Shortening the entire process through the accelerated testing of the Czech labour market – the worker will not fill a job position that could be filled by a Czech or EU citizen
- Shortening the period for sending a visa application by an embassy
- Shortening the time for preparing/handling the application – Ministry of the Interior of the Czech Republic/Department of Asylum and Migration Policy

Involvement of key Ministries⁴:

MIT – evaluates the application for inclusion into the project and notifies the MI, MLSA and MFA of the inclusion of the company concerned (including the specification of the job positions) into the project, as well as takes care of its publicity.

MFA/E – receives an application for a long-stay visa from the applicant and handles it through the accelerated delivery process, paid by the applicant, and lets the applicant or a representative empowered by the applicant know of the decision by the MI/DAMP on granting the visa.

MLSA, i.e. PES – accelerates the labour market test and decides on issuing an employment permit; evaluates the compliance with the condition that the firm has not been repeatedly fined for breaching its legislation-based obligations monitored by the PES, SLIO or DLI.

MI, i.e. DAMP – decides on granting a short-stay visa within 30 calendar days from the date of submitting an application if the application has been provided with all

³ Number of entries – The Schengen (short-stay) visa validity period will be determined, depending on the suggested length of the stay or the expected number of trips, for a maximum of 5 years. The following types of visa are distinguished:

- a) Single-entry visa – entitles to a single uninterrupted stay in the territory of the Czech Republic/Schengen area for the period indicated in it, which must not exceed 3 months within a half-year period;
- b) Double-entry visa – entitles to two stays in the territory of the Czech Republic/Schengen area for the period indicated in it, and the total stay must not exceed 3 months within a half-year period;
- c) Multiple-entry visa – entitles to multiple stays in the territory of the Czech Republic/Schengen area for the period indicated in it, and the total stay must not exceed 3 months within a half-year period.

⁴ MIT – Ministry of Industry and Trade, MFA – Ministry of Foreign Affairs, E – Embassy, MLSA – Ministry of Labour and Social Affairs, PES – Public Employment Service, SLIO – State Labour Inspection Office, DLI – District Labour Inspectorate, MI – Ministry of the Interior, DAMP – Department of Asylum and Migration Policy.

statutory elements and, no later than the 20th day from the date of submitting the application, is delivered to the DAMP.

Publicity:

MIT, in cooperation with the other departments, will prepare an information material on the Project, which, with CzechInvest's assistance, it will publish and disseminate. The project will be publicised through the MIT website, to which links will be created in the relevant sections of the websites of the MI, MLSA and the MFA.

Annexes:

Annex 1: Process of the intra-corporate transfer of an employee according to the project

Annex 2: Application for including an intra-corporate transfer into the project

Process of the intra-corporate transfer of an employee according to the project ⁵

The company discusses the details of the intra-corporate transfer with a regional office of the PES, enters into a contract under which the transfer will be made, and submits an application for an employment permit. Then the firm notifies the MIT of the intra-corporate transfer and submits certified documents from the TO, CSSAA and health insurers.



The MIT evaluates the application and
a) if the firm meets the conditions, the MIT will immediately notify the MI, MLSA, MFA of including the application into the project, or
b) if the firm fails to meet the conditions for inclusion into the project, the MIT will notify the firm of that fact in writing.



MLSA, i.e. PES, evaluates the compliance with the condition that the firm has not been repeatedly fined for breaching its legislation-based obligations monitored by the PES, SLIO and DLI.
A member of the firm's staff will submit a visa application to the Embassy (and shall arrange for the express delivery of the application in advance and at its cost). The Embassy will send the visa application to the DAMP.



The PES decides on issuing an employment permit.
The DAMP evaluates the submitted application for a long-stay visa and, if statutory conditions are met, it will grant the long-stay visa.



Based on a DAMP's instruction, the Embassy notifies the foreigner and indicates a long-stay visa in the foreigner's travel document.

⁵ MIT – Ministry of Industry and Trade, MFA – Ministry of Foreign Affairs, E – Embassy, MLSA – Ministry of Labour and Social Affairs, PES – Public Employment Service, MI – Ministry of the Interior, DAMP – Department of Asylum and Migration Policy, CSSAA – Czech Social Security Administration Authority. TO – Tax Office.

Involvement of other authorities with the following links: undertaking – CSSAA, Tax Office and health insurers:

- **CSSAA** prepares a certificate of the registration for social security insurance payments for the undertaking and a document to certify that the company has no arrears in social security insurance contributions and state employment policy contributions.
- **Tax office** issues a document to certify that the business company has no arrears in payments.
- **Health insurers** issue certificates of the registration for health insurance payments and a document to certify that the company has no arrears in public health insurance contributions.

APPLICATION FOR INCLUDING AN INTRA-CORPORATE TRANSFER INTO THE PROJECT OF “ACCELERATED PROCEDURE FOR INTRA-CORPORATE TRANSFERS OF FOREIGN INVESTORS’ EMPLOYEES”	
Name of the company where the applicant will be employed/ID No	
Applicant’s name/date of birth/nationality	
Registered office/place of business	
Type of company linked by capital	
File reference in the Commercial Register	
Annual turnover in the Czech Republic/amount of taxes paid for the past accounting period	
Number of employees in the Czech Republic as at the date of submitting the application	
Amount of investment in the Czech Republic a) in non-current tangible assets b) in non-current intangible assets c) wage cost of all employees in the Czech Republic for the last 2 years	
Contact person Delivery address in the Czech Republic	
Telephone/E-mail	
Job specification (specialist/manager)	
Regional office of the Public Employment Service where the application for an employment permit was submitted and the application’s reference number	

Expected place of submitting the application for a long-stay visa	
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In.....on.....

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First name, surname and position of an authorised representative and signature

Annexes Required

- ✓ Tax Office's certificate of no tax arrears (not older than 6 months),
- ✓ Certificate by the Czech Social Security Administration Authority of the company's registration for social security insurance payments and of no arrears in social security insurance contributions and state employment policy contributions (not older than 6 months),
- ✓ Insurer's certificate of the company's registration for health insurance payments and of no arrears in public health insurance contributions (not older than 6 months).
- ✓ Declaration of honour that none of the employees of the firm is ensured with the health insurers from which the firm has not submitted a certificate of no debt, and that the firm has no arrears in insurance contributions and in penalty payments in respect of public health insurance with those insurers.
- ✓ Declaration of honour that the firm globally employs at least 1,000 people, at least 250 of them in the Czech Republic, and that the number of staff transferred under the project has not exceeded 10% of the number of employees in the Czech Republic.

Note: If the company has supplied the above annexes, along with the application for inclusion into the project, it is not obliged to enclose them with the application for inclusion into the project for the period of 6 months again. In that event, the application for inclusion into the project should only include the company name, ID No and details on the applicant; the other data must only be specified by the company if they have changed since the date of the last submission of the application for inclusion into the project.