

**Circolare Ministero del Lavoro - Ministero 9 febbraio 2017, n. 517  
"Attuazione della direttiva 2014/66/UE sulle condizioni di  
ingresso e soggiorno dei dirigenti, lavoratori specializzati,  
lavoratori in formazione di Paesi terzi nell'ambito di trasferimenti  
intra-societari"**

**Traduzione a cura dell'Ufficio Interpreti della Prefettura di Firenze -  
(Dott.ssa Alessandra Biagi)**

**REFERENCE: Legislative Decree, n. 253/2016" Implementation of  
DIRECTIVE 2014/66 of EU on the conditions of entry and residence of  
third- country nationals for managers, specialists and trainee  
employees in the framework of intra- corporate temporary  
secondment or transfer  
(Published on the G.U. n.7 on January , the tenth, 2017).**

Last January the tenth, on the Gazzetta Ufficiale nr.7, the Legislative Decree, n. 253/2016 establishing the rules for " the Implementation of DIRECTIVE 2014/66 of EU on the conditions of entry and residence of third- country nationals, for managers, specialists and trainee employees in the framework of intra- corporate temporary relocation or secondment " was published. It is also called ICT Directive for intra-corporate transfer.

This Directive purpose is to discipline the entry and stay in Italy, for a period superior to three months, of high skilled workers who want to carry out subordinate work in the framework of intra corporate – transfer outside the quotas allocated by article nr.3, paragraph 4, of Legislative Decree 286/1998.

**Intra - corporate transfer** means a **temporary secondment** of a non E.U. worker who has been hired and has worked for at least three months in an undertaking placed outside the European Union and is posted to a host entity in Italy as hereby specified.

Legislative decree 253/16 introduces 2 new articles in the Immigration Text (TUI)

- article 27-*quinques* that disciplines the entry and stay of non EU high skilled workers in the framework of intra- corporate transfer;
- article 27-*sexies* concerning the specific hypothesis of mobility within the European Union of the above mentioned workers (tranferees) already admitted

in another Member State and that are then transferred to Italy upon the employer's request.

In order to implement the present decree here follows the operative instruction based on regulatory framework .

## **IMPLEMENTATION AND DEFINITIONS AND SUBJECT MATTER**

The workers should be managers, specialists and trainee employees in the framework of intra corporate- transfer.

**The manager** is specified by letter a) of article *27-quinquies*, subparagraph 1, as established by art. 2095 of c.c. and it means a person holding a senior position , carrying out highly professional performances, possessing decision making capability, responsibility with regards to the undertaker, and who directs the host entity or a department or a division of the host entity.  
( **DIRECTIVE 2014/66 of EU** )

**The specialist** is depicted by letter b) of article 27-quinquies subparagraph 1, and it means a person possessing specialized knowledge essential to the host entity areas of activity, techniques or management account . In assessing such knowledge, account shall be taken not only of knowledge specific to the host entity but also of whether that person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge , including membership of an accredited profession; (**DIRECTIVE 2014/66 of EU**)

For the accredited professions it is necessary to have the acknowledgment of qualifications according to the Legislative Decree 206/2007.

In order to assess the qualifications of intra- corporate transferees, the European Qualifications Framework – EQF for lifelong learning shall be taken into account as it enables to carry out a transparent evaluation.

**The trainee employees** are specified in letter C) of article *27-quinquies*, paragraph 1, and they are workers with a university degree transferred to a

host entity (and paid during the transfer) for career development purposes or in order to obtain training in business techniques or methods, according to what is stated by the educational training plan (containing the duration, the educational purposes and the conditions of implementation of the training).

**(DIRECTIVE 2014/66 of EU)**

This provision should not apply, according to paragraph 4 , to those third-country nationals who:

- apply to reside in a member State as researchers according to 'article 27-ter' as established by the Council Directive 2005/71/EC
- enjoy the rights of free movement (as for instance in Switzerland) or are hired in an undertaking placed in third-countries in the framework of agreements between the Country of origin and the European Union and its member States;
- ask to stay in Italy as assigned workers with the aim to carry out specific services, as established in article 1, subparagraphs 1 and 5 of the legislative Decree 136/2016 ( article 27, comma 1, l. i) TUI) within the framework of a tender process;
- carry out activities as self- employed workers according to article 26 of the Immigration Text
- are admitted as full-time students or who are undergoing a short – term supervised practical training as a part of their studies;

**INTRA - CORPORATE TRANSFER**

Intra-corporate transfer means a **temporary transfer** of a non E.U. worker from an undertaking placed in a third Country to **the host entity , that can be :**

- **seat/ branch or representative** of the undertaking where the assigned non EU National worker is hired, **located in Italy;**
- an undertaking belonging to the same group of undertakings according to article 2359 c.c. – the so called “ **intra -corporate secondment**” upon condition that the third country worker has been working at the transferring

undertaking as dependent worker for at least three months, without interruption, immediately before the transfer.

The intra - corporate transfer encompasses also the cases of mobility for those non EU workers who had already been given a ICT permit ( intra-corporate transferee permit) according to paragraph 17 of article 27 *quinques*, among host entities placed in different Member States.

**The maximum duration of one intra-corporate transfer ( including mobility between member States) should not exceed three years for managers and specialists and one year for trainee employees,. These periods encompass eventual prorogations and are considered as maximum comulated duration.**

**Between the end of the maximum duration of one transfer and the lodging of another application for the same intra- corporate transferee, a period of at least three months must elapse.**

At the end of the authorized intra- corporate transfer, **the third country worker must go back to an entity belonging to the same undertaking or to an undertaking of the same group placed in a third- country.**

## **CONDITIONS OF WORK**

**According to paragraph12** of article 1 of the present decree (referring to the Legislative Decree 16/2016), the non EU National workers admitted in Italy in the framework of intra- corporate transfer, here called **intra-corporate-transferees**, should **benefit** from at least **the same terms and conditions of work and employment as hired workers occupying comparable positions in the place where the secondment takes place**, as established by the collective contracts disciplined by article 51 of the Legislative Decree 81/2015 (respecting **the so called minimum levels of work and employment- circular letter INL 1/2017.**)

In particular, as it was declared in a previous circular letter, if the work activity is carried out in Italy, it is regulated by the provisions of Law, by the administrative dispositions and by dispositions of the collective work agreements and with particular attention to:

- maximum period of work and minimum of rest;
- minimum duration of annual paid holidays;
- minimum wage in remuneration, including higher tariffs for extra work;
- health, safety and hygiene on work places;
- non- discrimination between men and women.

It is specified that the undertaking established in a third-Country or outside the EU that intends to carry out an intra- corporate transfer of managers/ specialists / trainee employees (ex article 27 -quinquies, paragraph 1 Immigration Text) **has not the obligation to make the previous communication of secondment (according to article 10 of the legislative Decree 136/2016) because this obligation is due only for non UE transferees within the framework of a tender process (one or group of workers as established by article 10 of L. Decree 136/2016).**

## **SANCTIONS**

Paragraph 5 of article 27 -quinquies introduces specific **cases of denial of rejection** to the work leave, for instance **when the host entity is built and conceived with the unique and specific aim to ease the entry of these workers.**

To this purpose the Territorial Inspectorate will carry out due inspections to render the competent evaluation before the Unified Desk of Immigration issues the leave.

A penal sanction is applied according to article 27 quinquies, paragraph 26.

The penal sanction is established by article 22 paragraph 12 of the Immigration Text and it encompasses from three months to six years imprisonment and a

fine amounting to 5.000 euros for each hired worker and aggravated by paragraph 12-bis of the same article 22,.

when workers without the specific permit to stay for intra- corporate transfer issued according to paragraph 17 are hired or when the permit has expired or was revoked or cancelled and the application for renewal wasn't lodged. In the same cases provisions stated by paragraph 12-ter , 12 - quarter and 12-quinquies of the same article 22 are applied.

## **THE APPLICATION FOR THE WORK LEAVE**

The application for the work leave is lodged online by the host entity to the Sportello Unico per l'immigrazione in the provincial venue where the host entity has its legal head office.

**THE APPLICATION FORM** corresponding to art.27-quinquies is to be filled in and sent through the link : **([nullaostalavoro.dlci.interno.it](http://nullaostalavoro.dlci.interno.it))**.

THE APPLICATION MUST ENCOMPASS ( under penalty OF EXCLUSION)

- The existence of the company bind between the host entity and the undertaking placed in the third country (head office/ branches/representative office/same group of undertakings)
- the evidence of having been working as dependent worker for at least three interrupted months before the date of the intra - corporate transfer in the undertaking abroad ( headquarters, branch, representative office or undertaking belonging to the same group of undertakings);
- the maximum duration should not exceed three years for managers and specialists and one year for trainee employees
- address in Italy of the host entity or host entities where the worker carries out the work;
- professional qualification covered by the worker while working for the host entity
- same retribution and other conditions of work and employment established by the laws and national collective work agreements as those applied to the workers where the intra- corporate transfer takes place should be guaranteed;

- at the end of the intra corporate transfer the worker should go back to an entity belonging to the same undertaking or to an undertaking of the same group established in a third- country;
- the worker should possess qualifications and professional experience and higher education degree as described at paragraph 1 letter a) b)and c) of legislative decree 253/2016;
- the transferee should possess the acknowledgement of the professional qualifications established in the legislative Decree nr.206 dated November the 9<sup>th</sup>, 2007 in case the profession exercised is framed in membership of accredited professions
- the data of the valid passport or equipollent document of the non E.U worker  
for trainee employees an individual training plan containing the duration, the educational and training purposes and the conditions of the implementation of the training
- the commitment to meet all the welfare and social security obligations established by the Italian Laws, unless there are social safety agreements with the Country of origin

## **PROCEDURE**

- Within ten days from the lodging of the application the host entity hands the documents concerning the requisites stated by art.27-quinquies according to conditions of paragraph 5 ( see joint 2) to the Sportello Unico per l'Immigrazione
- The Sportello Unico checks the regularity , the completeness and the conformity of the documentation
- In case the irregularity of the documentation is rectifiable the Sportello Unico invites the host entity to integrate the application
- The Sportello Unico acquires the different competent leaves from the local Office of the National Employment Inspectorate for the verification of the conditions established by paragraph 5 and from the Questura ( Police Headquarters) after verifying the admissibility of the worker in Italy ( no hindering criminal records as stated by article 31, paragraph 1 of the DPR 394/99)

- The Sportello Unico, within the maximum term of forty-five days from the lodging of the application issues the leave for entry and transmits it with the non E.U. worker social security number to Consular Offices with the aim to grant the visa.
- The leave's validity does not exceed six months since the date it was issued. In order to carry out the administrative procedure aimed at issuing the work leave all the rules established in the regulation text for the implementation of the Immigration laws ( DPR 394/1999) art.30-bis and 31 will be taken into account.

The provision indicating the withdrawal of part of the salary for housing expenses ( art.30-bis paragraph 4) is expressly excluded.

Paragraph 25 of art.27 quinquies excludes the obligation to undersign the contract of stay between the employer and the worker.

The application for the leave can be replaced by a communication online made on line from the host entity to the Sportello Unico per l'immigrazione , if the host entity had undersigned with the Minister of Interior , upon consent of the Employment Minister a specific protocol of agreement by which it guarantees the existence of the conditions required by the Laws for the work leave ( paragraph 13 and 14)

Within eight days from entry in the national territory the non E.U. worker presents himself/herself at the Sportello Unico per l'Immigrazione that issued the work leave, and there the worker is given form 209 necessary to withdraw the **permit to stay for ICT**

The permit to stay duration ( issued as a result of the work leave to enter Italy granted by the Sportello Unico ) is equivalent to the intra- corporate transfer and it can be renewed for maximum duration established for each category of workers.

The worker possessing a an ITC permit to stay can apply for family reunion, independently from the duration of the stay, and to the members of the family

rejoined, a permit to stay for family cohesion is granted whose duration goes along with the permit of the worker

### **Mobility (art. 27-sexies del T.U.)**

**The non e.u. worker** with a valid permit to stay for- intra corporate transfer issued by another State member of the European Union is authorized to stay and work at a head office, a branch ,a filiation or representative office in Italy of the undertaking where the same worker is hired and this latter can stay for a maximum of 90 days along the lapse of 180 days.

In the case of the **mobility of short duration** , the host entity should not apply for work leave and the non E.U. worker can enter Italy without a specific entry visa according to article 5 paragraph 7 of Immigration Text.

In case of a secondment whose duration is superior to 90 days – **mobility of long duration** – the host entity has to lodge an application online according to article 27-quinquies, declaring the presence of the same conditions.

The application for the work leave can be lodged also in case the worker has already entered the Italian territory, but within 90 days since the entry date.

**In this case, too, the entry can occur without the visa .** Within eight days since the issuing of the work leave the worker goes to declare the presence at the Sportello Unico per l'Immigrazione and applies for the permit to stay in order to be given a permit to stay for "mobile ICT".

While waiting to be given the work leave and the "mobile ICT" permit to stay, the worker can work if provided with a valid "ICT permit to stay" issued by the first Member State.

**If the permit to stay for intra-corporate transfer issued by another Member State expires in the meantime, revoked or cancelled, an no work leave -according to art.27- quinquies conditions -was asked within 90 days,** sanctions established by article 22, paragraph 12, 12-bis, 12-ter, 12-quarter and 12-quinquies of Immigration Text are applied ( art.27-quinquies , paragraph 16).

Also the "mobile ICT" permit to stay is issued for the duration of the mobility required and it can be renewed if extension is given, after The Sportello Unico has verified the presence of necessary conditions for the maximum duration allowed that is three years for managers and specialists or of one year for employee trainees , according to art.27-quinquies- paragraph 11.

With a permit to stay "mobile ICT" , independently from its duration it is possible to apply for family reunion, according to both articles 29 and 30 of the Immigration text.

The members of the family of a non E.U worker provided with a "mobile ICT permit to stay", can enter the national territory together with the worker proving they had resided as family members of the transferee in possession of the ICT permit in the same Member State.

In this last case the authorization for family reunion should not be applied for. In case the authorization is not granted or revoked ( paragraphs 8 and 10 of art.27 – sexies), the Member State of origin must be immediately notified and this latter is obliged to readmit on its territory without any formalities ( art.27 quinquies- paragraph 24).

The authorization can be replaced by an online communication on behalf of the host entity to the Sportello Unico per l'Immigrazione, if the host entity had previously subscribed a specific protocol of agreements with the Minister of Interior upon consent of the Minister of Employment by which the conditions required by the LAW for the authorization are guaranteed.( paragraphs 13 and 14)

## **ABROGATIONS**

Article 4 of decree nr.253 moreover modifies partially art.27, paragraph 1 and 1-ter of the Immigration text, which would sort out not compatible with the above mentioned legislative decree and the relative regulation of

implementation as established by the Decree of the President of the Republic nr.394 issued on August the 31st , 1999.

In particular, according to paragraph 1, I. f) of article 27 the Law takes into account

those non EU Nationals who, authorized to stay for professional training, carry out also short period of training by Italian employers (...). This is why the words " carry out also working offices that are entailed in the subordinate work" were cancelled , as this hypothesis is included in article 27 quinquies, paragraph 1 l.c).

Particular attention must be given to the suppression of letter g) paragraph one of article 27, encompassed in article 27 quinquies paragraph 1 l. f) with some modifications ( specialists)

As a result of the above mentioned suppressions and modifications, the decree 253 modifies the corresponding dispositions of the Implementation Act (Regolamento di attuazione) of the Immigration Text ( art.40, paragraph 9lb. and paragraphs 10 and 11.).