

11 September 2017

Response to the EU Commission legal migration consultation in light of current and upcoming legislation on highly skilled employment

Thank you for the opportunity to respond to your consultation on the relevance, coherence, effectiveness, efficiency and added value of EU migration legislation and its contribution to effective management of migration flows. The timing of your consultation is particularly relevant in view of current negotiations on the repeal of the Blue Card Directive and we make our submission both in that context and with a view to longer term policy.

Permits Foundation is an independent, not for profit organisation supported by over [40 major international companies](#) and organisations operating in the EU and worldwide. We promote access to employment for the family members of employees on international assignment, resulting in a triple win for host countries, employers and families alike. Since 2001, Permits Foundation has worked with EU policy makers and legislators to secure this entitlement in EU legislation.

In responding to your consultation, we focus on highly skilled migration in the context of:

- Directive 2009/50/EC¹ on highly skilled employment (EU Blue Card) *and the proposal for its revision* COM(2016) 378²
- Directive 2014/66/EU³ on intra-corporate transfers

1. Family access to employment – a key factor in attracting and retaining talent

Access to employment for family members has been recognised as a fundamental element of both the current Blue Card Directive and the ICT Directive in order to “*attract and retain talent*” (Blue Card) and to “*produce all the expected benefits for competitiveness of business in the Union*” (ICT Directive). We are therefore very concerned that the Commission’s new Blue Card proposals include a possible labour market check for family members. We view this as a backward step that is not consistent with Recital 36 of the same proposal that “*favourable conditions for family reunification and unhindered access to work for spouses should be a fundamental element of this Directive in order to facilitate the attraction of highly skilled workers.*”⁴

We strongly support the European Parliament’s recent vote to remove the labour market check and urge the Commission and Council to take this into consideration.

Granting family members direct access to employment, without a labour market check, ticks all the boxes of *relevance, coherence, effectiveness, efficiency and added value*. Our extensive surveys (see appendix) show that countries that guarantee spouse access to employment are more attractive to highly skilled employees associated with international business, investment and development. Importantly, partners of employees need certainty that they can access work before the decision to relocate is made.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0050>

² [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0378/COM_COM\(2016\)0378_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0378/COM_COM(2016)0378_EN.pdf)

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0066>

⁴ [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0378/COM_COM\(2016\)0378_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0378/COM_COM(2016)0378_EN.pdf)

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Moreover, access to employment for partners has a positive impact on highly skilled employees' willingness to accept, complete and extend an international relocation, as well as on health, well-being and integration of the family members into the host country. With respect to integration, we note that the EU's 2020 strategy includes "better integration of migrants". Direct access to employment for family members, without a labour market test, will help meet this objective.

Currently, neither the current EU Blue Card nor the ICT Directive prescribes a labour market check and most Member States have done away with this hurdle. Its re-introduction, even as a 'may' clause, would run contrary to the objective of fostering competitiveness and growth in the EU⁵. It would act as a deterrent for those considering an assignment and impact disproportionately on women, who make up the majority of accompanying partners, and thereby also on gender diversity in the workforce. It would also impact on businesses and Member States, creating more uncertainty, complexity and administrative cost. For example, how should a self-employed spouse demonstrate a job offer or a *concerned vacancy* that could not be filled by an EU national?

Globally, more than 30 countries recognise the importance of dual careers in the global workplace. Australia, Canada, Hong Kong, New Zealand and USA, (and more recently Brazil and Peru) are some examples of countries that - alongside the EU - allow spouses, partners or other family members to work or be self-employed, without a test of the labour market and not limited to a specific employer.⁶ The European Commission's own research shows that these countries are attracting highly skilled workers in competition with the EU.

2. Reduce the decision time as much as possible

Application procedures should preferably be completed within 30 days, rather than 60 days as proposed in the new Blue Card Directive, for both employees and accompanying family members to improve the speed and efficiency of moves to the EU, and reduce uncertainty time for employers and employees.

3. Ensure coherence between directives to facilitate conversion between permit types for highly-skilled workers and their family members, and efficient procedures for employers

The wording of EU directives needs to be compared, to ensure that an ICT wishing to convert to a Blue Card (if the conditions are met) can do so after the maximum 1 year or 3 year period on an ICT permit, without requiring a change of contract type. This is an important point for international companies who may need to retain a small number of highly skilled staff in a given Member State for longer than the maximum period on an ICT permit. At present, national schemes allow a conversion.

4. Improve the communication about the terms and benefits of the various schemes to employers, employees and family members coming to the EU

The Commission should encourage Member States to provide clear, accessible online information on the schemes in their country. We also request that the Commission's [immigration portal](#) keep an up-to-date map of countries that have implemented all the legal migration directives. The rights of family members, including access to employment and self-employment, should be consistently included in this portal. Currently, the emphasis tends to be on the right to accompany.

Conclusion

We urge the Commission, Council and Parliament to take our requests into consideration when finding areas for common ground during the Blue Card negotiations and the development of future legal migration policy.

⁵ https://ec.europa.eu/home-affairs/content/consultation-european-unions-eu-legislation-legal-migration-non-eu-citizens-fitness-check-eu_en

⁶ P18. <https://www.permitsfoundation.com/wp-content/uploads/Permits-intro-Nov-15-web.pdf>

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Permits Foundation research

Our research shows that assured family access to employment is a key factor in attracting and retaining talent. For example, in our survey of over 3300 expatriate partners accompanying employees in 200 companies, almost 60% said they would be unlikely to relocate to a country where there would be difficulties getting a work permit.

Further evidence from our international surveys:

- 96% of highly skilled families say that countries that enable partners to work are more attractive destinations.
- 70% of partners said that their own employment was important in the decision to relocate.
- 51% of employers reported that employees have turned down international assignments due to partner employment concerns.
- 21% of employers reported that assignees returned home early for the same reasons.
- 80-90% of partners of highly qualified employee are graduates, including around half with a master's degree or higher.
- Partners who are working are more likely to report a positive impact of working on integration, health or well-being and family relationships than partners who are not working.

Our individual surveys (click hyperlinks)

[The Impact of Removing the Unrestricted Right of Dependants to Work in the UK \(2015\)](#) - This survey of 1063 expatriate employees was created in response to a review of the UK's Tier 2 visa route by the independent Migration Advisory Committee (MAC) as part of a UK Government drive to reduce immigration levels. The government decided against making a change. While this was a survey of third country nationals in the UK, the population is likely to be very similar to highly skilled and intra-corporate transferees working in other EU countries. Click here for [additional respondent comments](#).

[International Mobility & Dual Career Survey 2012](#) – Permits Foundation surveyed over 177 leading global organisations (employing almost 7.5 million between them) to look at the challenge of dual careers and its potential impact on business success, with some very compelling findings. [Click Here](#)

[International Survey of Expatriate Spouses & Partners 2008, Summary Report](#) – this survey examines the views of 3,300 expatriate spouses and partners in 117 host countries including the EU, and provides evidence that a lack of employment opportunities adversely affects global mobility of international employees. You can [read the Full Report here](#).

Summary and context of our responses to specific points in the questionnaire

1. We are happy for our information to be published in full.
 2. We are sending this written information in addition to answering some of the questions in the questionnaire as we wish to focus on our area of expertise, which is intra-corporate staff and highly skilled migrants and their family members.
 3. Name: Permits Foundation. Contact@permitsfoundation.com.
 4. The Netherlands.
 5. Replying in professional capacity on behalf of an organisation.
9. We have detailed knowledge of the Directives on Family Reunification; EU Blue Card; Intra-Corporate Transfers.

10. We agree to a large extent with the statements:

- Targeted immigration of workers from countries outside the EU is one of the solutions to fill existing job openings that are currently not filled by EU workers.
- The EU should do more to attract highly skilled workers from countries outside the EU.

However, we wish to add that filling existing job openings is not the only reason or added value for having EU migration legislation. Highly qualified intra-corporate employees also relocate, as part of an international mobility programme, to transfer knowledge, skills and technology, develop potential and create cohesion in international companies. This works both ways, with EU staff also transferring to other countries inside and outside the EU.

14: Currently, non-EU citizens have the right to bring their immediate family (spouse and children who are minors) to the EU, under certain conditions. To what extent do you agree with these statements? The following members of the family of non-EU citizens should also be entitled to family reunification under EU common rules:

We agree to a very large extent that the following categories be entitled under EU legislation:

- Registered or other long-term partners (not married)
- Dependent children who are no longer minors (E.g. disability)

We have received regular feedback that these categories make a difference to the decision of highly skilled migrants to relocate.

We agree to a small extent that the following categories should be entitled under EU legislation:

- Economically dependent children who are no longer minors (e.g. unemployed.)

We do not have evidence of the example given of unemployment. However, if dependence would be more closely defined, for example, to cover children in full-time education up to age 22 or 23, we believe that this may be a helpful addition to EU legislation to support mobility. It should also be investigated whether conversion from minor dependent to student visa is available in every Member State and may sufficiently solve the concern.

We do not agree that the following categories should be entitled under EU legislation:

- Children who are no longer minors.
- Dependent parents (economically or otherwise).

The reason for this answer, at the present time, is that we do not have wide evidence that these categories will make a significant difference to mobility at EU level. However, with changing demographics, dependent parents is a growing a growing concern. We recommend that more study be done, learning from experience in individual member states, before determining whether recognition should remain a national competence as at present or become subject to EU law.

14. (cont.) We agree to a very large extent that the spouse of a non-EU citizen should always have the right to work.

We have already highlighted the importance of direct access to employment without a separate labour market check for family members of Blue Card workers and ICTs. This is our key area of expertise.

At the same time, it is reasonable to expect that being able to work also has a positive impact on the health, well-being and integration of the family members of lower skilled workers too. Sadly, we observe that the Family Reunification Directive leaves accompanying spouses and partners of those other than ICTs and Blue Card workers, in a vulnerable position with respect to applying for a work permit and conditions to enter the labour market. We encourage both Member States and the EU to take a more positive stance.