

Permits Foundation

working together to promote change worldwide



18 October, 2010

Commissioner Cecilia Malmström
EUROPEAN COMMISSION (Home Affairs)
B-1049 BRUSSELS

Dear Dr. Malmström,

Response to the proposal for a Directive on intra-corporate transfers, Com (2010) 378

On behalf of Permits Foundation, I would like to thank the Commission for developing a proposal for a Directive on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT).

International companies place a high value on efficient processes for intra-company personnel and their family members. Every step to simplify and harmonise procedures across Member States makes companies more efficient, which benefits the EU economy and makes the EU a more attractive destination for investment and top talent. At the same time, given the importance of accompanying family members to international mobility, we strongly recommend two amendments to Article 15 before the directive is passed:

1. Immediate access to the employment market for accompanying family members, in particular spouses and partners, at least in line with provisions in the Blue Card Directive.
2. Family members should be granted their residence permits within the same period as the intra-corporate employee (i.e. within 30 days, unless in exceptional circumstances).

Intra-corporate employees are a highly educated and skilled talent pool. The transfer of knowledge, skills and technology that they facilitate provides refreshment and upgrading of human capital in the EU employment market, boosting the economy and providing additional tax revenues for Member States. The partners of these employees are generally also highly educated and Permits Foundation has strong evidence that granting their work authorisation is essential to the EU's attractiveness as a destination for investment and skilled workers. We are happy to share this data, which the Commission may draw upon in support of a policy of ICT partner employment, bearing in mind the wider and long-term implications for gender equality and integration.

Permits Foundation is a corporate initiative to promote work authorisation for expatriate spouses and partners worldwide. This is an issue that affects men and women of all nationalities, including European families abroad, in both the private and public sectors. More than 40 major international companies and organisations support Permits Foundation, which is independent and not-for-profit.

Already around 20 countries worldwide allow family members to work and this number continues to grow. If the European Union does not keep up with best international practice, it will lose out in competition for global talent. The appendix provides further background to our proposals.

I gratefully request a meeting with you or your representative to explore how we can be of assistance in gaining acceptance of these principles and overall support for the directive.

Yours faithfully,

Kathleen van der Wilk-Carlton
Board Member, Permits Foundation

Accompanying family issues in the EU Commission's proposal for a Directive on Intra-corporate transfers - Com (2010) 378

1. Article 15 on family members

Access to employment for family members

Although the Commission recognised that allowing spouses to work would have a positive economic impact on attracting ICTs, the final proposals stopped short of a clause allowing spouses to work. We note that the Commission actively considered it under Option 4 in the Impact Assessment (SEC/2010/884). Since this was rated positively on several criteria, including economic, social and fundamental rights, the final proposal without access to employment appears at odds with the analysis and the unanimous agreement of stakeholders who were consulted.

The Impact Assessment states *"When spouses are.....granted access to work...and Member States are not allowed to apply the time limit of 12 months,..... companies will be able to attract ICTs more easily and therefore be more competitive."*

"However, access to labour market would be easier for family members of ICTs than for family members of New Member States subject to transitional measures, which could be politically difficult to defend and run counter to the Union preference."

We find this a weak counter-argument and the Commission appeared to agree. *"Yet, the current remaining transitional measures would not apply any more at the time when the directive would enter into force; in addition, such a provision was already put forward by the Blue Card Directive and the number of persons would be small."*

Time period within which family members should be granted a residence permit

We do not see any rationale for a 2-month period within which to grant families a residence permit, when the intra-corporate employee permit is normally granted within 30 days.

Employers want to ensure that family members can arrive from the start of the assignment. While it may sometimes be convenient to join the employee later, for example if children need to complete a school term, it is normally least disruptive if the whole family transfers together. It is important to recognise that ICTs sometimes transfer directly from a previous assignment outside their home country. In some international companies, this could be up to half of all ICTs.

Once the employee has left the previous group company, it may not be permissible for an expatriate family to remain there, either for cost reasons or because the residence permit is only valid for the same period as the employee. The EU Directive should reflect this reality by granting family permits at the same time as the employee, with flexibility to arrive later if necessary.

2. Evidence of the need for work authorisation for partners

In 2008, Permits Foundation conducted a global survey of the employment aspirations of 3300 spouses and partners and the impact this has on international mobility. Almost 60% of respondents said that they would be unlikely to relocate to a country where it is difficult for a partner to get a work permit. A majority said that their own employment and career was important in the decision of the family to relocate. This was even more significant for younger age groups, those with a university degree, male partners and university graduates and unmarried partners. Moreover, around a quarter of international staff had either turned down a previous assignment or terminated an assignment early because of concerns about the partner's career. These figures are likely to be the tip of the iceberg because the survey only questioned those already on assignment. Moreover, the problem is likely to increase over time as demographics change. This indicates the challenge that both employers and countries face in attracting the 'brightest and the best'.

The survey also looked at wider social issues such as the impact of working on adjustment to the host country, family relationships and health or well-being. Whilst a majority of those surveyed wanted to work, others were very happy to take a career break, for example to raise children. However, there was a clear link between working and positive feelings about the assignment.

Spouses who were working were more likely to report a positive impact of working on adjustment to the host location, family relationships and health and well-being than spouses who were not working. Moreover, 30-40% of not-working spouses reported a negative impact of not working on these same factors.

Thousands of individual comments from accompanying spouses bore testimony to both the economic and wider societal implications of access to employment. The vast majority of respondents were highly educated with 36% holding a bachelor's degree, 40% a masters degree and 6% a doctorate. 85% of them were women.

"Both my partner and I have invested a lot in our education and career and either one of us could be offered an international job. We would only accept if we were fairly sure that both of us could work. As an absolute minimum we would need to know that whichever of us is 'accompanying' could get a work permit."

"If I work, I will make best use of my skills, pay income tax and have more money to spend locally."

"The implications of not working on my health (especially mental health) are so vast that I will never consider to relocate to such a country (where is not possible to get a work permit – ed.). I was unemployed for 1 year when I came here and that was the most miserable year in my entire life. I will not repeat that, and my husband stands by my decision."

"I have been an expatriate for more than eight years. Being able to work and contribute is vital for me. Not having a job generates a lot of stress for me and therefore for my family. Not only for economic reasons, is it absolutely much more than that."

"It puts a tremendous strain on a marriage when one career is "more important" and that carries over to the employee's job performance when the home life is unhappy."

"I decided to follow my husband...to keep our family balance and I hoped to share my personal expertise in the host country. Now I feel guilty ... because I cannot make my expertise available.... and I cannot continue to grow in my own development."

"There is serious depression, insecurity, loneliness, boredom, and a feeling like no one understands - it takes the help of others who have been through it.....No one prepares the employed spouse how to deal with or understand the misery of the unemployed spouse, which doesn't help."

"Now that I am back in the workforce and have resumed my career, it would be psychologically very difficult to take another break. It would be very hard for me to go to a new location where I couldn't work... It has made an incredible difference to how my children see me (a mother, a wife, and now a professional) and to their expectations of what they, as women, will be able to do with their own lives. My daughter's comment to me - "I didn't realise girls could work too Mum"- was a huge wake-up call. Our wonderfully tolerant, versatile expat children shouldn't have their world view limited in this way".

The last comment, which was from a non-European spouse who was able to return to work when she moved to the UK, shows how the issue has implications far beyond the economic pressure to attract the brightest and best. Failure to grant work authorisation for dependants is an affront to personal dignity and equal opportunity in a modern society, impacting on generations to come.

Permits Foundation applauds the recent strategy plan announced by the DG Justice and Fundamental Rights to boost gender equality and women's employment potential. The same underlying principles should be reflected in the Commission's policies on ICTs and their spouses.

Further information:

Overview of regulations in countries that allow family members to work:

<http://permitsfoundation.com/docs/Permits%20Country%20Summary%20March%202010.pdf>

Permits Foundation global survey summary report:

http://www.permitsfoundation.com/docs/permits_survey_summary.pdf

Global survey final report: http://www.permitsfoundation.com/docs/permits_survey_final_report.pdf

Permits Foundation sponsors: <http://www.permitsfoundation.com/sponsors.htm>