



Suggested amendments to the LIBE Committee draft Report on intra-corporate transfer: conditions of entry and residence of third country nationals

Permits Foundation requests you to submit new amendments to the draft Report. As it stands, Amendment 25 could be interpreted by Member States as no change on the important issue of spouse employment as it simply refers to the Family Reunification Directive, which gives Member States a period of up to 12 months to examine the labour market before authorising family members to work. This is too restrictive for an ICT family whose assignment may only last up to 3 years. While meaning well, the current amendment does not meet the aim of the Directive to create more attractive conditions for the temporary stay of ICTs and their family members. We suggest that the wording can be easily improved.

AMENDMENT 25		
Article 15 5a (new)		
Commission proposal	Rapporteur's amendment	Permits Foundation suggestions
	<p><i>In accordance with Article 14 of Council Directive 2003/86/EC and without prejudice to the principle of Union preference, Member States may facilitate access to employment or self employment for the family members of the transferee.</i></p>	<p>(Preferred wording) 1</p> <p><i>By way of derogation from Article 14(2) of Directive 2003/86/EC, the family members of an intra-corporate transferee who have the right of residence in a Member State shall be entitled to take up employment or self-employment there, for the same duration as the transferee.</i></p> <p>(Fall-back wording) 2</p> <p><i>By way of derogation from Article 14(2) of Council Directive 2003/86/EC and without prejudice to the principle of Union preference, Member States shall grant direct access to employment or self employment for the family members of the transferee, for the same duration as the transferee.</i></p> <p>(Final fall-back wording) 3</p> <p><i>By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market.</i></p>
<p>1. This wording has the advantage that it is completely transparent and in line with an existing legal basis as established in Directive 2004/38/EC (2004), (Article 23) on the right of citizens of the Union and their family members, irrespective of their nationality. We would argue that there is also a legal basis in the Treaty on the Functioning of the European Union, Article 79 (1) and (2)(a) and (b) ('with respect to fair treatment of third country nationals residing legally').</p> <p>2. A minimal change to the structure of the Rapporteur's draft amendment 25.</p> <p>3. This is the wording used in the "Blue Card" Directive 2009/50/EC (2009). Our strong reservation about this wording is that it is not transparent. Even now, six years after the intended transposition date of the Family Reunification Directive, we are not sure that all Member States have implemented this aspect, so it is not a good model to follow.</p>		

AMENDMENT 24

Article 15.4 (amend)

Commission proposal	Rapporteur's amendment	Permits Foundation suggestion
By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the first Member State, if the conditions for family reunification are fulfilled, at the latest within two months from the date on which the application was lodged.	By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the first Member State, if the conditions for family reunification are fulfilled. <i>The competent authorities of the first Member State shall undertake to process the intra-corporate transfer permit request at the same time as the residence permit request for the transferee's family members; in more complex cases, the procedure shall be completed at the latest within two months from the date on which the application was lodged.</i>	By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by the first Member State, if the conditions for family reunification are fulfilled. <i>The competent authorities of the first Member State shall undertake to process the residence permit request for the family members at the same time as the permit request for the intra-corporate transfer employee. In more complex cases, the procedure shall be completed at the latest within two months from the date on which the application was lodged.</i>
With respect to the Rapporteur's amendment, we wonder if there is a simple transposition error in the order of the sentence in the English version. We believe it should read as we suggested above since the subject of Article 15 is Family Members. It is also necessary to be consistent with the next sentence: <i>"In more complex cases, the procedure shall be completed at the latest within two months...."</i> as this refers to the family members and not the ICT.		

We believe that these points are relatively minor concessions in the overall context of the aims of the ICT Directive. They are nonetheless highly important to mobility in international companies.

Further information:

Permits Foundation is a corporate initiative to promote open 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. Between them, they employ more than 2 million employees worldwide, around half of whom work in Europe. ICTs represent a very small proportion of the workforce (less than one per cent on average), but they are critical to the success of business, transferring knowledge, skills and technology that go hand in hand with international investment.

Evidence of the importance of spouse employment to mobility:

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

International comparison: Overview of regulations in 20 countries that allow family members to work:

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

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

Background

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 Directive on ICTs and their family members.