REPORT
on the Free Movement of Workers in Denmark in 2004

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Introduction and General Remarks

The event overshadowing all others in 2004 with regard to free movement of workers was the enlargement of the European Union taking effect on 1 May 2004. The enlargement caused massive interest from many parts of the society: politicians, the media, labour unions and ordinary people wondering what the consequences of the enlargement would be for them. Just as in 2003 the debate had a somewhat negative bias as the main concerns were what the effects of the enlargement would be on the labour market and whether the enlargement would put the social welfare system under pressure. The debate was on before as well as after 1 May 2004.

Before 1 May the main issue for the Danish Government and its coalition partners was how to construct the transitional arrangements with regard to workers from the new Member States. The result was amendments to the Aliens Act which – with regard to access to the labour market – puts citizens from the new (eastern European) Member States in a position, which is less advantageous than that of other Union citizens but better than that of third country nationals. While these new rules applied only to workers from the new Member States other changes were made with regard to specific social benefits which applied in general, although it was clear that they were motivated by the fear of unintended use of the social benefits which was sparked by the enlargement.

After 1 May focus has been put first of all on the actual numbers of workers coming to Denmark under the transitional arrangements. It seems to be the impression that the number (2,100 residents permits granted from 1 May to 31 December) is a bit higher than expected but not big enough for the Government and its coalition partners to be alarmed with regard to the repercussions on the labour market. Secondly, the interest has focused on the possible sidestepping of the requirements set out in the transitional arrangements as it has proven difficult in reality to distinguish between "workers" to whom the transitional arrangements apply and "service providers" and "self-employed persons" who are not encompassed by the arrangements. Thirdly, questions have been raised with regard to the compatibility of elements of the transitional arrangements with what is actually allowed within the framework of the accession treaty. The enlargement and its consequences are described in chapter VII of this report.

Apart from the enlargement, 2004 has not been a very eventful year with regard to free movement of workers. It should be mentioned, however, that the legal framework has changed as a new Order on EU/EEA citizens entered into force 1 May. The new Order does clarify and make more detailed the rules on access, residence and departure of Union citizens, but there are not many substantial changes. The most significant ones regard the access to family reunification and are actually also results of the enlargement. This is further explained in chapter I and IV.

Finally it could be mentioned that with regard to equality of treatment (chapter II of the report) it is an issue – taken up by the Commission as well as by Danish labour unions – whether the conditions that Danish shipowners are offering Polish sailors with regard to work and payment are compatible with Community law. This question is still to be answered.

Relevant websites:
- www.inm.dk (Ministry of Refugee, Immigration and Integration Affairs)
- www.udlst.dk (Danish Immigration Service)

- www.bm.dk (Ministry of Employment/Labour – of particular relevance as regards the EU enlargement).

Chapter I
Entry, Residence, Departure

Entry

Texts in force

Laws

The rules on free movement of workers have been implemented in Danish law first and foremost by the EU/EEA Order, see below. Certain sections of the Aliens Act[1] do also apply to some extent to EU citizens, however, among these, section 2 on the right to enter and section 28 on refusal of entry. For a description of these rules, which have remained unchanged in 2004, see National Report for Denmark for 2002-2003.

Administrative rules

The EU/EEA Order is the central piece of legislation concerning the implementation of the EU rules on the free movement as it implements the seven directives on free movement (Directive 2004/38/EC has not yet been transposed into Danish law).

A new version of the Order entered into force on 1 May 2004, replacing the Order from 1994. Before entering into a description of the detailed rules on entry etc. a general description of the new Order is given here.

New Ministerial Order on right to residence for EU citizens

One purpose with the new Order[2] is to make some clarifications, make the Order more systematic and coherent and update it. But there are also some more substantial changes made. The most substantial of these relate to the conditions for family reunification, which will be described in chapter IV. Others are mentioned here:

- In the previous Order it was made a general requirement for the issuing of residence certificates under the Order that the EU citizen would take up residence ("fast bopæl") in the country, cf. section 5. That requirement has now been abandoned, which seems to be appropriate, as it was not quite clear how the requirement was to be understood, and whether it might raise problems of compatibility with EU law.
- In the previous Order there was a distinction between residence *certificates*, which were issued to EU citizens comprised by the Order, and residence *permits*, which were issued to third country nationals comprised by the Order. That distinction has now been abandoned in that all persons comprised by the Order will be issued a residence certificate. By this change there is now a clear distinction between residence certificates issued to all persons deriving a right to stay from EU law and the rules on free movement, and residence permits which are issued to persons qualifying for residence under the Aliens Act. There is one exception to this general distinction, however, as third country nation-

1 Consolidation Act No. 808 of 14 July 2004.

2 Ministerial Order No. 292 on Residence in Denmark for Aliens comprised by the rules of the European Union or of the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 April 2004.

als deriving a right of residence from the "Singh principles" will receive a residence permit issued under the Aliens Act (see chapter V).

- The provisions on lapse and revocation have been made clearer and more detailed. One result of this is that there is a specific mentioning in the Order of those sections of the Aliens Act which apply to EU citizens with regard to lapse and revocation of residence certificates (see for instance section 16 on lapse, referring to section 17 of the Aliens Act, and the references to section 26 of the Aliens Act in the Order's sections 17-22 on revocation). It is also now made clear that a residence certificate can always be revoked if it has been obtained by fraud (section 18 of the Order).

With regard to the right to enter into Denmark the new Order does not contain specific provisions, but the right to enter is, of course, a prerequisite for the enjoyment of the right to residence, which is set out in the Order (see point B).

Judicial practice

Nothing to report (it should be noted that Denmark does not have administrative courts and that ordinary courts only quite rarely deal with cases concerning the right to entry and residence).

Miscellaneous (administrative practices etc.)

Cases concerning EU citizens and their right to entry, stay etc. are – with some exceptions, including cases from the 8 new eastern European countries – handled in the first instance by the county government offices, whose decisions can be appealed to the Danish Immigration Service (DIS). When the competence to handle these cases was delegated to the county government offices in 1995, DIS issued guidelines for the processing of the cases. These guidelines are to be updated in light of the new EU/EEA Order – this is expected to take place in 2005.

The guidelines are supplemented by letters of information or instruction from DIS to the county government offices whenever DIS deems it necessary. There have been no such letters of interest concerning entry in 2004.

Recent legal literature

Ellen Brinch Jørgensen, *Indrejse og ophold for udlændinge omfattet af EF-reglerne* (i "Udlændingeret", 2. udgave, 2000) (3rd edition forthcoming 2005)
Ruth Nielsen, *EU-arbejdsret*, 3. udgave, 1997
Ruth Nielsen, *European Labour Law*, 2000

Residence

Texts in force

Laws

Section 2 (1) of the Aliens Act contains the basic rule on the right to enter and reside for up to 3 months or – if seeking work – up to 6 months, which applies to Union Citizens and, cf. section 2 (2), members of their family.

Section 6 of the Act implies that a residence certificate shall be granted to foreigners, to whom the EU rules apply.

Section 14 (1, ii) exempts EU citizens from the requirement to have a work permit in order to take up employment in Denmark, which is imposed on most other groups of foreigners.

Apart from amendments to take into account the transitional arrangements with regard to the citizens of the new eastern European EU Member States, which is dealt with in chapter VII, the abovementioned provisions have not been changed in 2004.

Administrative rules

According to section 1 of the EU/EEA Order a EU residence certificate is granted to a EU citizen, who is employed in Denmark. This does not apply, however, to citizens of Estonia, Lithuania, Latvia, Poland, The Slovak Republic, Slovenia, The Czech Republic and Hungary. For this group of persons special rules apply, cf. chapter VII on the enlargement of the European Union.

The certificate is granted for 5 years, cf. section 14 (1), unless the period of employment is shorter than that or the EU citizen specifically has applied for a certificate valid for a shorter period. After 5 years the certificate will be made permanent, cf. section 15 (1).

Miscellaneous (administrative practices etc.)

The well-known criterion that employment must be actual and effective and that the employment must not be of such limited extent that the income from that appears as a purely marginal supplement to a person's other income or means in order to serve as the basis for a right to stay has been tested in relation to EU citizens, who work in the country but whose wages consist partly or completely of a wage supplement from the state.

The Danish Immigration Service stated that such cases must be dealt with on a case-by-case basis, and that in doing so it must be taken into account whether the employment is temporary and provided through a public job agency or a municipality, whether the employment must be regarded as a form of job training, whether all unemployed persons receive a similar job-offer and whether the public paid wage supplement covers the main part of the salary or is merely a minor supplement.[3]

3 Information letter from DIS to the county government offices No 2/2004 of 28 June 2004.

C. Departure

Texts in force

Laws

As stated above the main piece of legislation concerning the free movement is the EU/EEA Order. Not all issues are covered by this Order, however, and in such cases the rules in the Aliens Act apply. One such issue is *expulsion* and consequently the rules on expulsion in section 22 to 26 in the Aliens Act apply to EU citizens, but only to the extent that these rules are compatible with the EC rules, which is explicitly stated in section 2 (3). The basic principle behind these rules is, that the longer a foreigner has resided in Denmark the better is his protection against expulsion. A decision on expulsion is usually made by a court of law but in some cases it can also be decided administratively.

With regard to *lapse* of EU residence certificates the EU/EEA Order (section 16) specifically refers to the provision in the Aliens Act (section 17) on lapse of residence permits, which – with some exceptions – applies to EU citizens and their family members. In practice this means that a residence certificate granted on the basis of the Order lapses when the person in question has stayed outside the country for a period of more than six or 12 months, depending on the length of the stay in the country.

Administrative rules

One of the more significant changes in the new EU/EEA Order is that the rules on revocation of a EU residence certificate are now set out in more detail than previously. This is true especially for the rules on revocation of residence certificates issued to family members to EU citizens.

Section 18 of the Order limits revocation of *permanent* EU residence certificate to cases where the certificate has been obtained by fraud. Obviously, fraud will also lead to the revocation of time-limited residence certificates.

According to section 17 of the Order a *time-limited* residence certificate can be revoked when the basis on which the certificate was issued was incorrect or is no longer present. Section 17 contains, however, also a number of exceptions from that rule in accordance with the EU regulations and directives on free movement (securing, for instance, that a person who looses his job due to sickness or accident or involuntary unemployment, will not have his residence certificate revoked).

In all cases on expulsion and revocation of a residence certificate or residence permit section 26 of the Aliens Act applies. According to section 26 an assessment of the foreign citizen's personal situation, including his attachment to the Danish society, family members there, the length of the stay etc., must be made in order to evaluate whether the expulsion or revocation would be excessively burdensome.

Judicial practice

In a judgement from a local court of 1 September 2004 (unpublished) the court was asked by the prosecutor to expel an Italian citizen who had committed a minor crime for which, however, he could be expelled according to the Aliens Act. The court decided not to follow the claim. In doing so the court made reference to the general principles, which can be derived from the ECJ-practice in cases on limitations in the right to free movement, and to several of the judgements, upon which these principles are drawn, and concluded – taking into account

all aspects of the case – that it would be inconsistent with Community law to expel the person in question as there was not an actual and serious threat to the public order or security.

Chapter II
Equality of Treatment

Texts in force

Concerning *social welfare* any foreigner, who is residing legally in Denmark, has a right to cash benefit, but only for a limited period. The right to such benefits on a permanent basis is restricted to Danish citizens and EU citizens and members of their family who are residing in Denmark on the basis of Community law (as well as to certain third country nationals on the basis of international agreements).[4] On this point EU citizens and members of their family are treated equally with Danish citizens. As a consequence of the enlargement of the European Union taking effect 1 May 2004, the laws on social benefits were amended on a few points. See chapter VII for a description of the amendments to the laws on social benefits following the EU enlargement and chapter IX for other questions concerning social security.

Concerning basic *integration* assistance the central piece of legislation is the Act on Integration. This Act does not apply to EU citizens and the members of their families. It has been questioned whether third country nationals who are granted residence permit as family members to EU citizens according to the principles in the Singh judgement (see chapter V for an explanation of this) should be encompassed by the Act on Integration. Such persons are granted residence permit with a legal basis in the Aliens Act and not in the EU/EEA Order. The Ministry of Refugee, Immigration and Integration Affairs has determined that such person shall not be encompassed by the Act on Integration since the background for the residence permits, which they are granted, is the EU rules on free movement of persons.

As mentioned in the 2002/2003 report a new Act on *Danish courses* for adult aliens was passed by the Parliament in 2003 and supplemented by a regulation.[5] The Act entered into force 1 January 2004. The Act does also apply to EU citizens and their family members. This means that they have a right to receive an offer from the municipality to take part in Danish courses but there is no obligation to do so. Whereas such courses are free of charge for foreigners encompassed by the Act on Integration, the municipalities may require a fee from other categories of participants, including EU citizens and their family members. The government seems to have considered whether this will raises questions of discrimination under art. 12 TEC, since it is emphasised in the explanatory memorandum to the Bill that the language courses will provide general qualifications, and not address the need for specific professional training. The Bill was therefore considered as having no EU law implications, even while it was clearly stated that EU citizens were to be among those participants required to pay for such courses under the Act.[6]

The Act on *prohibition of differential treatment on the labour market,*[7] which prohibits differential treatment on grounds of race, colour, nationality, ethnicity etc. in the relationship between an employer and an employee, has been amended on a number of points in 2004. The amendments had as their purpose to transpose into Danish law parts of directive 2000/43/EC on equal treatment of all regardless of race or ethnic origin and directive

4 Cf. section 3 (2) of the Act on Active Social Policy, Consolidation Act No. 709 of 13 August 2003, as amended.
5 Act No. 375 of 28 May 2003 and Regulation No. 1014 of 10 December 2003.
6 Explanatory Memorandum to Bill No. L 158/2002-03, para. 10 and comments on section 14.
7 Consolidation Act No.31 of 12 January 2005.

2000/78/EC establishing a general framework for equal treatment in employment and occupation.[8]

The Act on *equal treatment* irrespective of ethnic origin, which was passed by the Parliament in 2003,[9] has remained unchanged in 2004. The Act, which is partly an implementation of Directive 2000/43/EC on equal treatment of all regardless of race or ethnic origin, deals with conditions outside the labour market and contains a prohibition against direct and indirect discrimination on the grounds of race or ethnic origin and a prohibition against harassment and instructions to discriminate. The Danish Institute for Human Rights can hear complaints concerning violation of the prohibition against discrimination and the committee established to do so has dealt with a smaller number of complaints and has also taken up cases on its own initiative in 2004 but none of these were relevant to the questions dealt with in this report.[10]

Regarding the right for foreigners to take up certain jobs a new law was passed by Parliament in 2004,[11] partly to replace a law from 1991 on the access to certain professions for citizens of the European Community and the Nordic countries. The Act carries on the implementation of the EU directives on *recognition of exams and professional qualifications*. With respect to EU citizens the substantial parts of the Act is a continuation of the previous Act and the ministerial regulations issued on the basis of that Act. The main point of the Act is to make the system for recognition of qualifications for third country nationals more comprehensive and accessible.

Miscellaneous (administrative practices etc.)

In the course of 2004 questions have been raised with regard to *equal treatment in the maritime sector*. The question relates to the conditions for Polish seafarers on ships sailing under Danish flag. Polish seafarers have complained that they are not accorded rights similar to those of Danish seafarers with regard to membership of labour unions and that they are treated in a discriminatory way with regard to wages and other working conditions.

The first part of the complaint relates to the fact that the Act on a Danish International Ship's Register[12] determines that Danish collective agreements regarding wages and working conditions onboard ships can only apply to persons living in Denmark or persons, who must be put at an equal footing with Danish nationals on the basis of international obligations (section 10 (2)). In practice this provision has been construed by the Danish authorities to mean that the place of residence is the decisive factor. This interpretation has been upheld by the Danish Labour Court in a case where it was argued that the entire crew, consisting mainly of Dutch seafarers, on a certain ship should be covered by the collective agreement entered into by a Danish trade union.[13] The Court turned this argument down as there were in the Court's opinion not any "international obligations" at present according to which persons residing outside Denmark should be treated as Danish nationals, and thus would be covered by Danish collective agreements.

The second part of the complaint follows from the first part in the sense that the lacking possibility for Polish seafarers to be encompassed by Danish collective agreements in prac-

8 Acts No. 756 of 30 June 2004 and 1417 of 22 December 2004.
9 Act No. 374 of 28 May 2003.
10 Information on this is found at the website of the committee, www.klagekomite.dk.
11 Act No. 476 of 9 June 2004.
12 Consolidation Act No. 273 of 11 April 1997 and later amendments.
13 Judgment of 24 April 1997 in Case No. 96.017.

tice means that they are paid less and work under less advantageous conditions. The Danish authorities have justified this by referring to the different costs of living in Denmark and in the seafarers' country of residence.

A case on this question has been filed to the Danish Labour Court by a Danish labour union on behalf of Polish seafarers at the end of 2004. The union claims that around 4,000 Polish seafarers have been underpaid since 1994. The case had not been decided by the time this report was finished and will be further described in the 2005-report.

In October 2004 the Commission filed an opening statement regarding breach of Article 39 (2) of the EC Treaty and Articles 7 and 8 of Regulation 1612/68. By the time this report was finalized it was still not decided whether the case would be presented to the ECJ. This is also an issue to be described further in the 2005-report.

The statistics on the administration of the rules on *recognition of exams and professional qualifications* show that there are quite few negative decisions on applications to be allowed to take up employment according to the national rules implementing the directives on recognition of exams and professional qualifications (8 percent in 2004).

Recent legal literature

Helle Otte, Vurdering af udenlandske uddannelser, *Uddannelse*, nr. 4/2001

Sjur Bergan, *Dansk lov og europæisk standard – gensidig anerkendelse af uddannelseskvalifikationer* (published at www.cvuu.uvm.dk)

Chapter III
Employment in the Public Sector

Texts in force

According to the Danish Constitution (section 27) only Danish citizens can be appointed to civil servants ("*tjenestemænd*"). This is modified, however, by the fact that foreign citizens can be employed on conditions similar to those of civil servants, which would allow them to take up also high ranking posts. With respect to pension they will also be treated like civil servants. A rule on this is inserted in the Act on Civil Servants[14] and reference is made to this rule and its connection with Article 39 of the EC Treaty in the guidelines from the Ministry of Finance to the public employers.[15]

Employment under a collective agreement or on individual conditions (as opposed to employment as civil servant/"*tjenestemand*"), however, is not conditional on the applicant being a Danish citizen. Foreign citizens are generally free to hold such posts.

A survey on the extent to which a requirement on Danish citizenship exists regarding positions in the public sector has been carried out by the State Employers' Authority (an agency within the Ministry of Finance) in 2004. The survey covers all Danish ministries but not the regional/municipal part of the public sector.[16] The conclusion in the survey is that there are in general no posts within the public sector where a requirement on Danish citizenship is upheld. Exceptions to this are certain posts within the Ministry of Defence, for which, however, a dispensation can be given, and certain posts within the Prison and Probation Service.

Regarding the recognition of diplomas for access to employment in the public sector degrees obtained from a foreign university are to be evaluated by the Danish Centre for Assessment of Foreign Qualifications (CVUU). CVUU is to evaluate on a case-by-case basis what foreign degrees are comparable to the relevant Danish degrees (see also chapter II). There are no major developments in this area in 2004.

Judicial practice

Nothing to report. It should be mentioned that the situation giving cause to the ECJ judgment in the Burbaud case[17] – the use of competitions for access to training and afterwards employment in the public sector – does not seem to be relevant in Denmark.

Miscellaneous (administrative practices etc.)

With regard to the right to be credited for previous employment in the public administration in other Member States there are no major developments in 2004. It is expressly stated in a paragraph in the guidelines to the public employers[18] that previous employment in other Member States shall be taken into account to the same extent as it would have been, if it was

14 Consolidation Act No. 531 of 11 June 2004, section 58 c.
15 "*Personale-Administrativ Vejledning*" (Guidance on Personnel Administration), chapter 17.
16 The survey does not include information on positions for law graduates within the Danish courts.
17 Case C-285/01, judgment of 9 September 2003.
18 "*Personale-Administrativ Vejledning*" (Guidance on Personnel Administration, issued by the Ministry of Finance and updated twice every year), chapter 18.

employment in Denmark. This applies to Danish citizens and other EU nationals alike. In the guidelines reference is made to the jurisprudence of ECJ and the Communication from the Commission from December 2002.[19]

19 "Free movement of workers – achieving the full benefits and potential", Communication from the Commission of 11 December 2002.

Chapter IV
Family Members

The rights of family members concerning entry and residence are derived from those of the EU citizen performing the right to free movement. To a large extent reference can therefore be made to chapter I of this report. There are, however, certain rules that apply specifically for family members – these rules are described below with focus on the changes in 2004.

Texts in force

Residence

The 2004-version of the EU/EEA Order contains more detailed and partly new rules on the issuance of residence certificates to family members than the previous Order, especially with regard to the requirements on housing and support.

Section 5 of the Order regards family members of workers, self-employed persons and persons who provide or receive services. For this purpose family members are defined as spouse, descendants under 21 years of age, other dependent descendants, dependent relatives in the ascending line and other dependent relatives (this last group only covers relatives of the EU citizen, while the other groups also cover relatives of the EU citizen's spouse) (section 5 (2)).

A condition for being granted a residence certificate as a family member to an EU citizen (worker, self-employed or service provider) – apart from proving the relationship with the EU citizen – is that the family prove that they dispose of *sufficient income or means*, unless exceptional reasons make this requirement inappropriate. The requirement does not apply to spouses and descendants under 21 years of age.

The required income or means is defined as "means corresponding at least to the sum of the benefits for which the EU/EEA national and the family members in question would be eligible under section 25 (12) and section 34 of the Act on an Active Social Policy" (section 5 (4) of the Order). The sections in the Act on an Active Social Policy[20] mentioned refer to the so-called "*starthjælp*" (introductory aid), which is the lowest support benefit under the Act (around 600 euros per adult per month). Detailed rules on the calculation of the income and means and the procedures to be followed by the relevant authorities are set out in the provision as well (section 5 (5) and (6) of the Order).

For family members of EU citizens with paid employment it is an additional requirement that the EU national provides *housing for his family* considered as normal for Danish employees in the region where the EU national is employed. It is expressly stated in the provision (section 5 (3) of the Order) that this requirement must not give rise to discrimination between Danish employees and employees of other EU/EEA countries.

The introduction of a housing requirement in relation to family members of EU workers and a support requirement in relation to some family members of EU citizens are the most substantial changes in the new EU/EEA Order. The background for these changes is in fact the enlargement of the European Union, which is explained in the explanatory memorandum to the act amending the Aliens Act to implement the transitional arrangements for citizens from the 8 new eastern European Member States.[21] Here it is stated – with reference to the political agreement on the transitional arrangements – that it will be a precondition for letting

20 Consolidation Act No. 709 of 13 August 2003 with later amendments.

21 Act No. 283 of 26 April 2004 (see chapter VII).

workers from these new Member States bring their families with them that they dispose of appropriate housing and are able to support their family. As the accession treaty does not allow for transitional arrangements on such measures these new requirements will apply to citizens from all EU Member States.[22]

The explanatory memorandum goes on to explain that EU law (reference is made to Regulation 1612/68, Art. 10 (2)) can be construed so as to allow a requirement to be imposed on EU citizens that they prove to be able to support the family members they want to bring with them to Denmark. Such requirements cannot, however, be imposed with regard to the EU citizen's wife and children under the age of 21. In practice it will be required that the EU citizen disposes of an income corresponding to at least the amount to which the EU citizen and the family members in question taken together would be entitled if they were receiving the lowest benefit replacing income according to the rules on social benefits (around 600 euros per person). The support requirement will apply to all categories of EU citizens exercising the right to free movement, whereas the housing requirement will only apply to workers.

With regard to the housing requirement it is clarified, with reference to EU law, that it should be implemented in a way allowing for a concrete and rather lenient assessment as to whether the requirement is met. It therefore cannot be administered in the same strict way as the housing requirement which generally applies in cases of family reunification, pursuant to section 9 (6) of the Aliens Act.[23] Problems of *discrimination* against EU workers are therefore not likely to arise in connection with the housing requirement. As regards the requirement of economic support, equal treatment with Danish citizens – and others applying for family reunification under the general rules – seems to be provided for by the possibility to dispense with this requirement under section 5 (4) of the Order if exceptional reasons make it inappropriate. This criterion is similarly phrased as that of the general section 9 (3) of the Aliens Act.

The abovementioned rules also apply to family members of nationals of the new eastern European EU Member States in so far as these have actual and effective paid employment in Denmark (section 5 (7) and (8) of the Order).

Sections 6-8 of the Order concern the right to residence for family members of the other groups of EU citizens enjoying the right to free movement (students, persons of sufficient means and persons entitled to remain following cessation of paid employment or activities as self-employed persons). These provisions will not be further described here.

The rules on spouses also apply to couples who cohabit in a stable relationship. However, for this category it is always made a condition that the EU citizen undertakes to support the applicant (section 9 of the Order). This corresponds largely to the general rules applying to cohabiting partners of Danish and third country nationals, cf. section 9 (3) of the Aliens Act.

Lapse and revocation

With regard to revocation of residence certificates issued to family members of EU citizens, who are in paid employment, self-employed or providing or receiving services rules are laid out in section 19, according to which the death of the principal person (the EU citizen) can lead to revocation of the residence certificates of family members with some exceptions, and

22 Explanatory Memorandum to Bill No. L 157/2003-04, paras. 1.2 and 3.

23 *Ibid*., para. 3 in fine.

section 22, which states that revocation can take place where the principal person's residence certificate lapses, is revoked or refused extended.

It seems that the right to continued residence for the spouse of a EU citizen, which can be derived from the ECJ's Judgment in the Baumbast case[24] is not covered by the Danish rules - as pointed out in the 2002/2003 report. The provisions on revocation and exemptions from this have been made more detailed and perhaps somewhat clearer in the 2004-version of the EU/EEA Order (cf. chapter I.A), but it seems that in reality the content has not changed much.

Miscellaneous (administrative practices etc.)

According to section 10 (2) of the Aliens Act a foreigner, who is not a national of a Member State, cannot – unless particular reasons make it appropriate – be granted residence permit if an alert on the person has been entered in the Schengen Information System (SIS). This led, in 2003, to an instruction from the DIS to the county government offices to make sure that an SIS check is performed before a residence certificate is granted to EU citizens' family members, who are third country nationals.

Following that DIS issued in 2004[25] a letter of instruction to the county government offices specifying the conditions for denying the issuing of a residence certificate or for revoking a residence certificate on the basis of an alert in SIS, when the person in question is a family member to an EU citizen performing his or her right to free movement.[26] The main point in the instruction is, that the mere fact that an alert on the third country national has been entered in SIS cannot in itself lead to denial or revocation of a residence certificate. Such a decision must be made on a case-by-case basis taking into account the actual situation with regard to the threat that the person poses in relation to the public order, security and health. That threat must be current, genuine and sufficiently serious in order to serve as the basis for a negative decision with regard to a residence certificate.

24 Case C-413/99, judgment of 17 September 2002.

25 Information letter from DIS to the county government offices No. 3/2004, letter of 28 June 2004.

26 It should be mentioned that the Danish authorities do not seem to distinguish between third country nationals who are family members to EU citizens and other third country nationals with respect to *entering* alerts on persons in SIS.

Chapter V
Relevance/Influence/Follow-up of recent Court of Justice judgments

Right to residence for family members of EU citizens

It was highlighted in the 2002/2003 report how ECJ's judgement in the *Singh* and *Akrich* cases[27] had gained attention and importance following the tightening of the Danish rules on family reunification over the last few years and especially in 2002 (see chapter VI for a short description of the rules on family reunification). The reason for this was that a number of persons, who were not able to fulfil the requirements in Danish law for being family re-united, were hoping to rely on the EU rules on free movement as these rules allow for persons exercising the right to free movement to bring with them their family. Such a right also applies to EU citizens upon return to their own country after having worked in another Member State, which is what was stated in the *Singh* case.

A Danish citizen with a foreign spouse would therefore be entitled to have the spouse come live in Denmark, if the couple had been living together in, for instance, Sweden and the Danish citizen had had employment there. That would follow from EU law and it would make no difference in this respect that the couple would be unable to fulfil the requirements on family reunification in Danish law.

According to the Danish practice a residence permit would be granted on the basis of EU law as interpreted in the *Singh* case under these circumstances:

- The Danish spouse has resided in another Member State on the basis of the provisions in the Treaty on free movement.
- The Danish spouse returns to Denmark and takes up residence there in a manner that would have made him/her be encompassed by the provisions on free movement in the Treaty, if he/she had taken up residence in another Member State.
- The Danish spouse must – if he/she is a worker – fulfil a housing requirement (see chapter IV on this).
- The couple must be married by the time they enter Denmark and during the continued stay there.
- The foreign spouse must have stayed legally in the Member State in which the Danish spouse exercised his/her right to free movement under the Treaty[28].

The scope of the *Singh* case was further questioned and examined in 2004. The main question has been whether the right to bring along a spouse when exercising the right to free movement as a worker or a self-employed person, derived from the *Singh* case, also applies to students, pensioners and persons with sufficient means who exercise their right to free movement (on the basis of directives 93/96/EC, 90/365/EC and 90/364/EC respectively). Part of the background for the emergence of this question was a number of cases concerning Danish citizens, who had moved to Sweden but kept their job in Denmark, and who were

27 Cases C-370/90, judgment of 7 July 1992, and C-109/01, judgment of 23 September 2003.

28 Guidelines No. 4/05 of 11 January 2005, The Danish Immigration Service. It can be questioned whether the requirement that the foreign spouse must have stayed legally in the Member State, where the Danish spouse exercised the right to free movement, is compatible with Community law. In *Commission vs. Spain (C-157-03)* the Court seems to have given an exhaustive list of the requirements, which a Member State can set out in order to grant a residence permit to a spouse of a Union citizen. The "list" does not include requirements as the one mentioned here.

invoking EU law and the principles deriving from the *Singh* case in their applications to be reunited with spouses from third countries upon return to Denmark.

The Ministry of Refugee, Immigration and Integration Affairs issued a general statement on this issue in December 2004.[29] The Ministry noted that ECJ has not answered the question whether the "Singh principles" can be extended to the groups mentioned above and that the judgment seems to be interpreted in different ways in different Member States (Germany: extension in practice, United Kingdom: non-extension, according to the Ministry). The Ministry concluded by stating that the right to family reunification will be administered in such a way that the general requirements for family reunification pursuant to the Aliens Act will apply to family members of Danish citizens belonging to the three mentioned groups. In other words: the principles derived from the Singh case do not apply in such cases. This interpretation has now been incorporated into the practice of the Danish Immigration Service.[30]

There is still quite strong public interest in the issue, and a number of Danish citizens are likely to become affected by the general policy thus adopted by the Ministry. Hence, cases may still occur in which the restrictive practice and the underlying legal reasoning will be challenged. Given that the primary basis of the Ministry's statement is the absence of ECJ precedents, and diverging practices in other Member States, there seems to be a high degree of probability that Danish courts will refer this question to the ECJ in a preliminary ruling request.

Nationality conditions for captains and first officers of ships

The ECJ judgments in the cases C-405/01 and C-47/02[31] have led to a change in Danish law in 2004 as the Act on Ships' Crew has been amended with the specific aim to bring national law in compliance with Community law as it was interpreted in the two judgments mentioned.

According to the Act on Ships' Crew the starting point is that captains of merchant ships and fishery vessels must hold Danish citizenship. The amendment of the Act[32] means an insertion of a provision, which authorizes the Danish Maritime Authority to set out rules in a ministerial regulation in order to exempt persons, who are encompassed by the rules on free movement, from the requirement on nationality.

In the explanatory memorandum to the act amending the Act on Ships' Crew it is stressed that international conventions require from captains of ships that they have a certain knowledge of the maritime rules of the country in which the ship is registered. Against this background the ministerial regulation will be accompanied by rules to secure this by setting up basic requirements to the education of the captains, where this is necessary.

It also follows from the explanatory memorandum that it cannot be excluded that – in special cases – the extent to which the captain will have to exercise powers conferred by public law will justify that he/she holds Danish citizenship. The ministerial regulation will include provisions to provide for this.

29 Ministerial statement of 21 December 2004.
30 See note 28.
31 Judgments of 30 September 2003 in cases *Colegio de Oficiales de la Marina Mercante Espanola* and *Albert Anker*.
32 Act No. 1462 of 22 December 2004.

It is interesting to note that there was some debate on the proposed act during the parliamentary process as some political parties were reluctant to give up the nationality requirement. This led the minister responsible for the act to issue a statement promising that the ministerial regulation will not go further with regard to exemptions from the nationality requirement than provided for by Community law.

By April 2005 the ministerial regulation had not yet been issued.

Jobseekers' entitlement to social advantages

It follows from the judgment in the *Collins* case (C-138/02) that EU citizens seeking employment in another Member State cannot be denied the right to certain social benefits from the host country solely based on their nationality.

According to Article 12 a of the Act on an Active Social Policy[33] EU citizens residing in Denmark on the basis of Community law on jobseekers' right to residence are entitled to no other economical assistance under the Act than costs related to the return to their home country. This special provision was inserted into the Act by an amendment implementing the political agreement on access to the labour market following the EU enlargement (see further in chapter VII). As the amendment was proposed in February 2004, before the ECJ delivered its judgment in the Collins case, the possible impact of the judgment was not discussed in the Explanatory Memorandum. It was, however, argued that the new provision aimed at emphasising that this category of EU citizens – whose right of residence under EU law is condioned on economic self-sustainability – should not be entitled to receive public assistance on a current basis during their stay in Denmark as first-time jobseekers.[34]

33 Consolidation Act No. 709 of 13 August 2003 with later amendments.

34 Explanatory Memorandum to Bill No. L 153/2003-04, para. II.1 and IX and comments on section 12 a.

Chapter VI
Policies, texts and/or practices of a general nature with repercussions on free movement of workers

Family reunification

The Danish rules on family reunification, which are embodied in the Aliens Act, have been amended and tightened several times over the past few years and also in 2004. These rules do not apply to EU citizens exercising their right to free movement. Nevertheless, there is a link between the general Danish rules and EU law on free movement for persons, as in many cases persons who are not able to fulfil the strict requirements in the Aliens Act, or who are unwilling to go through the cumbersome procedures connected to the Act, are invoking EU law in this field (see also chapter V). For this reason it is considered useful to give an overview of the general requirements in the Aliens Act regarding family reunification, primarily regarding reunification of spouses.[35]

a. For *spouses* there is a minimum age of 24 years for both parties. (There is no right to family reunification with parents except for situations where a negative decision in such a case would be contrary to Denmark's international obligations. *Children* must, as a starting point, be under the age of 15 to be family reunited).
b. *Immigrants* must have had a permanent residence permit in Denmark for three years in order to be allowed family reunification with a spouse. A permanent residence permit will normally require a lawful stay of seven years in Denmark
c. A *support requirement* must be met.
d. A *housing requirement* must be met.
e. An *economic guarantee* of about 53.000 dkr. (about 7.000 euro) must be provided by the sponsor to cover any future public expenses to support the spouse.
f. The sponsor must *not have received public financial assistance* for a period of one year prior to the submission of the application for family reunification.
g. Residence permit cannot be granted if there is reasonable doubt about one of *the parties full consent* to enter into the marriage.
h. A so-called *attachment requirement*, meaning that the attachment to Denmark of the spouses as a whole is *stronger* than their attachment to any other country, must be met. This means that if the cumulative attachment to another country is stronger than or just as strong as the attachment to Denmark a family reunification permit in Denmark will not be granted.
i. The marriage must not be *pro forma*.

The changes made to the rules on family reunification in 2004[36] are mainly focused on family reunification with children, for which the requirements have been tightened, most notably by lowering the general age-limit from 18 to 15 years of age. The rules on family reunification between spouses have been amended to introduce a 10-year waiting period with regard to family reunification for persons who have been convicted of violent behaviour against former spouses.

35 Section 9 of the Aliens (Consolidation) Act No. 808 of 14 July 2004. It should be noted that most of the requirements can be dispensed with in exceptional cases, yet normally under very restrictive criteria.

36 Act No. 427 of 9 June 2004.

Citizenship

The Act on Citizenship was amended by the Parliament in 2004[37] on two points. Both points were to seen as implementing an agreement between the Government and the Danish People's Party from 2003 on naturalisation. The first change regarded the possibility to obtain citizenship by declaration, which is possible for persons between 18 and 23 years who have lived in Denmark for most of their lives. That possibility is now reserved for citizens from the other Nordic countries. The other change opens a possibility for the State, by a judgement from a court, to denounce the citizenship of naturalised persons who are convicted for having committed serious crimes against the security or independence of the State.

Initiatives to prevent illegal work

The Danish Parliament agreed in 2003 on a decision to step up the fight against illegal work and illegal workers. Following that decision a number of initiatives have been launched, including reinforced surveillance by the Police and establishing of regional networks to monitor and discuss the situation.

From a legal point of view an amendment of the Aliens Act has been passed by Parliament in order to step up the level of punishment for illegal employment of foreigners,[38] which can now lead to imprisonment of up to two years. To accompany the measures against persons employing foreigners illegally the Minister of Refugee, Immigration and Integration Affairs has proposed an additional amendment of the Aliens Act in order also to step up the level of punishment for foreigners taking up employment illegally. According to the proposal such employment can be punished with up to one year of imprisonment.[39]

37 Act No. 311 of 5 May 2004.
38 Act No. 428 of 9 June 2004.
39 Proposal No. L 149 of 15 December 2004. The proposal was passed by Parliament as Act No. 324 of 18 May 2005.

Chapter VII
EU Enlargement

Introduction

The EU enlargement taking effect on 1 May 2004 has led to a number of headlines and was a major political focal point throughout 2004 (and still is in 2005). Before the enlargement took effect the interest had focused on the possible pressure on the Danish labour market and the risk of unintended use of the social benefits under the Danish welfare system. This continues to be a concern even though Denmark has chosen to apply transitional arrangements in accordance with the accession treaty with the express wish to avoid such problems.

After the enlargement – and with that the transitional arrangements – took effect on 1 May 2004 new questions have emerged. Now much of the attention is directed towards possible ways the transitional arrangements are or can be circumvented, which has led to a number of initiatives from the Government in order to tackle this potential problem. Questions have also been raised by the Commission as a follow up to the explanations from the competent Danish authorities on the contents of the transitional arrangements.

In the following the background for the transitional arrangements and the content of these are described, followed by statistical information to illustrate the effect of the enlargement with regard to free movement of workers. Finally the various questions, which have emerged after the enlargement, are described.

The political framework

In April 2003 a working group composed of representatives from a number of ministries issued a report on the risk of unintended use of social benefits as a consequence of the enlargement.[40] The report concluded that especially three kinds of social benefits were vulnerable in terms of unintended use and difficult to protect from such use: cash benefits, allowances in relation to parental leave and allowances in relation to sickness, birth and adoption. Also for other types of benefits unintended use was regarded as possible.

In another ministerial report issued at the same time[41] the possibilities enshrined in the accession treaty with the new Member States with regard to transitional arrangements are explored and the need to monitor the developments in the labour market is stressed and ways to do that set out.

The Government and the main part of the political parties represented in Parliament concluded – partly on the basis of the abovementioned reports – on 2 December 2003 an agreement on transitional arrangements for the access of workers, who are nationals of the new EU member states (except Malta and Cyprus), to the country and the access to social benefits.[42] In the agreement the positive effects of the enlargement are underlined, it is stated

40 *Danish Social Benefits in the Light of the EU Enlargement*, Report of 11 April 2003 from an interministerial working-group.

41 *The EU Enlargement and the free movement of workers*, Report of 11 April 2003 from an interministerial working-group.

42 The agreement is available in an English version at the website of the Danish Ministry of Employment (www.bm.dk). At this website the development with regard to the number of residence permits issued to workers from the new eastern European Member States, the impact on the labour market of the enlargement etc. can also be followed.

that the pressure on the Danish welfare system will be limited but at the same time it is stressed that any potential risk that the enlargement will lead to imbalances on the labour market and unintended use of the social benefits must be prevented. This is the argument for imposing transitional measures from the eight new members of the European Union, the contents of which are described below.

The political agreement was implemented by a number of legal and administrative changes in the first months of 2004.

The legislative changes

Amendments of the Aliens Act

The Aliens Act was amended by an act in April 2004, taking effect on 1 May 2004.[43] The main new provisions (section 9 a (5-11)) describe the conditions for granting residence permit to citizens from Estonia, Latvia, Lithuania, Poland, The Slovak Republic, Slovenia, The Czech Republic and Hungary on the basis of employment.

The basic condition is that the person in question must have been offered a full-time job with an employer based in Denmark in accordance with the terms and conditions applying on the Danish labour market (subsection 5).

The employer must be registered with the customs and tax authorities (subsection 6) and must not be the subject of a strike, boycott or lockout (subsection 7). The employer must also see to that the job offer contains specific information on a number of things, including a work description, rights with respect to holidays etc. (subsection 8). The employer is obliged to make a declaration on the fulfilment of all of the conditions mentioned above to the Danish Immigration Service, which processes the applications for residence permits under this scheme (subsection 9).

The Danish Immigration Service can ask the Regional Labour Market Council when needed to certify that the conditions listed in subsections 5 and 8 are fulfilled and can pass on relevant information on the granting of residence permit to a foreigner without his or her consent to the Regional Labour Market Council (subsections 10 and 11).

Another amendment is found in section 14 where it is stated (subsection 1 (ii)) that the exemption from the requirement of a work permit, which is granted to foreigners falling under the EU rules, does not apply to citizens from the 8 new Member States mentioned above.

When the situation for workers from the these new Member States are compared to that of workers from the "old" Member States (+ Cyprus and Malta) and third countries respectively the picture is this:

- *Citizens from the "old" Member States*: enjoy full free movement under the rules in the EU/EEA Order as described in chapter I.
- *Third country nationals*: a residence permit on the basis of employment will only be granted when essential employment considerations make it appropriate, cf. the Aliens Act section 9 a (1).
- *Citizens from the "new" Member States*: are not encompassed by the EU/EEA Order's provisions on workers. The Aliens Act section 9 a (5) applies, which means on the one hand that no labour market test will be applied but, on the other hand, that a full-time

43 Act No. 283 of 26 April 2004.

job on the terms described above is needed in order to be granted a residence permit. On certain points – especially with regard to the full-time requirement – the conditions under section 9 a (5) will be stricter than those under section 9 a (1). Therefore, workers from the new Member States, whose application under section 9 a (5) has been rejected, are entitled to have their application examined under section 9 a (1) as well.

Amendments of the laws on social benefits

As mentioned above, one of the possible risks entailed with the enlargement was an unintended use of social welfare schemes. This has led to a couple of changes in the laws on social benefits, which will apply to all EU citizens, including Danish nationals.

The Act on parental leave[44] has been amended by inserting a requirement according to which persons, who wanted to take leave after this law, should notify the authorities before 1 April 2004.[45] It should be noted, that this kind of leave was to be phased out in any event.

The Act on allowances in relation to sickness and birth[46] has been amended to specify that a EU citizen, who is reported ill and receives Danish sickness allowances abroad, can be called in for a so-called "sickness follow up" in Denmark in order to discuss the situation and possible initiatives to enable a faster recovery and continued employment.[47]

The Act on Active Social Policy[48] has been amended to specify that EU citizens on a short term stay in Denmark, including persons seeking work, will not be eligible for cash benefits but only help in relation to the return to the home country.[49]

Administrative changes

Amendments of the EU/EEA Order

Some of the revisions of the EU/EEA Order which took place in 2004, especially the introduction of housing and support requirements in relation to family reunification, had the EU enlargement as the main background.[50] It was also deemed necessary to state expressly in the Order that provisions on the issuance of residence certificates on the basis of paid employment do not apply to citizens from the new eastern European Member States (section 1 of the Order being an example).

Regulation on foreigners' right to enter and reside in Denmark

The Regulation on foreigners' right to enter and reside in Denmark[51] has been amended on one point to clarify where applications for residence permit from citizens from Estonia, Lat-

44 Act No. 402 of 31 May 2000 with later amendments.
45 Act No. 135 of 2 March 2004.
46 Consolidation Act No. 761 of 11 September 2002.
47 Act No. 282 of 26 April 2004.
48 Consolidation Act No. 709 of 13 August 2003 with later amendments.
49 Act. No. 282 of 26 April 2004.
50 See chapter IV, referring to Explanatory Memorandum to Bill No. L 157/2003-04 which presents the Government's statement of the political and legal reasons for the amendments
51 Regulation No. 581 of 10 July 2002 with later amendments.

via, Lithuania, Poland, The Slovak Republic, Slovenia, The Czech Republic and Hungary can be filed.[52]

Regulation on allowances in relation to sickness and birth

The abovementioned amendments of the Act on "allowances in relation to sickness and birth" have been specified in a regulation.[53]

Next to these administrative changes a number of guidelines on the consequences and the administration of the enlargement and the transitional arrangements have been issued to the relevant authorities.

Statistics

As explained above the main conditions for granting a residence permit to workers from the new eastern European Member States are laid out in section 9 a (5) in the Aliens Act. The statistics in relation to that provision are the following for the period 1 May to 31 December 2004 (the figures are preliminary and all relate to the first instance (the Danish Immigration Service)).

3,658 applications for residence permit were received. By 31 December decisions had been made in 2,421 cases, cf. figure 1.

Figure 1. Decisions	
Negative decisions	102
Applications given up	209
Exempted from permit	8
Positive decisions (permits)	2,102
Total	2,421

The 2.102 permits are divided according to nationality in figure 2.

Figure 2. Permits divided according to nationality	
Estonia	49
Latvia	240
Lithuania	835
Poland	805
Slovakia	48
Slovenia	3
The Czech Republic	46
Hungary	68
Not accounted for	8
Total	2.102

52 Regulation No. 293 of 29 April 2004.
53 Regulation No. 306 of 3 May 2004.

A breakdown of these figures on the types of work that the permits relate to shows that farming and related activities account for more than half of all permits (approximately 1.220 permits of which more than half (approximately 630) were granted to workers from Lithuania). The only other categories of work with more than 100 permits were the health sector (approximately 150 permits with more than half granted to Polish nationals) and the building-/construction sector (approximately 130 permits more than 80 of which were granted to Polish nationals).

The first experiences with the transitional arrangements

The first months after the entry force of the transitional arrangements, that is to say the period from May to December 2004, were dominated by a number of questions relating to the interpretation of the arrangements, especially with regard to demarcation of the notion "worker". This followed a number of cases, where there was suspicion that persons from the new eastern European Member States were circumventing the transitional arrangements by acting as service providers, self-employed persons etc., for which there are no transitional arrangements, when they were in reality workers.

This situation was followed closely by, among others, the trade unions and was also given quite some attention in the press. The responsible authorities took a number of measures to clarify the rules and to tackle the problems. Among these is a manual issued by the Ministry of Employment as a tool to relevant authorities and organizations to use in those cases, where doubt is raised about the basis for the stay of citizens from the new eastern European Member States (hereinafter "the Manual").[54]

Worker or self-employed?

The demarcation between "worker" and "self-employed" was laid out by the Danish Immigration Service in a letter of information to the county government offices[55] after the Service had dealt with the problem in a couple of appeal cases. In doing so the Immigration Service made reference to the European Court of Justice's judgement in Agegate (case C-3/87)[56] and outlined a number of criteria, which should be taken into account when drawing the line between the two notions. Similar criteria are found in the Manual.

As part of the control mechanisms set up in connection with the transitional arrangements requests from persons from the 8 new eastern European Member States to be registered as self-imployed persons will be scrutinized by the Customs and Tax authorities in order to establish whether there is in reality established a company.

A special question arose for persons from the Member States in question whose application for residence permit on the basis of self-employment were rejected, because it was established that they were in reality employed persons. The question was whether such persons

54 *Manual on rules for residence and work in Denmark for citizens from the new eastern European EU countries*, available (in Danish) at the homepage of the Danish Ministry of Employment (www.bm.dk).

55 Letter of Information No. 11/2004 of 15 October 2004.

56 No reference is made to the more recent judgement by the Court in *Jany (C-268/99)* but the principles which can be derived from that case are reflected in the letter of information.

could continue their work during the appeals procedures. The Ministry of Refugee, Immigration and Integration Affairs issued a statement saying that since such persons were in reality workers they were not allowed to work in the country without having obtained a residence- and work permit in accordance with the transitional arrangements. This result is not changed by the fact that such a person has appealed a decision not to be regarded as self-employed.[57]

Worker or service provider/posted worker?

Also the demarcation between "worker" on the one side and "service provider" and "posted worker" on the other has raised questions after cases in which the transitional arrangements were circumvented by the setting up of fictitious companies in new Member States.

In the Manual (pp. 12 and 16-17) it is specified which requirements that should be met in order to qualify as a posted worker (and thereby evade the restrictions following from the transitional arrangements for workers). The requirements to companies, which want to provide services in Denmark, are also set out in the Manual (pp. 23-25).

Right to work for other groups than workers?

Doubt was raised as to whether citizens from the new eastern European Member States, who stayed in Denmark on the basis of Directive 90/364/EC (the "playboy-directive"), were allowed to take up employment in Denmark without having a work permit, which would put them on equal footing with citizens from the "old" Member States. It was clarified, however, that citizens from the new Member States could not take up employment unless a specific work permit was issued in accordance with the transitional arrangements. The same rules apply for citizens from these countries staying in Denmark on the basis of directive 90/365/EC (workers and self-employed persons who have ceased their activities).[58]

Students from the new eastern European Member States, who stay in Denmark on the basis of directive 93/96/EC, will be granted a work permit, which will allow them to take up employment for up to 15 hours a week and full-time in the months June, July and August.

Other questions

As mentioned in the introduction the Commission has raised a number of questions concerning the Danish transitional arrangements. Some of these have already been dealt with in other chapters of this report (for instance the introduction of a housing and support requirement in relation to family members (chapter IV)) or previously in this chapter, while a couple of them will be dealt with here.

One thing that has interested the Commission in particular is the Danish interpretation of the rules covering the situation in which a citizen from one of the Member States, for which the transitional arrangements apply, is made redundant after having been employed for a period of minimum 12 consecutive months (the question is relevant both to persons already employed in Denmark at the time of entry into force of the transitional arrangements and to persons who after 1 May 2004 receive a residence- and work permit).

57 The Ministry's opinion is inserted in Information Letter No. 6/2004 (undated) from The Danish Immigration Service to the county government offices .

58 Letter of Information No. 7/2004 from the Danish Immigration Service to the county government offices of 25 August 2004.

According to the transitional provisions in the Treaty of Accession for the new eastern European Member States the citizens of these countries will, in such cases, have "access to the labour market" in Denmark. The Danish authorities have interpreted this to mean that the person in question, if he or she wants to apply for jobs in Denmark again, is encompassed by the transitional arrangements. Thus, he or she can stay in Denmark for up to 6 months as a jobseeker, but will only be granted a residence permit under the conditions that apply under the transitional arrangements. Contrary to this, it seems to be the Commission's view that a citizen from one of the Member States in question in such situations must be put at an equal footing with citizens of the "old" Member States, meaning that the general rules on free movement for workers would apply.

Another question raised by the Commission related to the definition of the notion "worker". The Commission wondered whether the Danish authorities had developed an interpretation that was too rigid. They did so with reference to guidelines from the National Directorate of Labour to the regional municipalities where a time-limit of 10 weeks of employment was set out as a guiding principle to define what would constitute "actual and real employment".

The future

It follows from the political agreement on access to the Danish labour market for workers from the new EU Member States that the labour market will be monitored with a view to following immigration flows and to preventing disturbances on the labour market. It also follows that the parties to the agreement will meet twice a year to discuss the situation and possible adjustments to the rules. That frequency has now been increased significantly, which reflects the political interest in these questions.

Before 1 May 2006 it will be estimated whether there is a need to continue with the transitional arrangements. It is not possible to say at this time what will be the result of these deliberations, although the concerns raised by a wide spectre of the political environment indicates that the transitional arrangements will continue to apply at least until 2009. Based on the situation by the end of 2004 it was, however, estimated by the Labour Market Authority, which is a body under the Ministry of Employment responsible for monitoring the situation on the labour market, that the number of workers from the new EU Member States had not had a general impact on the Danish labour market. It was also stated, that a possible positive impact was seen in specific sectors (agriculture and garden centres), where seasonal shortages was covered by workers from the new Member States.[59]

Another question will be whether the Danish transitional arrangement can or will be upheld in its current form or whether the criticism from the Commission will lead to changes.

59 *Note on state of play with regard to issued and active residence and work permits*, published at www.bm.dk in December 2004.

Chapter VIII
Statistics[60]

Statistics (flux of Community workers/family-members in comparison to third country nationals)

EU workers (+ Swiss nationals) granted a residence certificate in 2004

Austria	36
Belgium	34
Cyprus	3
Finland	4
France	228
Germany	585
Greece	40
Ireland	70
Italy	213
Luxembourg	2
Malta	3
Netherlands	191
Portugal	55
Spain	127
Sweden	23
Switzerland	43
UK	468
Total	2,125

The corresponding total figures for 2002 and 2003 were 2,011 and 2,099 respectively.

The figures do not include residence certificates or permits granted to family members to EU workers. It should be noted, that nationals of Sweden and Finland (as well as of Norway and Iceland) can reside and work in Denmark without a permit. Were these nationalities to be included the total would presumably be somewhat higher.

In 2004 99 percent of all applications for residence certificate from EU workers have been accepted.

A different figure from that above emerges if one looks into the number of *EU citizens immigrating to Denmark*. For 2004 that figure was approx. 10.700 while the number of EU citizens leaving Denmark was approx. 8,500. In 2004 approx. 12,000 *Danish citizens emigrated from Denmark* to another EU Member State.

The total number of EU citizens residing in Denmark by 1 January 2005 was around 68,000. The largest nationality-groups are from Germany, the UK and Sweden. These nationalities – together with Poland – also dominate the statistics on naturalisations of EU citizens of which there were 745 altogether in 2004.

For the sake of comparison the number of residence permits granted to *third country nationals* on the basis of work/business considerations can be mentioned. For this category a residence permit is only granted in so far as essential occupational or business considerations

60 The figures in this chapter are obtained from The Danish Immigration Service (www.udlst.dk) and Statistics Denmark (www.dst.dk) and are preliminary.

make it appropriate. The figure for this category of residence permits was approximately 7,200 in 2004.

Trends

The number of residence permits issued to EU workers (from the "old" Member States) seems to have stabilized around 2,000 permits a year. As pointed to in the 2002/2003-report this is significantly lower than in the mid-nineties, where the total peeked in 1996 at around 3,000 such permits.

It is noteworthy, that for third country nationals granted residence permits on grounds of work or business the trend has been the opposite, as this figure has been going up in the same period from around 2,200 in 1996 to more than 3,200 in 2004.

Chapter IX
Social Security

Relationship between regulation 1408/71 and regulation 1612/68

The general remarks made under this heading in the 2002/2003 report still apply. There are no new developments to report under this chapter.

Chapter X
Establishment, Provision of Services, Students, Others

To a large extent the rules, schemes etc. applicable for community workers, which are described in the previous chapters, also apply to EU citizens who exercises the right to free movement related to establishment, provision of services, studies and disposal of sufficient means. There are differences, of course, and one of the advantages of the new EU/EEA Order (see chapters I, IV and VI) is a clearer systematic, which – to some extent - distinguishes between the different groups mentioned here.

Establishment

The rules on entry and residence for EU workers and their families as set out in the EU/EEA Order (mainly sections 1 and 5 of the Order), cf. chapter I, also apply to EU citizens establishing businesses in Denmark.

106 residence certificates were granted on the basis of establishment in 2004.

Provision of services

As for self-employed persons also persons who provide or receive services are encompassed by the same rules as those applying to workers. There are a few differences, however, most notably concerning the periods for which the residence certificates are issued, which for this group is restricted to the expected length of the service in question, cf. section 14 (4) of the EU/EEA Order. For stays not exceeding three months no residence certificate is issued, cf. section 12.

65 residence certificates were granted on the basis of provision of services in 2004.

Students

The rules on residence for students and their family now have their separate sections in the EU/EEA Order, cf. section 2 and 6. Section 6 on family members includes a requirement for the EU citizen to declare that he or she disposes of sufficient means for the support of himself or herself and his or her family, but for this group, unlike the other groups as mentioned in chapter IV, this requirement is not new.

Students are granted a residence certificate for a period corresponding to the length of the studies, but not for more than one year at a time, cf. section 14 (1, ii), and cannot be granted a permanent residence certificate, cf. section 15 (1). For this group a residence certificate will lapse when the EU citizen gives up his or her residence in Denmark, cf. section 16.

3,807 residence certificates were granted to EU citizens for the purpose of studying in 2004.

Others

EU citizens of sufficient means, defined as at least the sum of the benefits for which the person would be eligible under the lowest rate in the Act on an Active Social Policy, will be issued a residence certificate, cf. section 3, which also sets out rules on the calculation of that amount. Such certificates are also issued for five years, but if deemed necessary it may be required that the certificate must be extended upon expiry of the first two years of residence, cf. section 14 (1, iii)

Around 740 residence certificates were granted to EU citizens with sufficient means in 2004.

Chapter XI
Miscellaneous

Nothing to report.

Annexes

- The Aliens Act, Consolidation Act No. 808 of 14 July 2004 (in English)
- The EU/EEA Order, Ministerial Order No. 292 of 28 April 2004 (in English)

Please note that some of the acts and regulations have been amended in 2005. The versions in the annex are those to which reference is made in the report