

REPORT
on the Free Movement of Workers
in Finland in 2005

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Introduction

In 2005 the most severe problems in the area of free movement of EU citizens continued to relate to the position of the citizens of the new Member States. In 2005 the majority of workers coming from the new Member States, in particular from Estonia, entered the Finnish labour market as hired workers and not as employees under the Act on transitional measures or the Aliens Act. In case of hired workers posted from abroad, irregularities concerning the working conditions appear to be rather common. The wages are in these situations often below the minimum wages, the working hours longer, and the other conditions, too, weaker than in case of regular employees and hired workers working for companies established in Finland.

The Government gave in March 2006 to the Parliament a report concerning the effects of the Act on transitional measures and the effects of the freedom of workers and freedom of services on the Finnish labour market (Valtioneuvoston selonteko Eduskunnalle siirtymäaikaisin vaikutuksista sekä työvoiman ja palvelujen vapaan liikkuvuuden vaikutuksista työmarkkinatilanteeseen eri aloilla). In this report the Government proposed that the application of the transitional measures should not be continued after the 1st of May 2006. The Government also proposed that transitional measures shall not be applied to the citizens Bulgaria and Romania. The Parliament has not decided to continue the applicability of the Act on transitional measures and thus the transitional measures will no longer be applied after the 30th of April 2006.

Chapter I

Entry, residence, departure

The questions of entry, residence and departure of aliens, including citizens of the other EU states, are regulated in the Aliens Act (Ulkomaalaislaki 301/2004) that entered into force on 1.5.2004. Unofficial English translation of the Aliens Act can be found at <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf>.

The EC rules concerning entry, residence and departure of EU citizens and their family members were attempted to be taken into account extensively when the Aliens Act was drafted. Thus, according to the Government Bill to the Parliament for the Aliens Act (Hallituksen esitys Eduskunnalle ulkomaalaislaiksi ja eräksi siihen liittyviksi laeiksi, HE 28/2003 vp, hereafter the Government Bill 28/2003) the provisions of the new Aliens Act that concern free movement of EU citizens and their family members and other relatives are based on EC free movement legislation and the relevant decisions by the European Court of Justice (hereafter ECJ). Furthermore, according to the Government Bill, the Proposal for a European Parliament and Council Directive of 23 May 2001 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [COM(2001) 257 - Official Journal C 270 E of 25.09.2001] was taken into account when drafting the new Act. The Directive 2004/38/EC had not yet been adopted when the Aliens Act was drafted and thus the references in the Government Bill are made to the proposal for the directive. As the text of the Directive was not yet final when the Aliens Act was drafted, some amendments of the Act are expected later this year when the Directive will be implemented. No Government Bill concerning the transposition of the Directive 2004/38/EC has yet been given.

The provisions concerning free movement of EU citizens and their family members are contained in chapter 10 of the Aliens Act. According to Section 153 of the Act the provisions contained in the chapter 10 of the Act apply to EU citizens and comparable persons and their family members and other relatives. As persons comparable to EU citizens are regarded the citizens of Iceland, Liechtenstein, Norway and Switzerland.

Entry

Texts in force

Section 155 of the Aliens Act concerns EU citizens' and their family members' entry and residence.

Section 155

“EU citizens’ entry into and residence in the country

An EU citizen entering or residing in the country is required to hold a valid identity card or passport. An EU citizen's family member, or other relative, who is not an EU citizen may be required to have a visa if the family member or relative is a citizen of a State whose citizens are required to have a visa under Council Regulation.”

This provision recognises the right to enter the country and to reside there and lays down the preconditions for using this right. According to the Government Bill 28/2003, section 155 of the Aliens Act is based on Article 3.1 of the Directive 68/360/EC and Article 3 of the Directive 73/148/EC as well as on Article 18 of the EC Treaty. Furthermore, case C-68/89 *Commission v. the Netherlands* was taken into account when drafting this provision and should be taken into account when applying it in practice. According to the Government Bill, the border guard authorities must not request from EU citizens information on questions such as the purpose of one's entry to Finland. According to the Bill, the entry of an EU citizen can in practice be prevented only if she does not hold a valid passport or identity card or if the entry can be prevented on grounds of public order or security or public health.

There appears to be discrepancy between this provision on the one hand and the practice of the ECJ (e.g. *Salah Oulane*), on the other, as the requirement laid down in the Aliens Act concerning valid identity card or passport is formulated as absolute. Important modification to this is, however ex-

pressed in the Government Bill when discussing the grounds for refusing EU citizens', their family members' or other relatives' entry into Finland (Section 167 of the Aliens Act). The Bill states that exceptionally, and for a weighty reason, it is possible to take into account in the overall discretion the unreasonableness that would be caused by refusing an EU citizen's entry to Finland. Thus, according to the Bill, an EU citizen may be admitted to the country if her identity may be confirmed in some other reliable manner provided that the public order and security are not jeopardized. According to the Bill, the preconditions for entry are therefore not always absolute. The Bill also refers to case C-459/99 *MRAX* and states that a person who is married to a citizen of another Member State and who can prove her identity and marital status may not be turned back at the border even though she or he does not possess a travel document or a visa, provided that it is not established that she or he would jeopardize public order or security or public health.¹

The third-country national family members of EU citizens, who are required to have a visa to enter Finland are exempted from the fee for the visa and from the requirement concerning travel insurance. Furthermore, the special position of third-country national family members is regularly discussed when educating the visa officials in order to guarantee the third country family members' special treatment compared with other third-country nationals. In cases in which visa officials consider rejecting the visa application of a family member of a Union citizen, the application is sent to the Passport and Visa Unit of the Ministry for Foreign Affairs for stricter scrutiny in order to guarantee that the special position of the third country national family member is respected.

Section 156 of the Aliens Act lays down further conditions for the entry.

Section 156

"Public order and security and public health

(1) In addition to what is provided in section 155, a requirement for an EU citizen's entry into and residence in the country is that the EU citizen or his or her family members or other relatives are not considered a danger to public order and security or public health.

(2) Preventing an alien's entry into or removing an alien from the country on grounds of public order and security or public health shall be based on the alien's own behaviour and not merely on any previous convictions."

This provision expresses the rule that a person who jeopardizes public order and security or public health may be prevented from entering Finland, or if already entered, may be removed from the country. According to the Government Bill 28/2003 this provision reflects articles 39.3 and 46.1 of the EC Treaty. Measures the purpose of which is to guarantee safe and comfortable environment to the members of society and to prevent and solve crimes and injustices as well as to prevent and remove disturbances, belong to public order and security. In this connection the Government Bill also refers to cases *van Duyn*, *Adoui* and *Cornuaille* and *Bouchereau*, and states that these decisions should be taken into account when applying this provision in practice. The notions of public order and security and public health should, according to the Government Bill, be interpreted in a restrictive manner. A citizen of another Member States may not be removed from Finland on the grounds of activities that Finnish citizens are not prohibited from doing, or that are not tried to be effectively prevented. Public order may be appealed to only if the threat is real and sufficiently serious and it threatens the fundamental interests of society. As concerns public health, the Government Bill refers to Article 4.1 of the Directive on Public Order and Security.

According to section 142 of the Aliens Act, refusal of entry means preventing an alien from entering the country at the border, or removing from the country an alien who has not yet been issued with a residence permit or residence card or whose right of residence has not yet been registered. Thus, refusal of entry may take place either when the person concerned is trying to enter the country or after the person has *de facto* entered the country and stayed there for a while. The question of refusal of entry is therefore discussed in this report also under title 'Departure'.

Section 167 of the Aliens Act lays down the grounds for refusing EU citizens', their family members', and other relatives' entry.

Section 167

1 See further under title 'Departure'.

Finland

“Grounds for refusing EU citizens, their family members or other relatives entry into Finland

EU citizens, their family members or other relatives may be refused entry into the country if their right of residence has not been registered or they have not been issued with a residence card and if they:

- 1) do not meet the requirements for entry laid down in sections 155 and 156;
- 2) have, soon after entering the country, had to resort to social assistance provided in the Act on Social Assistance or to other comparable benefits owing to the lack of sufficient funds; or
- 3) would be required to have the right of residence registered or a residence card issued to them in order to continue their residence in Finland, but they do not meet the requirements for registering the right of residence or for being issued with a residence card.”

According to the Government Bill 28/2003 the entry of a Union citizen and her family member and other relative shall be refused if she does not meet the preconditions for entry, registration of the right of residence, or issuing a residence card, or if it is found out soon after she has entered Finland that she does not possess sufficient financial resources for her stay.

An EU citizen and her family member should possess the required travel document and visa during her residence in Finland. When considering refusal of entry in situations where the person concerned does not possess the required documents, the unreasonableness caused by the possible refusal of entry may, however, exceptionally and for a special reason be taken into account in the consideration. It is possible to give up refusing entry if the identity of the person concerned may be ascertained by other means, provided that she does not jeopardize public order or security. The Government Bill thus confirms that the preconditions for entry are not absolute. In this connection the Bill also refers to case C-459/99 *MRAX*, and states that the Member States may not turn back at the border a person who does not possess a travel document or a visa if she is married to a citizen of another Member State and if she can prove her identity and marital status, and furthermore, if it is not established that this person would jeopardize public order or security or public health. The Government Bill also refers to case 68/89 *Commission v. the Netherlands*, according to which the Member States may not require a citizen of another Member State to establish evidence of her financial resources upon entering the country. It would, however, be possible to refuse entry of a Union citizen if she after entering the country and before registering her right of residence has to turn to social security system to secure her income. Secured income is regarded as a condition for the right of residence, and if a person concerned does not have sufficient financial resources for her stay, her right of residence shall be denied and therefore her entry refused.

Draft legislation

No draft legislation is given. The Government Bill concerning the transposition of the provisions of the Directive 2004/38/EC will be given by the autumn of 2006 and the amendments of the Aliens Act will most probably enter into force during the autumn or in the beginning of 2007.

Recent legal literature

Sankari, Suvi, Union citizenship and free movement: who is who?, in *No foundations*. Helsinki: Extreme Legal Positivism Group. 2005:1. Pp. 37-48. <http://www.helsinki.fi/nof/>
Sankari, Suvi, *Yksilö Euroopan unionissa*. Helsinki 2005. (An individual in the EU. Publication by the Ministry of Justice)

Residence

Texts in force

Section 158 of the Aliens Act concerns short term residence of EU citizens and their family members.

Section 158

Finland

“EU citizens’ short-term residence

EU citizens may reside in Finland for a maximum of three months without registering their right of residence. After that period, EU citizens may reside in Finland as jobseekers for a reasonable time without registering their right of residence, if they continue to look for employment and if they have a real chance of finding employment.”

According to the Government Bill 28/2003 this provision is based on Article 8.1 of the Directive 68/360/EC and Article 4.2 of the Directive on provision of services. It is reminded in the Government Bill that the ECJ has interpreted free movement of workers broadly. Furthermore, according to the Government Bill, decision C-292/89 *Atonissen* was taken into account when drafting this provision and should be taken into account when applying it in practice.

Section 159 of the Aliens Act concerns long term residence of EU citizens and their family members who are EU citizens.

Section 159

“Registering EU citizens’ right of residence

(1) EU citizens shall register their right of residence no later than the expiry of their right of residence in Finland under section 158. Registering the right of residence requires that the EU citizens meet the requirements laid down in sections 155 and 156 and that:

- 1) they are engaged in economic activity as paid employees or self-employed persons;
- 2) they have sufficient funds and, if necessary, health insurance so that they do not have to resort to social assistance provided in the Act on Social Assistance or to other comparable benefits during their residence in Finland; or
- 3) they have been admitted to an educational institution in Finland as students and have sufficient funds for their residence and, if necessary, health insurance.

(2) The right of residence of an EU citizen’s family member is registered if the family member is also an EU citizen.

(3) The right of residence of an EU citizen’s other relative is registered if the relative is also an EU citizen, and if refusing registration of the right of residence would be unreasonable because the persons concerned intend to resume their earlier close family life in Finland or because the relative is fully dependent on the relative living in Finland.

(4) Registering the right of residence of an EU citizen’s family member or other relative as referred to in subsection 1(2) or (3) requires that the family member or relative has sufficient funds for his or her residence and, if necessary, health insurance. However, the right of residence of a Nordic citizen’s family member is registered even if he or she has no secure means of support. Registering the right of residence of a Nordic citizen’s other relative requires that he or she has sufficient funds for his or her residence and, if necessary, health insurance.”

This provision covers all categories of EU citizens *i.e.* workers, self-employed workers, students, and all others whose residence in Finland will last for longer than three months. To reside in Finland the EU citizens and their family members and other relatives who also are Union citizens are required to register their right of residence at the alien’s register. According to the Government Bill 28/2003 this provision reflects the proposal for directive on the right of EU Citizens and their family members to freely move and reside in the area of the Member States (COM(2001) 257 final) and the practice of the ECJ.

The precondition for the right of residence for economically non-active persons is secured income. The notion of secured income is further elaborated on in the Government Bill 28/2003. According to the Bill, what constitutes sufficient financial resources for the purposes of residence shall not be defined in abstract. Under usual circumstances it is sufficient that the person herself declares that her income is secured; no proof of that shall be required. The reliability of this declaration is assessed if the person avails herself of the Finnish system of subsistence support to cover the costs of her daily living. The right of residence may be refused if an EU citizen has to avail herself continuously of the Finnish system of subsistence support to cover her every day living expenses. Sickness insurance is required if the person concerned does not, according to the Regulation 1408/71, fall within the ambit of the Finnish social security system.

Finland

According to the Government Bill, when an EU citizen has registered her right of residence, she will be issued a certificate of registration.

Section 160 of the Aliens Act concerns the effect of invalidity for work and non-attributable unemployment on EU citizens' registered right of residence.

Section 160

"Effect of invalidity or unemployment on EU citizens' registered right of residence"

(1) In cases as referred to in section 159 (1) (1), an EU citizen's registered right of residence remains in force even after he or she has ceased to be a paid employee or self-employed person if he or she suffers from temporary invalidity as a result of illness or accident, or if he or she has become unemployed for a reason not attributable to him or herself.

(2) The registered right of residence remains in force for two years if the unemployment continues and if the unemployment is not attributable to the EU citizen him or herself."

According to the Government Bill 28/2003 this provision is based on Article 7 of the directive on free movement of workers and on the practice of the ECJ.

Section 162 of the Aliens Act concerns a permanent residence card and section 163 exceptions to requirements for obtaining permanent residence card.

Section 162

"Permanent residence cards"

(1) Upon application, an EU citizen or his or her family member or other relative is issued with a permanent residence card after a continuous residence of four years in Finland. Residence is considered continuous if the applicant has stayed in Finland for at least half of the four-year period.

(2) A person residing in Finland for the purpose of studies is not issued with a permanent residence card."

Section 163

"Exceptions to requirements for obtaining permanent residence cards"

(1) In a case as referred to in section 162 (1), an EU citizen is granted, upon application, a permanent right of residence and issued with a permanent residence card to prove this before the four years of continuous residence have passed if the EU citizen, as a paid employee or self-employed person:

1) has, upon termination of his or her employment, reached the age entitling him or her to old-age pension and worked or been engaged in the activity in Finland for at least the 12 months immediately preceding the termination of employment, and resided in Finland continuously for at least three years;

2) has terminated employment on grounds of permanent invalidity after living in Finland continuously for two years; or

3) after working and living in Finland continuously for three years, has moved to work in another EU Member State while still living in Finland and regularly returns to Finland daily or at least once a week.

(2) If the invalidity referred to in subsection 1(2) is due to an employment accident or occupational disease which entitles an EU citizen to statutory pension in Finland, the length of residence has no bearing on the issue of the residence card.

(3) For obtaining a permanent residence card under subsection 1(1) or (2), any periods of employment that took place in another EU Member State are also taken into consideration in the applicant's favour. Any spells of unemployment that were not attributable to the applicant and which were recorded by employment offices, or any breaks in self-employment that were not attributable to the applicant, or any absence due to illness or accident are considered as periods of employment.

(4) A person has the right to stay in the country permanently under subsections 1(1) and 1(2) and 2 within two years of obtaining this right. During the two-year period, the person may leave the country without losing his or her permanent right of residence.

Finland

(5) The requirements concerning the length of residence and employment laid down in subsection 1(1) or the length of residence in subsection 1(2) do not apply if the applicant's spouse is a Finnish citizen or has lost his or her Finnish citizenship upon marriage to the applicant.

(6) Family members of a paid employee or self-employed person who has obtained a permanent right of residence under subsection 1 or 2 have a permanent right of residence in Finland.

(7) If an employee or self-employed person dies while still in working life before obtaining a permanent right of residence in Finland under subsection 1 or 2, his or her family members residing in Finland have the right to stay in Finland permanently if:

1) the employee or self-employed person had lived in Finland continuously for two years before his or her death;

2) the employee's or self-employed person's death was due to an employment accident or occupational disease; or

3) the spouse of the deceased employee or self-employed person has lost his or her Finnish citizenship upon marriage to the employee or self-employed person."

These provisions apply to EU citizens and their family members and other relatives including such family members and other relatives who are not EU citizens. According to the Government Bill 28/2003 section 162 reflects the relevant EC legislation and the proposal for the Commission Directive on this issue.

For the purposes of section 162 of the Act, residing in Finland is deemed to begin at the moment when the person concerned registers her right of residence or at the moment when she makes the notice of removal, depending on which takes place earlier. The right of residence of a family member or other relative who is not a Union citizen is dependent upon the residence of the Union citizen. A precondition for issuing a permanent residence card to a family member or other relative who is not a Union citizen is that the person concerned still lives together with the Union citizen whose family member or relative she is.

Students are not issued with permanent residence cards. According to the Government Bill, in case the purpose of residence of a student changes, she may, however, be issued with a permanent residence card on the new ground of residence. An amendment of the Aliens Act is expected in this respect so that in the future students, too, would be entitled to permanent residence if the preconditions for that are met.

According to the Government Bill 28/2003 section 163 of the Aliens Act reflects Articles 2 and 3 of the Commission Regulation 1251/70/EC and Articles 2 and 3 of the Council Directive 75/34/EC.

The fee for registering one's right of residence and for the residence permit card is 40 euros.

Draft legislation

No draft legislation is given. The Government Bill concerning the transposition of the provisions of the Directive 2004/38/EC will be given by the autumn of 2006 and the amendments of the Aliens Act will most probably enter into force during the autumn or in the beginning of 2007.

Miscellaneous (administrative practices etc.)

In certain police districts, for example in Helsinki, there is still up to three month's delay in registering EU citizens' right of residence. The delay is explained by the rather large number of registrations compared with the small number of staff that handles them. There are, however, also signs indicating that the examination of the requirements for the registration is not always as summary as it should be.

Recent legal literature

Rosas, Allan, Euroopan unionin kansalaisuus – paljon melua vähästä vai vähän melua paljosta?, in *Lakimies* 7-8/2005, p. 1251-1266 (article on EU citizenship)

Departure

Texts in force

Section 165 of the Aliens Act lays down the rules on cancelling registration of the right of residence and the residence card.

Section 165

“Cancelling registration of the right of residence or a residence card

(1) The registration of the right of residence or a fixed-term residence card is cancelled if:

- 1) the person whose right of residence has been registered or who has been issued with a fixed-term residence card has permanently moved away from Finland;
- 2) the person whose right of residence has been registered or who has been issued with a fixed-term residence card has continuously resided outside Finland for two years for permanent purposes;
- 3) the requirements for registering the right of residence or issuing a fixed-term residence card no longer exist; or
- 4) the person whose right of residence has been registered or who has been issued with a fixed-term residence card is considered a danger to public order and security or public health.

(2) A permanent residence card is cancelled in cases as referred to in subsection 1(1), (2) or (4) or in a case where the applicant, upon applying for a permanent residence card, knowingly gave false information that affected the decision, or concealed a fact that would have affected the content of the decision.

(3) A person who has moved away from Finland may apply for non-cancellation of the registration of his or her right of residence or residence card within two years of moving from Finland. If the application is granted, the decision shall state the period during which cancellation is not made.”

According to the Government Bill 28/2003, before being issued a permanent residence card the person concerned has to meet continuously the conditions on which her right of residence is registered or her fixed-term residence card is issued. If she no longer meets these conditions the registration of the right of residence or the fixed-term residence card shall be revoked. There is, however, no systematic scrutiny concerning whether the conditions for residence continue to exist. Once a Union citizen and her family member or other relative has been issued with a permanent residence card the grounds for residence are no longer controlled. A permanent residence card may not be revoked on the ground that the person concerned no longer meets the preconditions for residence.

Section 166 of the Aliens Act lays down rules on expiry of registration of the right of residence and residence card.

Section 166

“Expiry of registration of the right of residence or a residence card

The registration of the right of residence or a residence card expires if the person whose right of residence has been registered or who has been issued with a fixed-term residence card is deported or acquires Finnish citizenship.”

According to section 142 of the Aliens Act, refusal of entry means preventing an alien from entering the country at the border, or removing from the country an alien who has not yet been issued with a residence permit or residence card or whose right of residence has not yet been registered. Thus, refusal of entry may take place after the person has *de facto* entered the country and stayed there for a while.

According to section 143 of the Act deportation means removing from the country an alien who resides in the country and whose residence has been registered as provided by the Act, or who continues to reside in the country after her registered residence or residence card has expired.

Section 167 of the Aliens Act lays down the grounds for refusing EU citizens', their family members', and other relatives' entry.

Section 167

“Grounds for refusing EU citizens, their family members or other relatives entry into Finland

EU citizens, their family members or other relatives may be refused entry into the country if their right of residence has not been registered or they have not been issued with a residence card and if they:

- 1) do not meet the requirements for entry laid down in sections 155 and 156;
- 2) have, soon after entering the country, had to resort to social assistance provided in the Act on Social Assistance or to other comparable benefits owing to the lack of sufficient funds; or
- 3) would be required to have the right of residence registered or a residence card issued to them in order to continue their residence in Finland, but they do not meet the requirements for registering the right of residence or for being issued with a residence card.”

According to the Government Bill 28/2003 the entry of a Union citizen and her family member and other relative shall be refused if she does not meet the preconditions for entry, registration of the right of residence, or issuing a residence card, or if it is found out soon after she has entered Finland that she does not possess sufficient financial resources for her stay.

An EU citizen and her family member should possess the required travel document and visa during her residence in Finland. When considering refusal of entry in situations where the person concerned does not possess the required documents, the unreasonableness caused by the possible refusal of entry may, however, exceptionally and for a special reason be taken into account in the consideration. It is possible to give up refusing entry if the identity of the person concerned may be ascertained by other means, provided that she does not jeopardize public order or security. The Government Bill thus confirms that the preconditions for entry are not absolute. In this connection the Bill also refers to case C-459/99 *MRAX*, and states that the Member States may not turn back at the border a person who does not possess a travel document or a visa if she is married to a citizen of another Member State and if she can prove her identity and marital status, and furthermore, if it is not established that this person would jeopardize public order or security or public health. The Government Bill also refers to case 68/89 *Commission v. the Netherlands*, according to which the Member States may not require a citizen of another Member State to establish evidence of her financial resources upon entering the country. It would, however, be possible to refuse entry of a Union citizen if she after entering the country and before registering her right of residence has to turn to social security system to secure her income. Secured income is regarded as a condition for the right of residence, and if a person concerned does not have sufficient financial resources for her stay, her right of residence shall be denied and therefore her entry refused.

Section 156 of the Aliens Act concerns public order and security and public health.

Section 156

“Public order and security and public health

- (1) In addition to what is provided in section 155, a requirement for an EU citizen’s entry into and residence in the country is that the EU citizen or his or her family members or other relatives are not considered a danger to public order and security or public health.
- (2) Preventing an alien’s entry into or removing an alien from the country on grounds of public order and security or public health shall be based on the alien’s own behaviour and not merely on any previous convictions.”

This provision expresses the rule that a person who jeopardizes public order and security or public health may be prevented from entering Finland, or if already entered, may be removed from the country. According to the Government Bill 28/2003 this provision reflects articles 39.3 and 46.1 of the EC Treaty. Measures the purpose of which is to guarantee safe and comfortable environment to the members of society and to prevent and solve crimes and injustices as well as to prevent and remove disturbances, belong to public order and security. In this connection the Government Bill also refers to cases *van Duyn*, *Adoui* and *Cornuaille* and *Bouchereau*, and states that these decisions should be taken into account when applying this provision in practice. The notions of public order and security and public health should, according to the Government Bill, be interpreted in a restrictive manner. A citizen of

another Member States may not be removed from Finland on the grounds of activities that Finnish citizens are not prohibited from doing or that are not tried to be effectively prevented. Public order may be appealed to only if the threat is real and sufficiently serious and it threatens the fundamental interests of society. As concerns public health, the Government Bill refers to Article 4.1 of the Directive on Public Order and Security.

Section 168 of the Aliens Act lays down grounds for deporting an EU citizen and her family member and other relative.

Section 168

“Grounds for deporting EU citizens, their family members and other relatives

(1) EU citizens whose right of residence has been registered or who have been issued with a permanent residence card may be deported if the registration of their right of residence or their permanent residence card has been cancelled or if they are considered a danger to public order and security or public health.

(2) EU citizens’ family members or other relatives who have been issued with a family member’s residence card, relative’s residence card or permanent residence card may be deported if the family members or relatives have not been issued with a new residence card, their residence card has been cancelled or they are considered a danger to public order and security or public health.”

The Government Bill 28/2003 refers to the Directive on public order and security and states that the measures taken on grounds of public order and security have to be based on the behaviour of the person concerned and that, for example, an earlier crime conviction may not automatically be regarded as a ground for deportation. Furthermore, the grounds for deportation may not be appealed to for financial reasons. According to the Government Bill, the ECJ has stated in *Adoui* and *Cornuaille* and *Bouchereau* that the threat caused by the behaviour of the person to be removed has to be real and sufficiently serious to jeopardize the fundamental interests of society. When assessing the threat caused by the individual, it should be evaluated whether the Member State takes sufficient measures to prevent its own citizens from the same behaviour.

Section 168 of the Aliens Act is somewhat problematic as it appears to allow deporting on grounds of public health persons whose right of residence is already registered and who have a right of permanent residence.

Section 170 of the Aliens Act concerns prohibition of entry.

Section 170

“Ordering and abolishing prohibitions of entry

(1) If removing an EU citizen or his or her family member or other relative from the country is based on the fact that the person concerned is considered a danger to public order and security or public health, he or she may be prohibited from entering the country for a maximum of fifteen years by a decision on refusal of entry or deportation.

(2) Upon application, a prohibition of entry may be abolished in part or in full on the basis of a change in circumstances or for important personal reasons.”

An EU citizen may be prohibited from entering Finland for a maximum of fifteen years. According to the Government Bill 28/2003, section 170 of the Aliens Act reflects the practice of the ECJ in particular in cases 115/81 and 116/81, *Adoui* and *Cornuaille* and *C-348/96 Donatella Calfa*. According to the ECJ, a decision on refusing entry of a citizen of another Member State may not be made for indefinite period or for life. Instead, it has to be made for a fixed term not exceeding fifteen years. According to the Government Bill, an EU citizen’s entry may be prohibited only if she is removed from the country because she is deemed to jeopardize public order or security or public health. The prohibition of entry starts from the day when the decision on removing the person concerned is taken. The prohibition of entry may be abolished upon application on the basis of a change in circumstances or for important personal reasons. No time limit is set for applying the abolishment of prohibition of entry.

Section 171 of the Aliens Act concerns the competent authorities.

Section 171

Finland

“Competent authorities

- (1) The District Police enter a person’s right of residence in the Register of Aliens and issue a fixed-term or permanent residence card.
- (2) The District Police cancel a registered right of residence or a fixed-term or permanent residence card.
- (3) The Directorate of Immigration decides on a prohibition of entry under section 170.
- (4) The provisions of sections 151 and 152 apply to the competence of the authorities to make decisions on removal from the country.”

According to section 151 and 152 of the Aliens Act the police have to refer the case to the Directorate of Immigration if the police are not competent to take the decision. This is the case if, for example, the person whose entry shall be refused has stayed in Finland for longer than three months.

Section 172 of the Aliens Act concerns enforcement of the decision on removing an EU citizen and her family member or other relative from Finland.

Section 172

“Enforcing removal of EU citizens or their family members or other relatives from the country

- (1) A decision on refusal of entry may be enforced immediately regardless of any appeal unless otherwise ordered by an administrative court if the person is refused entry under section 167(1) or 169(1), and if the matter is justifiably urgent.
- (2) A decision on refusal of entry under section 167(2) or (3) may be enforced within 30 days at the earliest of the date when the decision was served on the person concerned. If a decision issued under section 167(3) is based on the fact that the person to whom the decision applies is considered a danger to public order and security, and the matter is justifiably urgent, the decision may be enforced immediately regardless of any appeal unless otherwise ordered by an administrative court.
- (3) A decision on deportation under section 168 or 169(2) may be enforced after a final decision.
- (4) The provisions of section 202 apply to a decision on refusal of entry or deportation that is enforced with the consent of the person concerned before the decision is final.
- (5) When serving a decision on refusal of entry or deportation, the document served shall state the period during which the alien must leave the country. During that period, the authorities may not enforce the decision.”

According to the Government Bill 28/2003, a decision on refusing entry or deportation becomes final after 30 days have passed from the day when the decision was served to the person to be removed unless she, during this period, appeals to the administrative court. In case of appeal, the decision may not be enforced before the administrative court has decided the matter. An appeal to the Supreme Administrative Court is possible only if the Supreme Administrative Court grants a leave to appeal. The appeal to the Supreme Administrative Court does not prevent the enforcement of the decision on removal. When applying the Supreme Administrative Court for a leave to appeal the applicant may, however, apply for non-enforcement of the decision on refusing entry or deportation. Furthermore, the Supreme Administrative Court may, when considering the leave to appeal, *ex officio* take a decision on preventing the enforcement of the decision on removal. When a decision on refusing entry or deportation is connected to a matter under consideration by administrative court, the court may upon application or *ex officio* at any stage decide to prevent the enforcement of the decision.

Section 202 of the new Aliens Act concerns the consent of the person concerned in situation of enforcement of a decision on refusal of entry or deportation.

Section 202

“Consent to enforcement

A decision on refusal of entry or deportation may be enforced before the decision becomes final if the person refused entry or ordered to be deported gives, in the presence of two competent witnesses, his or her consent to the enforcement of the decision and signs the corresponding entry made in the decision.”

Finland

Section 5 of the Aliens Act lays down the principle of proportionality and is applicable in all decision-making under the Aliens Act.

Section 5

“Respect for the rights of aliens

The application of this Act may not restrict aliens’ rights any more than necessary.”

Section 146 of the Aliens Act concerns overall consideration and is applicable in cases involving EU citizens, as well.

Section 146

“Overall consideration

1)When considering refusal of entry, deportation or prohibition of entry and the duration of the prohibition of entry, account shall be taken of the facts on which the decision is based and the facts and circumstances affecting the matter otherwise as a whole. When considering the matter, particular attention shall be paid to the best interest of children and the protection of family life. Other facts to be considered include at least the length and purpose of the alien’s residence in Finland, the nature of the residence permit issued to her or him and the alien’s ties to Finland. Should a refusal of entry, deportation or related prohibition of entry be based on any criminal activity of the alien, account shall be taken of the seriousness of the act and the detriment, damage or danger caused to public or private security.

2)When considering prohibition of entry and its duration, account shall also be taken on whether the alien has any such family or work ties to Finland or to another Schengen State that would suffer unreasonably for the prohibition of entry. When considering the prohibition of entry and the duration of prohibition of entry for an alien whose application for international protection has been dismissed or rejected, the facts on which the dismissal or rejection was based and whether the alien has, by his or her own actions, hampered the processing of his or her application for asylum may also be taken into account.

Draft legislation

No draft legislation is given. The Government Bill concerning the transposition of the provisions of the Directive 2004/38/EC will be given by the autumn of 2006 and the amendments of the Aliens Act will most probably enter into force during the autumn or in the beginning of 2007.

Judicial practice

Analysis concerning the practice of the administrative courts indicates that in 2005 there were still problems in how the Directorate of Immigration and the administrative courts applied the grounds for refusing entry or deportation in cases involving EU citizens. The notion of ‘jeopardy to public order or security’ was applied in a rather formalistic manner. The administrative courts gave, for example, several decisions in which a conviction of drug offence or gross drug offence was regarded as a manifestation of the fact that the appellant jeopardizes public order and security and that thus there was a ground for refusing the entry or deporting the appellant. No examination was carried out concerning whether the behaviour of the appellant continued to jeopardize public order or security still after the conviction. (For example following decisions by the Administrative Court of Helsinki (Helsingin hallinto-oikeus): 05/0092/3 of 10.2.2005, 05/00097/3 of 10.2.2005, 05/0156/3 of 21.2.2005, 05/0453/3 of 21.4.2005 and 05/112/3 of 17.10.2005 all of which concerned Estonian citizens.) Decision 05/0348/3 of 21.3.2005 by the Administrative Court of Helsinki is an extreme example of this line of reasoning: the Directorate of Immigration had refused the appellant’s entry and prohibited her entry for 10 years. The ground for this decision was that the appellant was suspected of two incidents of shoplifting. The appellant appealed to the Administrative Court of Helsinki. The appeal concerned the prohibition of entry but not the refusal of entry. The Administrative Court of Helsinki returned the case for the Directorate of Immigration to reconsider the question of the prohibition of entry. The decision on refusal of entry was, however maintained as the court did not take a decision concerning it.

Finland

Decision 05/1295/03 of 11.10.2005 by the Administrative Court of Helsinki (Helsingin hallinto-oikeus) concerned registration of EU citizen's right of residence and refusal of entry. The Court maintained the decision by the Directorate of Immigration and rejected the appeal. The Directorate of Immigration had refused an EU citizen's entry on the ground that she did not meet the grounds for registering her right of residence under Section 167 of the Aliens Act and that her income was not secure.

Miscellaneous

The question of prohibition of EU citizen's entry was discussed at the Parliament as Petri Salo, Member of Parliament (the National Coalition Party) draw in a written question KK927/2005 attention to the fact that the decisions prohibiting EU citizens' entry to Finland do not in fact have any practical meaning as a decision on prohibition of entry does not as such constitute a ground for preventing an EU citizen from entering the country because the entry can be prevented only on grounds of public order or security or public health. Mr. Salo expressed his concern that there are no effective means to prevent persons who have previously committed crimes in Finland from entering the country.

In his reply to the written question Minister for the Interior Kari Rajamäki admitted that an EU citizen's entry to Finland may only be prevented on the ground that he or she does not possess a valid passport or identity document or if he or she jeopardizes public order or security or public health. The decision on prohibition of entry is not as such a ground for preventing an EU citizen from entering Finland or residing there or refusing entry to Finland. The minister continued that the decisions on prohibition of entry concerning EU citizen are, however, not altogether insignificant; the decision on prohibition of entry is taken into account when assessing whether the person concerned meets the conditions for entry or residence. If an EU citizen who has been issued with a decision on prohibition of entry enters Finland or seeks to register her right of residence, the decision on prohibition of entry constitutes a special ground for stricter scrutiny concerning the grounds for entry and residence.

The written question KK927/2005 and the answer may be found in Finnish and Swedish at http://www.eduskunta.fi/faktatmp/utatmp/kk_927_2005.htm

Appeal

Section 190 of the Aliens Act concerns appeal to administrative court.

Section 190

“A decision of the Directorate of Immigration, the police, border check authorities or an employment office as referred to in this Act may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act.

According to the Aliens Act, the decisions concerning EU citizens and their family members taken by the Directorate of Immigration, the police and the border check authorities may be appealed to an administrative court.

Section 196 of the Aliens Act concerns appeal to the Supreme Administrative Court. Further appeal to the Supreme Administrative Court is possible if the Supreme Administrative Court grants a leave to appeal.

Section 196

“A decision of an administrative court as referred to in this Act may be appealed to the Supreme Administrative Court if the Supreme Administrative Court gives a leave to appeal. A leave to appeal may be given if it is important for the application of the Act to other similar cases, or for the sake of consistency in legal practice, to submit the case to the Supreme Administrative Court for a decision or if there is some other weighty reason for giving the leave.”

The decisions concerning visa for third country family members may not be appealed. The Aliens Act will, however, be reformed during the autumn 2006 in this respect. No Government Bill on this has yet been given.

Finland

Chapter II Access to employment

Equal treatment

Texts in force

Equality of treatment and prohibition of discrimination of EU citizens is guaranteed by general legislation on equality and non-discrimination. The following provisions are of particular relevance in this respect.

Section 2 of Chapter 2 of the Act on Employment Contract prohibits discrimination at labour market. The provision covers access to employment.

Act on Employment Contract (Työsopimuslaki 55/2001), Chapter 2, 2 §

“Non-discrimination and Equality of Treatment

The employer may not without an acceptable reason treat employees differently on the grounds of age, state of health, disability, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, conviction, family relationship, activities in trade union, political opinion and acts, or other comparable reason.

Prohibition of discrimination based on gender is laid down in the Act on Equality between Women and Men. The Act on Equality contains the definition of discrimination, the prohibition of counter acts and the rules concerning the burden of proof in cases concerning discrimination.

Those working under fixed-term contract or part-time may not, without an acceptable reason, be treated differently from other employees solely on the ground of the fixed duration of the employment contract or short working hours.

The employer has to treat the employees equally unless there are good reasons related to the tasks or the position in the organisation to make an exception to this.

The employer has to obey the prohibition of discrimination laid down in section 1 when hiring workers.”

Section 3 of Chapter 47 of Criminal Code criminalises discrimination at work.

Criminal Code (Rikoslaki 39/1889), Chapter 47, 3 §

“Discrimination at Work

Employer or her representative, who when announcing a vacant job, hiring new workers, or during the employment without a weighty acceptable reason treats an applicant or an employee differently from others on the ground of her 1)race, national or ethnic origin, colour, language, sex, age, family relationship, sexual orientation or state of health or 2)religion, opinion, political activities or activities in trade union or other comparable ground, shall be convicted for discrimination at work to fine or prison sentence for maximum duration of six months.”

Language requirement

There are no regulatory language requirements at the private sector. In practice it is rather common to require that the applicant command either Finnish or Swedish to be employed. This does not necessarily, however, apply to low-skilled jobs. Furthermore, some companies such as Nokia use as their working language English.

Recognition of diplomas

The National Board of Education (Opetushallitus, <http://www.oph.fi/english/frontpage.asp?path=447>) decides upon application on recognition of diplomas completed in other Member States. A decision on

recognition of a diploma is required if a person wishes to apply for a post at the public sector, for which the eligibility requirement is a higher education degree or a post-secondary level qualification that has taken a minimum of three years to complete for post-secondary school graduates. A decision of recognition is not normally needed for qualifications that are lower than post-secondary level qualifications. Furthermore, as at the private sector the competence of job applicants is evaluated by employers, decisions on recognition of diplomas are not normally required. Such decisions may, however, be used by the job applicants as they may help the employer to determine the level of the foreign qualification. The question of recognition of diplomas is discussed in more detail below in Chapter IV 'Employment in the public sector' under title 'Recognition of diplomas', as this question relates more closely to access to the public sector.

The National Board of Education issues upon application advisory statements on foreign vocational qualifications. Advisory statements can be used when seeking employment in Finland in the private sector. The statements describe the content and the level of the qualification and the professional competencies it provides in the country where it was completed. Advisory statements are issued only concerning qualifications that form part of the official educational system of the Member State where the qualification was completed. The advisory statements do not confer eligibility for civil service positions.

The fee for an advisory statement is 84 euros.

Follow-up of *Burbaud*-case

Because of the differences between the Finnish and the French systems, cases similar to *Burbaud* have not occurred in Finland. The judgment has not given reason to any changes of legislation or practice.

Nationality condition for captains of ships

According to the Sea Act, the captain of a Finnish commercial ship has to be a Finnish national (Merilaki 674/1994, 6 luku 1 §, Sea Act, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940674>). In the reply dated on 2.9.2005 to the letter of formal notice by Commission of 13.7.2005, Finland stated that the nationality requirement concerning captains of commercial ships shall be abolished. No Government Bill on this was yet given in 2005.

At the maritime sector there are no other statutory requirements concerning nationality. Still, in practice members of crew of Finnish ships are normally Finnish nationals. This is to a great extent caused by the requirement that the members of crew have to command the working language of the vessel well enough to understand the security information and orders given in that language (Asetus aluksen miehityksestä, laivaväen pätevydestä ja vahdinpidosta 1256/1997 5 §, Decree on crew of a ship, qualifications of the crew, and keeping watch) and the fact that the working language at the Finnish ships is normally either Finnish or Swedish. Thus the requirement concerning language proficiency may in practice impede the access of the citizens of the other Member States to the Finnish maritime sector.

The Finnish labour legislation and collective bargain agreements are applied to all persons working at Finnish ships independent of the nationality of the persons concerns.

In 2005 there were no reported cases of discrimination based on nationality at the maritime sector.

Chapter III

Equality of treatment on the basis of nationality

Working conditions

Texts in force

Section 2 of Chapter 2 of the Act on Employment Contract prohibits discrimination at labour market including the working conditions.

Act on Employment Contract (Työsopimuslaki 55/2001), Chapter 2, 2 §

“Non-discrimination and Equality of Treatment

The employer may not without an acceptable reason treat employees differently on the grounds of age, state of health, disability, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, conviction, family relationship, activities in trade union, political opinion and acts, or other comparable reason.

Prohibition of discrimination based on gender is laid down in the Act on Equality between Women and Men. The Act on Equality contains the definition of discrimination, the prohibition of counter acts and the rules concerning the burden of proof in cases concerning discrimination.

Those working under fixed-term contract or part-time may not, without an acceptable reason, be treated differently from other employees solely on the ground of the fixed duration of the employment contract or short working hours.

The employer has to treat the employees equally unless there are good reasons related to the tasks or the position in the organisation to make an exception to this.

The employer has to obey the prohibition of discrimination laid down in section 1 when hiring workers.”

Section 3 of Chapter 47 of Criminal Code criminalises discrimination at work.

Criminal Code (Rikoslaki 39/1889), Chapter 47, 3 §

“Discrimination at Work

Employer or her representative, who when announcing a vacant job, hiring new workers, or during the employment without a weighty acceptable reason treats an applicant or an employee differently from others on the ground of her 1)race, national or ethnic origin, colour, language, sex, age, family relationship, sexual orientation or state of health or 2)religion, opinion, political activities or activities in trade union or other comparable ground, shall be convicted for discrimination at work to fine or prison sentence for maximum duration of six months.”

The conditions for work are in most branches laid down by the collective bargaining agreements. The standards defined in these agreements apply to all workers at the branch in question independent of, for example, nationality and membership in national trade union.

Miscellaneous

Great number of EU citizens working in Finland in 2005 were hired workers from the new Member States, in particular from Estonia. According to the occupational health and safety authorities (työsuojelupiirit) and Central Criminal Police (Keskusrikospoliisi), in this kind of situations it is rather common that the minimum conditions for work are not applied and that, for example, the wages are below the minimum wages (See further Chapter VIII: EU enlargement).

Social and tax advantages

In 2005 two significant reforms took place in the area of taxation.

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First reform concerned persons whose liability to pay taxes in Finland is limited. After the reform, a progressive tax scale is applied to pensions paid from Finland to pensioners living abroad. Furthermore, persons living in another EU State and working in Finland for a short time may in certain situations choose progressive taxation instead of tax at the source of income. Before the reform, tax at the source of income of 35 % was applied in these situations. It is evaluated that this reform will alleviate taxation in cases it concerns. The reform entered into force on 15.11.2005.

Furthermore, the Act on income taxation (tuloverolaki 1535/1992) was reformed in 2005 so that now the total amount of tax that the person is liable to pay to Finland and to abroad for income paid from abroad shall not exceed the amount of tax she would have been liable had the income been paid to her only from Finland. This reform entered into force on 20.10.2005.

Chapter IV Employment in the public sector

Texts in Force

Requirements concerning Finnish citizenship

Most public offices were formally opened also to persons who are not Finnish citizens in 1989. Exceptions to this rule are laid down in the Finnish Constitution and in the Act on public offices.

Finnish Constitution

According to section 25 and 26 of the Finnish Constitution only a Finnish citizen may be elected as a Member of Parliament. Furthermore, according to section 54 of the Constitution the President of the Republic shall be a native-born Finnish citizen. According to section 60 of the Constitution the Ministers shall be Finnish citizens.

Furthermore, according to section 125 sub-section 1 of the Constitution “it may be stated in an Act that only Finnish citizens are eligible for appointment to certain public offices or duties”. According to the Committee Report 1997:13 concerning the Finnish Constitution, Finnish citizenship may be required only in exceptional cases. Therefore, according to the main rule the public sector is open for persons who are not Finnish citizens.

The Act on Public Offices

Section 7, sub-section 1 of the Act on Public Offices contains an exhaustive list of public offices to which may be appointed only a Finnish citizen. According to the Government Bill to the Parliament for the Act on public offices (Hallituksen esitys Eduskunnalle valtion virkamieslaiksi ja laiksi valtion virkaehtosopimuslain muuttamisesta HE 291/1993 vp), this provision is compatible with the requirements laid down in the EEA Treaty.

The Act on Public Offices (Virkamieslaki 750/1994), 7 § 1

“Only a Finnish citizen may be appointed to following offices:

- 1) Chancellor of Justice, Deputy Chancellor of Justice, and Chief Secretary, Assistant Chief Secretary and department head at the Office of the Chancellor of Justice;
- 2) office of the Secretary of State, Chief Secretary of the Secretary of State, Head of Government Office, department head of Government Office, office manager, and other comparable or higher office;
- 3) office at the foreign service;
- 4) office of judge;
- 5) office of head of civil service department excluding rectors of universities;
- 6) office of county governor, department head of county administrative board, and head of preparedness;
- 7) office that includes tasks of public prosecutor or distrainer;
- 8) office of police within the meaning of the Act on Police (493/1995);
- 9) office, whose holder is a member of a prison board;
- 10) office at the Ministry of Defence and Armed Forces as well as Border Guard Detachment;
- 11) office other than policeman at Security Police;
- 12) office at the Customs to which appertains right to arrest as well as office at the Customs to which appertains duties concerning supervising and securing the territorial integrity of Finland or duties concerning investigation and supervision of crimes;
- 13) office of the Head of the Public Unit of the Civil Aviation Administration; as well as
- 14) office of the Head of Maritime Safety of the Finnish Maritime Administration.”

Section 11 of the Act on Public Offices lays down the obligation of equal treatment and the prohibition of discrimination based, among other grounds, on nationality.

The Act on Public Offices 11 §

“Public authorities have to treat civil servants equally so that no one is without an acceptable reason treated differently from other persons on the grounds of ethnic and other origin, national-

ity, sex, religion, conviction, disability, age, political activities or activities in trade union or other comparable reason. The Act on Equality contains provisions on the definition of discrimination, the prohibition of counter acts, and the rules concerning the burden of proof in cases concerning discrimination.”

Recognition of diplomas

In 2005 no significant developments took place regarding the rules and practices on recognition of diplomas for access to the public sector.

The Act implementing the EC system of recognition of diplomas (Laki Euroopan yhteisön yleisen tutkintojen tunnustamisjärjestelmän voimaannpanosta 1597/1992) and the Decree implementing the EC system of recognition of diplomas (Asetus Euroopan yhteisön yleisen tutkintojen tunnustamisjärjestelmän voimaannpanosta 520/1997) lay down the general provisions on recognition of diplomas².

In Finland the qualification requirements for civil service posts may be a qualification of certain level, a qualification of a specific title, or specified studies. To be eligible for posts for which there are such qualification requirements, a person who has completed her studies abroad needs usually a decision of recognition of her diploma. Recognition of diplomas is applied for from the National Board of Education (Opetushallitus, <http://www.oph.fi/english/frontpage.asp?path=447>). The Board decides on the competence for civil service posts in the public sector in Finland conferred by qualifications taken in another EU State.

The decision on recognition by the Board is always based on individual applications. Decisions concerning general correspondences between Finnish diplomas and diplomas issued in other Member States are not taken and there are thus no lists of such general correspondences. The decisions on recognition are always made on a case by case basis. The individual decision on recognition of a particular diploma is, however, general so that the recognition is not bound to any particular post the applicant has applied or is going to apply for.

A decision on recognition confers the applicant the eligibility to apply for a post at the public sector. The decision may be subjected to completion of specified supplementary study requirements or other requirements such as work experience. The decision of recognition fulfils the qualification requirements only for the part of the qualification; posts in the public sector are often subjected to other requirements, such as language proficiency requirements, too.

When processing the applications, the National Board of Education assesses the level and scope of education on the basis of qualification certificates. If necessary, the Board obtains a statement from a Finnish university or the authorities of the country where the qualification was completed. The point of departure is the situation in the country where the diploma was obtained. The main requirement for a foreign qualification to be recognised in Finland is that the qualification is an official qualification of higher education in the country where it was completed in, and that the higher education institution is legally recognised by the authorities of that country. If the diploma qualifies for public posts and positions of certain level in the country where the diploma was obtained, it shall qualify also in Finland for public posts and positions at the equivalent level. However, if there are significant differences between the diploma in question and the Finnish diploma required, work experience or a particular exam may be required as additional requirement.

The negative decisions on recognition of diplomas may be appealed to the administrative court, which, however, happens only in rare cases. When the National Board of Education anticipates that it would give a negative decision on the application, it always offers the applicant an opportunity to withdraw the application and thereby be exempted from the fee. In this kind of situations most applicants end up withdrawing their application. In most cases in which the decision by the National Board of Education would be negative, the reason for this is that the diploma is taken in an educational institution that has no official status in the state where it is established and is therefore not entitled to issue diplomas recognised as official in that Member State.

According to the Act Implementing the EC System of Recognition of Diplomas the decisions on recognition must be made in four months. Currently the fee for the decision is 178e.

2 The text of the Act and the Decree may be found at <http://www.oph.fi>.

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Between 1.1.1997 and 31.12.2004 3040 applications were lodged to the National Board of Education for recognising diplomas. In 1090 cases the applicant was a Finnish citizen and in 307 cases a citizen of another EU state. In 287 cases the diploma was acquired in the United Kingdom, in 286 cases in Sweden, in 161 cases in Germany, in 97 cases in Estonia, in 75 cases in France, in 41 cases in Hungary and in 23 cases in the Netherlands. 2460 decisions were positive *i.e.* the recognition was granted. 17 decisions (1%) were negative, *i.e.* the recognition was not granted. In 563 cases the decision on recognition was not taken for reasons such as the cancellation of the application by the applicant. (<http://www.oph.fi>).

The citizens of Nordic countries do not need a decision of recognition of a diploma for eligibility to posts in the public sector if the diploma has been taken in a Nordic country and the main content of that diploma can be shown to be comparable with a corresponding Finnish diploma (Act 651/1998).

Higher education institutions decide on the eligibility for further studies and the recognition of foreign studies as part of a Finnish higher education degree.

Obligation to participate in a competition which gives access to a training and to a post in the public sector

No developments took place in 2005 in this respect: in Finland no competitions giving access to training and afterwards to a post in the public sector are used. Anyone meeting the formal recruitment criterion concerning education and language proficiency required for a particular post may apply and be nominated to the post in question.

Recognition of professional experience and seniority acquired in another Member State

No developments took place in 2005 in this respect. There are no specific rules concerning the way the professional experience and seniority acquired in another Member State should be taken into account for the purposes of access to the public sector or for the purposes of the determination of professional advantages. All relevant matters contributing to the professional competence should be taken into account in the discretion concerning professional competence. Professional experience and seniority acquired in another Member State should be taken into account in a similar manner as corresponding experience and seniority acquired in Finland.

Requirements concerning language proficiency

The requirements concerning language proficiency at the public sector are laid down in the Language Act (Kielilaki 423/2003, English translation at: <http://www.finlex.fi/pdf/saadkaan/E0030423.PDF>) and the Act on language proficiency required from personnel of public authorities (Laki julkisyhteisöjen henkilöstöltä vaadittavasta kielitaidosta 424/2003, Finnish text at <http://www.finlex.fi/fi/laki/ajantasa/2003/20030424>). The main object of this legislation is to strengthen the position of the national languages Finnish and Swedish, and to promote the right to use one's own language at the public sector, including private actors committing public functions.

According to Section 6 of the Act on language proficiency, for public offices for which the qualification requirement is a university degree, the required level of language proficiency in the majority language is *excellent oral and written skills* and in minority language *satisfactory oral and written skills*. According to the Decree, the means by which a person can show that she has reached the required level of language proficiency are national language tests on the one hand and certificate showing that she has completed her education and passed a maturity test at a Finnish university in a given language on the other. According to section 14 of the Act on language proficiency, the Board on Language Exams (Kielitutkintolautakunta) may upon application issue a certificate on excellent command of Finnish or Swedish language to a person who can show that she has reached excellent language proficiency by other means than those specified in the Decree. Thus, the Board on Language Exams may upon application decide that, for example, language studies completed abroad may be equated with official Finnish exams. According to the Bill of Government to the Parliament concerning the act on languages and other related legislation (Hallituksen esitys kielilainsäädännön muuttamisesta ja muuksi siihen liittyväksi

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lainsäädännöksi 9/2002), this flexibility of means in proving the command of languages reflects the requirements following from the EC law.

The general legislation on languages does not apply to the universities, to the Evangelic Lutheran Church and to the Orthodox Church. These institutions are covered by special legislation in what concern language proficiency of their personnel.

The requirements concerning language proficiency are rather rigid and they may therefore impede the access of the citizens of the other EU States to the public sector. The requirements concerning linguistic competence are bound to the qualification requirement (for example university degree) and not, for example, to the post and tasks in question, which would be a more flexible approach.

It is not very common that citizens of the other Member States apply for open posts in the Finnish public sector. It is, however, difficult to assess to what extent this is caused by the rigid requirements concerning language proficiency and to what extent by other factors.

Chapter V Members of the family

Texts in force

According to the Aliens Act, the right of residence of EU citizens' family member or other relative who is an EU citizen is registered at the Aliens register. An EU citizens' family member or other relative who is not an EU citizen is upon application issued with a residence card. The treatment of family members who are citizens of the other Nordic countries differs from the treatment of the family members in other cases; for example the requirement concerning secured income is not applicable in case of Nordic family members.

The notion of a family member is defined in section 154 of the Aliens Act.

Section 154:

"EU citizens' family members

(1) An EU citizens' family members are his or her:

- 1) spouse;
- 2) children under 21 of age or dependent on him or her;
- 3) parents dependent on him or her;
- 4) spouse's children who are under 21 years of age or dependent on the spouse;
- 5) spouse's parents who are dependent on the spouse.

(2) If an EU citizen residing in Finland is a minor, his or her parent or guardian is a family member.

(3) When this Act is applied, persons of the same sex in a registered partnership are comparable to a married couple. Furthermore, persons living continuously in a marriage-like relationship within the same household regardless of their sex are comparable to a married couple."

According to this provision, persons of the same sex in a registered partnership and regardless of their sex, persons living continuously in a marriage-like relationship within the same household are regarded as a family.

Sub-section 2, 3 and 4 of section 159 of the Aliens Act lay down the rules on registering the right of residence of EU citizen's family members and other relatives, who are EU citizens.

Section 159

"Registering EU citizens' right of residence

(1) EU citizens shall register their right of residence no later than the expiry of their right of residence in Finland under section 158. Registering the right of residence requires that the EU citizens meet the requirements laid down in sections 155 and 156 and that:

- 1) they are engaged in economic activity as paid employees or self-employed persons;
- 2) they have sufficient funds and, if necessary, health insurance so that they do not have to resort to social assistance provided in the Act on Social Assistance or to other comparable benefits during their residence in Finland; or
- 3) they have been admitted to an educational institution in Finland as students and have sufficient funds for their residence and, if necessary, health insurance.

(2) The right of residence of an EU citizen's family member is registered if the family member is also an EU citizen.

(3) The right of residence of an EU citizen's other relative is registered if the relative is also an EU citizen, and if refusing registration of the right of residence would be unreasonable because the persons concerned intend to resume their earlier close family life in Finland or because the relative is fully dependent on the relative living in Finland.

(4) Registering the right of residence of an EU citizen's family member or other relative as referred to in subsection 1(2) or (3) requires that the family member or relative has sufficient funds for his or her residence and, if necessary, health insurance. However, the right of residence of a Nordic citizen's family member is registered even if he or she has no secure means of support.

Finland

Registering the right of residence of a Nordic citizen's other relative requires that he or she has sufficient funds for his or her residence and, if necessary, health insurance."

According to the Government Bill 28/2003, other relative than family member shall be considered to be fully dependent on the relative residing in Finland if the persons concerned lived in the same household before the other of them moved to Finland, if their separation from each other was due to compelling reasons, and furthermore, if their dependency has continued even after the other of them moved to Finland. If the persons concerned did not live together before one of them moved to Finland, it is required that there has occurred a compelling change in the circumstances and that because of this the relative is no longer able to live without the person residing in Finland. According to the Government Bill, this dependency should not be merely financial but instead caused by the state of health or age. It is further required that there is no one in the country of origin to take care of the person concerned and that she does not manage her daily life without the relative living in Finland. In cases in which the persons concerned would continue their established family life they shall not be required to be fully dependent on each other. In this kind of situations attention shall be laid, among other things, to reasons that caused the end of the family life, and to how the persons concerned have maintained their relationship during their separation.

According to the Government Bill 28/2003, the income of the family members and other relatives of workers or of self-employed persons shall be regarded to be sufficiently secured by the wage of the worker or the economic activities of the self-employed person. The income of the family members and other relatives of a person who is not involved in economic-activities has to be guaranteed by other means. Any proof of the secured income shall, however, not be required. The right of residence may be revoked if the person concerned has to avail herself continuously of the Finnish social security to cover the expenses of her daily living.

The treatment of the family members of the citizens of the other Nordic countries differs from the treatment of the family members of the other EU citizens. The income of a family member of a citizen of another Nordic country does not have to be secured. According to the Nordic Treaty on Social Services (Pohjoismaiden sosiaalipalvelusopimus, SopS 69/1996) a citizen of another Nordic country shall not be returned to her country of origin even if she is in need of social services or subsistence support in her country of residence, if her family situation is such that it requires staying in the country of residence. This provision is applied also to family members of citizens of the other Nordic countries, including third country national family members.

The treatment of third country national family members and other relatives of EU citizens differs from the treatment of those family members who are EU citizens. The third country national family members and other relatives are issued with a residence card under section 161 of the Aliens Act.

Section 161

"Family members' and relatives' residence cards

(1) Upon application, EU citizens' family members who are not EU citizens are issued with a family member's residence card if the sponsor meets the requirements laid down in sections 155 and 156 and section 157(3) or 159(1).

(2) Upon application, EU citizens' other relatives who are not EU citizens are issued with a relative's residence card if the sponsor meets the requirements provided in sections 155 and 156 and section 157(3) or 159(1), and if refusing the relative's right of residence would be unreasonable because the persons concerned intend to resume their earlier close family life in Finland or because the relative is fully dependent on the sponsor.

(3) A further requirement for an EU citizen's family member or other relative as referred to in section 159 (1)(2) or (1)(3) is that the family member or other relative has sufficient funds for his or her residence and, if necessary, health insurance. A residence card is issued to a Nordic citizen's family member even if the family member has no secure means of support. The requirement for issuing a residence card to a Nordic citizen's other relative is that the relative has sufficient funds for his or her residence and, if necessary, health insurance.

(4) A residence card for an EU citizen's family member or other relative is issued for a period of five years unless the right of residence is requested for a shorter period. However, if the resi-

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“... if the residence is estimated to last for a shorter period than one year, the residence card may be issued for the estimated length of residence.”

According to the Government Bill 28/2003, the right of residence of a third country national family member and other relative is dependent upon the right of residence of the family member or relative already residing in Finland. This person, who is an EU citizen or comparable, should meet the pre-conditions for registering her right of residence, and furthermore, if she is not working, should possess sufficient financial resources for her stay and to have a sickness insurance. The income of the family member or other relative should, too, be secured. A further precondition for issuing a permanent residence card to a family member or other relative who is not an EU citizen is that the person concerned lives together with the EU citizen whose family member or relative she is. According to the Government Bill, a family member or other relative of an EU citizen is issued with a residence card that is valid for five years. The validity of the permit is however dependent on the residence of the family member who is an EU citizen. If the residence of the applicant or the family member who is an EU citizen is estimated to last for a shorter period than one year the residence card may be issued for the estimated duration of the residence.

Permanent residence is, under Section 162 of the Aliens Act, available for both those family members who are EU citizens and for third-country national family members provided that the conditions laid down in the provision are met. (See further in Chapter I: ‘Entry, residence and departure’ under title ‘B.Residence’.)

In addition to these provisions following provisions already stated above apply to family members of Union citizens: Aliens Act 155 § and 156 § concerning entry, Aliens Act 162 § and 163 § concerning residence, and Aliens Act 165 §, 166 §, 167 §, 168 § 170 §, 171 § and 172 § concerning departure.

Miscellaneous

The bureaucratic formalities for issuing a residence card for third-country national family members are not significantly greater than those concerning registration of EU citizens’ right of residence. The applications for residence card are handled in a similar manner than the registrations of the right of residence. Furthermore, the application for family member’s residence card is handled jointly with the registration of the right of residence. In case residence cards there is, however, a slight delay caused by the preparation of the card. Both the applications for EU citizen’s registration of the right of residence and the applications for third country national family member’s residence card are handled as urgent compared to applications for regular residence permits.

Chapter VI

Relevance/influence/follow-up of recent Court of Justice judgements

In general, the landmark judgments of the ECJ are taken into account in legislative reforms. For example, the recent practice of the ECJ concerning free movement of EU citizens will be taken into account when the Aliens Act will be amended later this year on grounds of the Directive 2004/38/EC.

In addition to this, the practice of the ECJ is followed by the Immigration Department of the Ministry of the Interior, the Directorate of Immigration and other relevant bodies such as the Social Insurance Institution of Finland (KELA). For example the administrative courts educate their personnel regularly on the relevant practice of the ECJ.

Trojani

No changes of practice or legislation have taken place on grounds of *Trojani*.

Ioannidis

No changes of practice or legislation have taken place on grounds of *Ioannidis*.

Bidar

The Finnish legislation and practice is regarded by the authorities to correspond to the judgment in *Bidar* and thus no measures shall be taken on grounds of it.

According to section 1 of chapter 1 the Act on study grant (Opintotukilaki 65/1994, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940065?search%5Btype%5D=pika&search%5Bpika%5D=opintotuki%2A#a7.5.2004-345>), a person who is a citizen of another EU State or a person comparable to that or a family member of such person, as meant in section 153 or 154 of the Aliens Act, and whose right of residence has been registered as provided for in section 159 of the Aliens Act, may be granted study grant provided that she lives permanently in Finland and that the ground for her residence is other than studying in the country.

Van Lent and Commission v. Denmark

Finland has amended the tax legislation so that now after the reform a company car that is registered in another Member State can be used in Finland temporarily for work purposes. What comes to company cars registered in other Member State and used in Finland permanently or temporarily for purposes other than work, the Finnish system is regarded by the Finnish authorities to meet the requirements following from the EC law.

Sports sector

Among the teams playing at the Finnish national hockey league there was in the season 2004-2005 a 'gentlemen's agreement' according to which there can be only four foreign players, including citizens of other Member States, in the playing composition of each team in each game. The number of foreign players in the teams as such is not limited. There is no information on equivalent agreements at other fields of sport.

It is not known that the public authorities would have taken any measures on grounds of the practice of the ECJ in this respect.

Chapter VII

General texts and policies

Treatment of the citizens of the other Nordic Countries

Due to various agreements and historical arrangements between the Nordic countries special arrangements apply to entry to, residence, and departure from Finland of the citizens of the other Nordic countries. In 2005 no significant developments took place in this area.

Section 157 of the Aliens Act concerns Nordic citizens' entry and residence in Finland.

Section 157

"Nordic citizens' entry into and residence in the country

- (1) Citizens of Iceland, Norway, Sweden and Denmark have the right to enter the country direct from any of these States without a passport and to reside in Finland without registering their right of residence or holding a permanent residence card.
- (2) Citizens of Iceland, Norway, Sweden and Denmark shall be able to prove their identity and citizenship in a reliable way.
- (3) Nordic citizens entering the country for a purpose other than short-term residence shall register their residence by submitting an Inter-Nordic Migration Form as provided in section 3 of the Municipality of Residence Decree (351/1994)."

The citizens of the other Nordic Countries are not under obligation to register their right of residence and they are not required to have a residence card. Furthermore, according to the Government Bill 28/2003, a citizen of another Nordic country may prove her identity and citizenship also by a document that is not valid as a travel document, or by other reliable means. If the person concerned is not able to prove her identity by an identity document or by other such means, the Finnish authorities may, for instance, contact the authorities of the country whose citizen the person concerned claims to be in order to confirm her identity and nationality. This provision is based on various treaties concluded by Denmark, Finland, Norway and Sweden and joined by Iceland (SopS 17/1954 and SopS 39 and 40/1983) (See Annex I).

Section 169 of the Aliens Act lays down the grounds for refusing Nordic citizens' entry into Finland and for deporting them.

Section 169

"Grounds for refusing Nordic citizens entry into or deporting Nordic citizens from the country

- (1) Citizens of Iceland, Norway, Sweden and Denmark whose move to Finland has not been registered under an Inter-Nordic Migration Form may be refused entry if they are considered a danger to public order and security or public health.
- (2) Citizens of Iceland, Norway, Sweden and Denmark whose move to Finland has been registered under an Inter-Nordic Migration Form may be deported if they are considered a danger to public order and security or public health."

Thus, the Nordic citizens entry may be refused and they can be deported only on grounds of jeopardy to public order and security and of public health.

Integration of immigrants

The Act on integration of immigrants and reception of asylum seekers (Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanotosta 493/1999) covers, along with the other non-nationals, also EU citizens and their family members and other relatives who meet the preconditions laid down in the Act. It is important to notice that the participation to integration measures is not compulsory.

According to the Act on integration, an immigrant who has moved to Finland after the 1st of May 1997, who has been entered in the population data system of her home municipality, and who is eligible for labour market subsidy and/or social assistance is entitled to a personal integration plan. Subsis-

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tence during the plan period is secured with integration assistance. For example EU citizens' family members and other relatives who live in Finland permanently and who are registered as job-seekers may fall within the scope of application of the Act on Integration provided that also the other preconditions laid down in the Act are met.

The integration plan is drawn up after the immigrant has been entered in the population register as a permanent resident in Finland. The maximum plan period is three years. The plan is drawn up by the immigrant herself, the employment consultant, and where necessary a representative of the municipality. The integration plan includes an agreement on the measures taken to help the immigrant enter into the Finnish society and working life. These measures include courses in Finnish or Swedish languages. The plan period involves also an assessment on how the qualifications or degrees taken outside Finland can be made to meet the requirements set by Finnish working life and what kind of supplementary training may be needed.

Portability of university grants

The preconditions for the portability of the university grants are laid down in the Act on Study Grants (opintotukilaki 65/1994). It is possible to get financial help for studies that take place outside Finland if they correspond to Finnish studies that would be covered by the student financial aid provisions or form part of a Finnish degree programme.

Financial aid for a course of study which is conducted entirely outside Finland is only available for Finnish citizens and for citizens of other EU/EEA citizens and for citizen of Switzerland and their family members. Applicants must have been resident in Finland for at least two years within the five years preceding the course of study. Further requirements which apply to citizens of EU/EEA countries and to citizens of Switzerland are that they are working in Finland and the intended course of study is closely linked to their job or that they are unwillingly unemployed.

For those studying outside Finland, the study grant is paid at the same rate as it would be in Finland. The exception to this main rule is that the grant for studies at a foreign vocational training institute is equal to the grant provided to students attending a higher education institute in Finland. The grant for studies at a Finnish vocational training institute is lower than the grant for Finnish higher education institute. Housing supplement and the government guarantee for student loans are also available for studies abroad.

Chapter VIII

EU enlargement

The Act on the prerequisites for gainful employment of the citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia (Laki Tsekin, Viron, Latvian, Liettuun, Unkarin, Puolan, Slovenian ja Slovakian kansalaisten ansiotyön edellytyksistä 309/2004, English version at <http://www.mol.fi/finnwork/en/trans.pdf>) lays down the prerequisites for gainful employment in Finland for the citizens of the new Member States except Cyprus and Malta. A transitional period of two years is applied to the access of citizens of these states to the Finnish labour market. During this transitional period the citizens of the states concerned can, with some exceptions, be engaged in gainful employment in Finland only if the employment authority issues a decision approving it. The employment authority may issue a permit if it considers that the vacancy in question can not be filled by persons already present at the Finnish labour market. As persons already at the Finnish labour market are counted the citizens of Finland and the old Member States as well as such citizens of third countries, who have a right to work in Finland. The decisions by the employment authority approving access to the Finnish labour market are bound to a particular branch and not to a particular post. Therefore, it is possible to change jobs within the branch in question even without applying for a new permit from the employment authority. Changing branches requires a new permit.

The Act on transitional measures is not applicable in situations in which a citizen of a new Member State, who had been issued with a permit to reside and to work in Finland for at least 12 months, was working in Finland when the Act entered into force, provided that she has not left the Finnish labour market. Furthermore, the Act is not applied to the citizens of new Member States, who have, after the entry into force of the Act on transitional measures, been granted a right to reside and to work in Finland for at least 12 months and who still are involved in the Finnish labour market. In additions to these situations, the Act is not applied in situations in which the person concerned would have a right to work in Finland without the permission of the employment authority if she was a citizen of a non-EU state; the person concerned has a right of residence in Finland on some other ground than working (for example family members); and in situations in which the person concerned is working in Finland as a hired worker within the framework of freedom of services and her employer is established in a new Member State.

As the transitional measures do not apply to movement of workers within the framework of freedom of services, the citizens of the new Member States may enter the Finnish labour market as posted workers through agencies that are established in the other Member State and that hire workers to Finland. In fact, it is argued that the Act on transitional measures has been an important factor in creating a situation in which it is for the potential employers simple to by a service from another Member State than to employ a worker directly. In case of hired workers the supervision of the conditions for work is problematic. According to the occupational health and safety authorities (työsuojelupiiri) and Central Criminal Police (Keskusrikospoliisi), in this kind of situations it is rather common that the minimum conditions for work are not applied and that, for example, the wages are below the minimum wages. Furthermore, it is not uncommon that the social security regulations have been circumvented. Hired workers are used in particular in construction and restaurant sectors.

When adopting the Act on transitional period the Parliament expressed its concern concerning the treatment of hired workers and required that the Government should prepare as soon as possible additional measures to supervise the working conditions of foreign workers. In 2005 nine new posts for inspectors were founded at the occupational health and safety authority to supervise the foreign workers' right to work and their working conditions. Furthermore, the Act on posted workers (Laki lähetetyistä työntekijöistä 1146/1999) was reformed so that now the minimum wage paid to hired workers who are posted to Finland by agencies established in other Member States shall be determined according to same criteria as the minimum wage paid to hired workers working for agencies established in Finland. Furthermore, agencies posting workers to Finland are obliged to have a representative in Finland. The agency or the representative are under duty to collect information on the posted workers and the conditions of their work including on the wages paid and the working hours, and to give this information upon request to the occupational health authority and to representatives of the personnel. This reform entered into force on 1.1.2006. Furthermore, the Act on safety at work (Ty-

öturvallisuuslaki 738/2002) was reformed so that now all workers working at large construction works have to hold an identity card that indicates also the employer of the worker concerned. This reform entered into force on 1.2.2006.

The majority of the persons admitted to the Finnish labour market under the Act on transitional measures are Estonian citizens. Estonians constitute also the largest group of hired workers posted from the other Member States. The main explanations for the relatively large number of Estonians at the Finnish labour market are the countries' linguistic and geographic proximity and the good transport connections between them. Furthermore, the difference between the average wages in Estonia (about 500 euros per month) and in Finland (about 2 500 euros per month) is a pull factor for workers. The difference in the average wages and in the standard of living of these two countries is, however, expected to decrease in the future due to the prompt economic rise in Estonia. Still, especially among young Estonians it is relatively common to work for a short time in Finland. The majority of the citizens of the new Member States, including Estonians, are employed in Finland in low-skilled jobs.

The number of citizens of the new Member States working in Finland is difficult to estimate. No covering statistics concerning the decisions taken under the Act on transitional measures in 2005 are available. Since 1.2.2005 these decisions have been registered at the alien's register, and due to technical problems of this register, the information in question is not available. Furthermore, the number of hired workers working in Finland is very difficult to calculate. It is estimated that the number of workers from new Member States working in Finland has not increased significantly after the 1.5.2004. It is also estimated that the number of such workers working in Finland would not increase significantly even if the transitional measures would not be continued. Due to movement of labour within the framework of freedom of services, workers have moved relatively freely even during the transitional period and the Act on transitional measures has not significantly restricted it. It is, however, assessed that there would be some increase in the number of workers employed directly by Finnish employers and decrease in the number of hired workers if the transitional measures were not continued, as the administrative obstacles for direct employment would be removed. However, as the structures for using hired workers are already at place, it is not expected that this phenomenon will disappear.

The Government gave in March 2006 to the Parliament the report concerning the effects of the Act on transitional measures and the effects of the freedom of workers and freedom of services on the labour markets (Valtioneuvoston selonteko Eduskunnalle siirtymäaikalaisten vaikutuksista sekä työvoiman ja palvelujen vapaan liikkuvuuden vaikutuksista työmarkkinatilanteeseen eri aloilla) (<http://www.eduskunta.fi>). The Government proposes in this report that the transitional measures shall not be continued after the 30th of April 2006. The Parliament follows this proposal and thus the transitional measures will not be continued. The Government also proposes that transitional measures shall not be applied to citizens of Bulgaria and Romania after the states concerned join the EU.

In the spring of 2006 the Government gave the Parliament the Government Bill for the act concerning registration of information on employment of citizens of certain EU Member States and for the act amending section 85 of the Aliens Act and sections 5 and 7 of the Act on aliens register (Hallituksen esitys Eduskunnalle laiksi eräiden Euroopan unionin jäsenvaltioiden kansalaisten työntekoa koskevien tietojen rekisteröinnistä, ulkomaalaislain 85 §:n muuttamisesta sekä ulkomaalaisrekisteristä annetun lain 5 ja 7 §:n muuttamisesta, HE 46/2006). The Government proposes that specified information concerning the employment of citizens of Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia would be registered at the aliens register in cases where the employment lasts for the minimum of 14 days. The proposed act would cover not only employees employed directly but also hired workers. The information to be registered would include the name and the date and place of birth as well as the nationality of the worker, and the duration of the employment as well as the remuneration and the collective bargain agreement that shall be applied. This information should be given to the employment authority within 14 days of the day when the employment started. The employment authority would register the information in the aliens register. The proposed registration procedure would not influence the EU citizen's duty to register one's right of residence under the Aliens Act. The proposed act and the registration procedure laid down in it would not apply to those citizens of the new Member States whose right of residence would already have been registered under the provisions of the Aliens Act concerning registration of the EU citizen's right of residence. There would not be any sanctions for the failure to register under the proposed act. The proposed

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act would be in force for three years. The object of this act is to enhance compiling statistics concerning the employment of the citizens of the new Member States and following up their employment situation. The proposed act would also facilitate the supervision of the working conditions in this kind of situations. According to the Government Bill, this registration procedure would not constitute a restriction of the EU citizen's freedom of movement as no sanction would follow for failure to register and because the registration procedure is very informal (the information can be sent to the employment authority electronically).

Decisions by labour offices under the Act on the Prerequisites for Gainful Employment of the Citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia

*Positive decisions according to the country (May – December 2004)*³

	Estonia	Poland	Latvia	Hungary	Lithuania	Slovakia	Slovenia	Czech	Total
Gardening									
workers	169	54	17	2	28	0	0	0	270
Farm workers	145	9	36	1	4	0	0	0	195
Construction									
workers	161	0	7	0	5	0	0	0	173
Cleaners	132	8	7	1	0	0	0	1	149
Lorry etc.									
drivers	112	0	0	0	0	0	0	0	112
Animal									
husbandry	98	7	2	0	2	0	0	0	109
Musicians	21	0	0	28	0	19	18	2	88
Phycisians	78	3	0	2	1	0	0	0	84
Carpenters	71	1	2	0	0	0	0	0	74
Buss etc. drivers	45	0	0	0	0	0	0	0	45
Other house									
building	34	1	0	0	0	0	0	0	35
Others	582	46	37	21	21	3	1	8	719
Total	1692	130	108	61	61	22	19	11	2104

Source: *Ministry of Labour*

(http://www.mol.fi/mol/pdf/fi/04_maahanmuutto/02_ulkom_tyonteko/workeuhyv.pdf)

³ No updated information is available.

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Decisions by the labour offices according to the branch (May – December 2004)⁴

Branch	Positive	Negative	Total
Farming, game husbandry	582	16	598
House building	427	66	493
Services in real estate sector	132	15	147
Traffic sector (land)	133	2	135
Health and social sector	121	3	124
Recreation, culture, sports	109	0	109
Accommodation and restaurants	61	8	69
Metal industry	65	0	65
Food production	59	0	59
Civil engineering	43	2	45
Other services	29	12	41
Services on transport sector and travel agencies	38	1	39
Other branches	305	36	341
Total	2104	161	2265

Source: *Ministry of Labour*

(http://www.mol.fi/mol/pdf/fi/04_maahanmuutto/02_ulkom_tyonteko/workeuhyv.pdf)

4 No updated information is available.

Chapter IX Statistics

Number of citizens of the other EU States living in Finland 31.12.2005

<u>Country</u>	<u>total</u>
Austria	286
Belgium	178
Check	200
Cyprus	27
Denmark	651
Estonia	15 426
France	1107
Germany	2768
Great Britain	2776
Greece	371
Hungary	682
Italy	1111
Ireland	315
Latvia	469
Lithuania	396
Luxemburg	<20
Malta	<20
The Netherlands	875
Poland	910
Portugal	201
Slovakia	130
Slovenia	21
Spain	756
<u>Sweden</u>	<u>8255</u>

Source: *Väestökisterikeskus/Population Register Centre*

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Number of citizens of the other EU States living in Finland 31.1.2005

<u>Country</u>	<u>total</u>	<u>men</u>	<u>women</u>
Austria	275	168	107
Belgium	163	109	54
Check	185	75	110
Cyprus	30	26	4
Denmark	633	421	212
Estonia	14013	6192	7821
France	996	649	347
Germany	2616	1676	940
Great Britain	2674	2100	574
Greece	349	293	56
Hungary	639	307	332
Italy	1013	755	258
Ireland	286	228	58
Latvia	401	148	253
Lithuania	347	136	211
Luxemburg	13	7	6
Malta	10	8	2
The Netherlands	804	642	162
Poland	828	384	444
Portugal	180	128	52
Slovakia	90	49	41
Slovenia	16	9	7
Spain	685	461	224
<u>Sweden</u>	<u>8234</u>	<u>4645</u>	<u>3589</u>

Source: *Väestökisterikeskus/Population Register Centre*

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Number of Registrations of the EU citizens Right of Residence⁵ 2004

Country	1	2	3	total
Austria	107	3	-	110
Belgium	77	4	-	81
Check	134	8	-	142
Cyprus	11	3	-	14
Denmark	no need to register the right of residence			
Estonia	4057	361	4	4422
France	367	13	-	380
Germany	778	47	-	825
Great Britain	344	23	-	367
Greece	63	1	-	64
Hungary	258	21	-	279
Italy	252	15	-	267
Ireland	55	2	-	57
Latvia	230	21	-	251
Lithuania	228	21	-	249
Luxemburg	4	-	-	4
Malta	6	-	-	6
The Netherlands	179	16	-	195
Poland	348	22	1	371
Portugal	45	-	-	45
Slovakia	49	1	-	50
Slovenia	13	3	-	16
Spain	263	4	-	267
Sweden	no need to register the right of residence			

1 Union citizen's right of residence

2 Right of residence of a Union citizen's family member

3 Right of residence of a Union citizen's family member who is not a Union citizen

Source: *Väestökisterikeskus/Population Register Centre*

Immigration from the other EU States to Finland and emigration from Finland to the other Member States (other than Finnish citizens) 2001⁶

Country of orig./destin.	immigration	emigration
Sweden	685	3656
Denmark	78	391
the Netherlands	89	245
Belgium	18	255
United Kingdom	292	1125
Spain	90	803
Ireland	37	129
Italy	89	236
Austria	25	95
Greece	46	76
Luxemburg	2	77
Portugal	14	28
France	151	316
Germany	265	972

Source: *Tilastokeskus/Statistics Finland*

5 No published statistics available concerning the situation in 2005.

6 The most recent published statistics concerned the situation of 2001.

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Finnish citizenship granted 2004

<u>Former citizenship</u>	
Denmark	1
Estonia	690
France	13
Germany	51
Italy	13
Poland	33
Sweden	149
<u>United Kingdom</u>	<u>23</u>

Source: Statistical Yearbook of Finland 2005

Chapter X

Social security

The Regulation 1408/71 covers benefits such as pensions, sickness and accident insurances, unemployment benefits, family allowances and public health care. The Regulation 1612/68 covers all social services such as children's day care and public schools as well as services for aged persons.

The problems in the area of social security are caused mainly by the incompatibility of the Finnish residence-based system with EC legislation that is work-based. The personal scope of the social security system is defined by the Act on scope of application (Soveltamisalaki 1573/1993) and related special legislation. A worker or self-employed person who is insured according to the employee pension scheme is entitled to work-based entitlements such as pension and accident insurance since the moment when the employment starts. The precondition for residence-based social security is that the employment or the self-employed activities last at least for four months. If the employment is estimated to last at least for four months, the right to residence-based social security starts when the employment or the activities of a self-employed person start. This 'four months rule' covers national health insurance, child care subsidies and family allowances, accruing credits towards national pension and survivor's pension and to being covered by the Act on unemployment allowances (Työtömyysturvalaki 1290/2002). The compatibility of the 'four months rule' with EU legislation has been questioned in Finland.

Supplementary pension schemes are not commonly used in Finland; the pension system is by and large based on regulatory schemes.

Legal practice

The decision of 3.6.2004 by the Insurance Court (asianumero 4094/2002) concerned interpretation and application of Article 14 a 2 of Regulation 1408/71. The appellant was a self-employed person who lived permanently in another Member State and worked both in Finland and in the country of permanent residence. The Insurance Court maintained the decision by the Pension Board (Eläkelautakunta) and held that the appellant was not covered by the Finnish system of social security even despite of the fact that the appellant was not covered by the social security system of the country of residence, either.

In a decision of 4.2.2005 in case KHO:2005:10, the Supreme Administrative Court asked a preliminary ruling from the European Court of Justice concerning interpretation of Article 33.1. of Regulation 1408/71 (case number C-50/05 *Nikula*). The appellant who was a Finnish citizen was a pensioner who lived in Finland and was covered by the Finnish residence based social security. The appellant had worked both in Finland and in Sweden and was now paid pension from both these states. In the year 2000, the appellant was imposed on a sickness insurance fee that was based on the total amount of the pension paid from Finland and from Sweden. The Supreme Administrative Court asked whether Article 33.1 of the Regulation 1408/71 should be interpreted so that it precludes imposing on a person a sickness insurance fee that is based on pension paid both from the country of residence and from a country where the person concerned had worked previously provided that the sickness insurance fee does not exceed the amount of the pension paid from the country of residence in a situation in which the pensioner concerned is under Article 27 of the Regulation entitled to sickness and maternity allowances only from the institute at the country of residence and paid by it.

The ECJ ruled that:

“1. Article 33(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, does not preclude, when the basis is determined for calculating sickness insurance contributions applied in the Member State of residence of the recipient of persons paid by the institutions of that Member State responsible for the payment of benefits under Article 27 of that regulation, the inclusion in that basis of calculation, in addition to the pensions paid in the Member State of residence, also of pensions paid by the institutions of

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another Member State, provided that the sickness insurance contributions do not exceed the amount of pensions paid in the State of residence.

2. However, Article 39 EC precludes the amount of pensions received from institutions of another Member State from being taken into account if contributions have already been paid in that other State out of the income from work received in that State. It is for the persons concerned to prove that the earlier contributions were in fact paid.”

The Finnish legislation and practice is in conformity with this ruling and therefore no changes in practice are expected.

Miscellaneous

About 50 Finnish seamen residing in Finland and working at vessels owned by a Greek shipping company plying on a route between Finland and Germany have faced problems concerning social security. The seamen concerned have in practice been left outside both Finnish and Greek social security even though they pay tax both to Finland and to Greece and social security fee to Greece. The seamen are not granted any sickness or maternity benefits by Greece which, as the flag state, would be obliged to that. It is also unclear whether their pension aggregates.

The situation is in a standstill as the Social Insurance Institution of Finland (KELA) and the Finnish Centre for Pensions (Eläketurvakeskus) as well as the Finnish Seamen's Union and the individuals concerned have attempted to contact the *Naftiko Apomachiko Temeio* (Greek Merchant Seamen's Pension Fund) to solve the problem but have not received any replies to their inquiries.

Chapter XI

Establishment, provision of services, students

General rules of the Aliens Act on free movement of EU-citizens apply also to those practising their freedom of establishment, provision of services and to students (see above under title “Entry, Residence and Departure” and “Family Members”).

Those practising the freedom of establishment or the freedom of provision of services are regarded to be able to secure their income through their economic activities. Those who are not economically active – *e.g.* students – have to secure their income by other sufficient means so that they don’t burden the Finnish social security system. Any proof of the secured income is, however, not required; the statement of the person concerned is sufficient indication of the secure income. If the person concerned has to avail to the Finnish system of social security to cover the expenses of her daily living, the right of residence may be revoked on the ground that she does not meet the precondition of secured income.

According to section 159 of the Aliens Act, registering the right of residence of a student requires in addition to the general requirements that she has been admitted to an educational institution in Finland as a student.

According to the Aliens Act, students may not be issued with a permanent residence card.

Chapter XII
Miscellaneous

Nothing to report.

Chapter XIII

Consequences of the equal treatment clause in agreements between the EU and third countries

In the Aliens Act there are no special provisions implementing the requirements following from the agreements between the EU and third countries. According to section 1 of the Aliens Act, “the purpose of this Act is to implement and promote good governance and legal protection in matters concerning aliens. In addition, the purpose of the Act is to promote managed immigration and provision of international protection with respect for human rights and basic rights and *in consideration of international agreements binding on Finland*” (italics added). This reference to international agreements covers also the agreements between the EU and third countries and the equal treatment clauses adopted in such agreements. The general anti-discrimination legislation (see above in Chapter III: Equality of treatment on the basis of nationality) and the Aliens Act are regarded by the authorities to meet the requirements following from the agreements between the EU and third countries and the equal treatment clauses adopted in them, and therefore no special legislation has been given.

Apparently the administrative and judicial authorities are aware of the equal treatment clauses of the agreements between the EU and third countries and for example of the Decision 1/80, and these provisions are applied in the administrative and judicial practice. The judicial practice concerning this issue is, however, scarce and thus more detailed conclusions on how the provisions are applied are difficult to draw.

On the 31.12.2005 2613 Turkish nationals resided permanently in Finland (<http://www.uvi.fi>). In December 2004 there were 762 Turkish nationals applying for job in Finland through employment authority (<http://www.mol.fi>).

APPENDIX I

The most relevant treaties concluded between the Nordic states

Pöytäkirja Suomen, Norjan, Ruotsin ja Tanskan kansalaisten vapauttamisesta velvollisuudesta omata passi sekä oleskelulupa muussa pohjoismaassa kuin kotimaassa oleskellessaan. SopS 17/1954 (Treaty exempting the citizens of the other Nordic states from the obligation to hold a passport and residence permit when residing in another Nordic state)

Sopimus Pohjoismaiden yhteisistä työmarkkinoista SopS 40/1983 (Treaty on the joint Nordic labour market)

Sopimus Suomen, Islannin, Norjan, Ruotsin ja Tanskan välillä Pohjoismaiden kansalaisten oikeudesta käyttää omaa kieltään muussa pohjoismaassa SopS 11/1987 (Treaty on the right to use one's own language in the other Nordic states)

Pohjoismainen työttömyysturvasopimus SopS 57/1987 (Nordic Treaty on unemployment security)

Pohjoismainen sosiaaliturvasopimus SopS 106/1993 (Nordic Treaty on social security)

Sopimus Tanskan, Suomen, Islannin, Norjan ja Ruotsin välillä pohjoismaisista työmarkkinoista henkilöille, jotka ovat saaneet ammattipätevyyden antavan, vähintään kolmevuotisen korkeamman koulutuksen SopS 74/1998 (Treaty on the joint Nordic labour market for person who have passed at least three year's higher education)

Suomen, Islannin, Norjan, Ruotsin ja Tanskan välinen sopimus valtioiden eläkejärjestelmien mukaisen eläkeoikeuden sopeuttamisesta SopS 97/2002 (Treaty concerning right to pension)

Yhteispohjoismainen terveydenhuollon puitesopimus SopS 8/2004 (Framework convention on health care)

The Finnish and Swedish texts of the treaties enlisted here as well as several other Nordic treaties can be found at <http://www.finlex.fi>.

Relevant internet sites

- Legislation in Finnish and Swedish: <http://www.finlex.fi>
- Directorate of Immigration: <http://www.uvi.fi>
- Supreme Court: <http://www.kko.fi>
- Supreme Administrative Court: <http://www.kho.fi>
- Labour Court: <http://www.oikeus.fi/tyotuomioistuin>
- Finnish Centre for Pensions <http://tyoelakelakipalvelu.etk.fi/> (compilation of case law by the Insurance Court and other relevant bodies)
- Insurance Court: <http://www.oikeus.fi.vakuutusoiikeus/>

Changes made in the text on grounds of the comments received:

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Chapter X: Social security

The Regulation 1408/71 covers benefits such as pensions, sickness and accident insurances, unemployment benefits, family allowances and public health care. The Regulation 1612/68 covers all social services such as children's day care and public schools and services for aged persons.

The problems in the area of social security are caused mainly by the incompatibility of the Finnish residence-based system with EC legislation that is work-based. The personal scope of the social security system is defined by the Act on scope of application (Soveltamisalaki 1573/1993) and related special legislation. A worker or self-employed person who is insured according to the employee pension scheme is entitled to work-based entitlements such as pension and accident insurance since the moment when the employment starts. The precondition for residence-based social security is that the employment or the self-employed activities last at least for four months. If the employment is estimated to last at least for four months, the right to residence-based social security starts when the employment or the activities of a self-employed person start. This 'four months rule' covers national health insurance, child care subsidies and family allowances, accruing credits towards national pension and survivor's pension and to being covered by the Act on unemployment allowances (Työtömyysturvalaki 1290/2002). The compatibility of the 'four months rule' with EU legislation has been questioned in Finland.

Supplementary pension schemes are not commonly used in Finland; the pension system is by and large based on regulatory schemes.

Page 39-40:

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1. Article 33(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, does not preclude, when the basis is determined for calculating sickness insurance contributions applied in the Member State of residence of the recipient of persons paid by the institutions of that Member State responsible for the payment of benefits under Article 27 of that regulation, the inclusion in that basis of calculation, in addition to the pensions paid in the Member State of residence, also of pensions paid by the institutions of another Member State, provided that the sickness insurance contributions do not exceed the amount of pensions paid in the Stat of residence.
2. However, Article 39 EC precludes the amount of pensions received from institutions of another Member State from being taken into account if contributions have already been paid in that

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other State out of the income from work received in that State. It is for the persons concerned to prove that the earlier contributions were in fact paid.

The Finnish legislation and practice is in conformity with this ruling and therefore no changes in practice are expected.