

Network on Free Movement of Workers  
within the European Union

**Finland 2006**

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## FINLAND

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## INTRODUCTION

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 siirtymäaikalain vaikutuksista sekä työvoiman ja palvelujen vapaan liikkuvuuden vaikutuksista työmarkkinatilanteeseen eri aloilla). In this report the Government proposed that the application of the transitional measures shall not be continued after the 1<sup>st</sup> of May 2006. The Government also proposed that transitional measures shall not be applied to the citizens of Bulgaria and Romania. The Parliament decided to not continue the applicability of the Act on transitional measures and thus the transitional measures were not continued after the April 2006.

The Government gave in October 2006 a Proposal to the Parliament for the Act amending the Aliens Act (Hallituksen esitys Eduskunnalle laiksi ulkomaalaislain muuttamisesta, HE 205/2006), that concerned transposition of the provisions of the Directive 2004/38/EC to the domestic legislation. The amendments of the Aliens Act entered into force on 1.5.2007. The most significant amendments of the Act concern treatment of third country national family members of Union citizens, and students. Regarding third country national family members, the amended legislation lays explicitly down the requirement of previous legal residence as a precondition for enjoying the freedom of movement. This means that to fall within the scope of application of the rules on freedom of movement, third country national family member must have resided previously lawfully in another Member State with her family member. Furthermore, those third country national family members who hold a residence card issued by any of the Member States shall no longer be required to hold a visa to be allowed to enter Finland. Third significant amendment concerning third country national family members is that they can, in case of a negative decision on a visa application, appeal to an administrative court. Other third country nationals do not have a right to appeal in case of a negative decision on visa application. Students shall, under the amended Act, be entitled to permanent residence provided that they meet the general requirements for that. Before the amendment students were not entitled to permanent residence. Under the amended legislation, the right to permanent residence shall in all cases be acquired after five years of residence in Finland. Before the amendment the right to permanent residence was acquired after four years of residence.

## 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 Act amending the Aliens Act that concerned the transposition of the Directive 2004/38/EC to the domestic legislation entered into force on 1.5.2007. As this report covers the year 2006, the Act amending the Aliens Act is discussed below under title 'Draft legislation'.

The EC rules concerning entry, residence and departure of EU citizens and their family members were attempted to be taken into account extensively already in the Aliens Act that entered into force on 1.5.2004. According to the Government Proposal to the Parliament for the Aliens Act (Hallituksen esitys Eduskunnalle ulkomaalaislaiksi ja eräiksi siihen liittyviksi laeiksi, HE 28/2003 vp, hereafter the Government Proposal 28/2003) the provisions of the 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 Proposal, 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] (hereafter Citizenship Directive) was taken into account when drafting the Aliens Act. However, as the text of the Directive was not yet final when the Aliens Act was drafted, the provisions of the Act are not fully in line with the provisions of the final version of the Directive.

The Proposal of the Government to the Parliament for the Act amending the Aliens Act (Hallituksen esitys Eduskunnalle laiksi ulkomaalaislain muuttamisesta, HE 205/2006, hereafter Government Proposal 205/2006) concerning the transposition of the provisions of the Directive 2004/38/EC to domestic legislation was given in October 2006. The Administrative Committee of the Parliament proposed in its report HaVM 34/2006 certain changes to the Proposal and the Act amending the Aliens Act was finally adopted by the Parliament on 6.2.2007. The Act entered into force on 1.5.2007. The purpose of this amendment was to bring the Finnish legislation in line with those provisions of the Directive that were not fully taken into account already when the Aliens Act was given in 2004.

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 this chapter 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. The Government Proposal 205/2006 proposes amendments to section 153 of the Act. According to the Proposal, these amendments would be based on Articles 1 and 3 of the Citizenship Directive. According to the proposed provision, Union citizen's family members would be entitled to freedom of movement as family members only if they have legally resided with the Union citizen in the country from where the Union citizen came to Finland. A further requirement would be that the residence in the other Member State had no been merely temporary. By temporary residence the Proposal refers to residence that is short-term and not permanent. The provisions of chapter 10 would, thus, not be applied to family members who come to Finland directly from the third country or with whom the Union citizen concludes marriage after arriving in Finland. This is so, because the Directive and the national provisions that are based on it apply, according to the Proposal, only to intra-community movement and not to situations of migration from third countries. In this connection the Proposal refers to the statement of the Advocate General in case C-1/05 *Yunying Jia v. Migrationsverket* and states that the scope of the Directive is interpreted in the Proposal in line with this statement. The Proposal also refers to case C-109/01 *Akrich*. This amendment of the Aliens Act is problematic in light of EC law and in particular the judgment of the ECJ in C-1/05 *Yunying Jia v. Migrationsverket*.

Furthermore, the provisions of chapter 10 of the Aliens Act would, according to the Proposal, be applied to a family member of a Finnish citizen if the Finnish citizen has enjoyed her freedom of movement and resided in another Member State and returned from there to Finland, and the family member had resided legally in that other Member State with the Finnish citizen. The Proposal refers to case C-370/90 *Singh* and states that the Court concluded in its judgment that Member States may not apply to their own citizens rules that are stricter than the community law on freedom of movement. Thus, the Proposal clarifies, if a third country national family member of a Finnish citizen moves with the Finnish citizen to another Member State and the family then returns to Finland, the third country national family member shall not be required a residence permit but will instead be issued with a residence card under the provisions laid down in chapter 10 of the Act concerning freedom of movement. If the intra-community link is missing, the general rules concerning family members of Finnish citizens as laid down in chapter 4 of the Act are applicable.

According to the Government Proposal, the amendment concerning section 153 of the Act would modify the scope of application of chapter 4 of the Act, that lay down *inter alia* the general rules on family reunification. Under the current legislation and practice, the right of residence of a Union citizen family member of a Finnish citizen has been registered without, however, applying the requirement concerning secure income. Under the proposed legislation, the main rule would in this kind of cases be that the Union citizen family member's right of residence would be registered under the rules on freedom of movement. The family member would thus be treated not as a family member of a Finnish citizen but instead as a Union citizen entitled to freedom of movement. However, if the Union citizen family member would not meet the requirements concerning freedom of movement, and in particular the requirement concerning secure income, she could be issued with a family member's residence permit under the general rules of the Aliens Act.

## 1. 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 Proposal 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 Proposal 28/2003, the border guard authorities must not request from EU citizens information on questions such as the purpose of the entry to Finland. According to the Proposal, an EU citizen's entry 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 and the practice of the ECJ (*e.g.* *Salah Oulane*), 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 expressed in the Government Proposal 28/2003 when discussing the grounds for refusing EU citizens', their family members' or other relatives' entry into Finland (section 167 of the Aliens Act).

The Proposal states that in the overall consideration it is possible exceptionally, and for a weighty reason, to take into account the unreasonableness that would be caused by refusing an EU citizen's entry to Finland. Thus, according to the Proposal, an EU citizen may be admitted to the country if her identity may be confirmed in some other reliable manner than by identity documents, provided that the public order and security are not jeopardized. According to the Proposal, the preconditions for entry are therefore not always absolute. The Proposal 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 would not possess a travel document or a visa, provided that it is not established that she would jeopardize public order or security or public health.<sup>1</sup>

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

Section 156

**“Public order and security and public health**

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.

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 Proposal 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 Proposal 28/2003 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 Proposal, be interpreted in a restrictive manner. Furthermore, the Proposal states that 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 jeopardizes the fundamental interests of society. As concerns public health, the Government Proposal 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 both in this chapter and 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

**“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

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<sup>1</sup> See further under title 'Departure'.



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 Proposal 28/2003 the entry of a Union citizen and her family member and other relative shall be refused if the person concerned does not meet the pre-conditions for entry, registration of the right of residence, or issuing a residence card, or if it is found out soon after the entry to Finland that the person concerned does not possess sufficient financial resources for the 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 nevertheless be taken exceptionally and for a special reason 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 Proposal 28/2003 thus confirms that the preconditions for entry are not absolute. In this connection the Proposal 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 Proposal 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. The Government Proposal nevertheless states that the entry of a Union citizen could be refused if she, after entering the country and before registering her right of residence, has to turn to the 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 and circulars*

The transposition of the Directive 2004/38/EC to Finnish legislation will have influence on the national provisions concerning EU citizens' entry to Finland.

It is proposed in the Government Proposal 205/2006, that section 155 of the Act concerning EU citizen's entry and residence shall be amended as follows:

##### 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.

If a Union citizen or her non-citizen family member does not hold the required travel document or the required visa, she shall, before preventing her entry, be offered an opportunity to acquire the required travel document or to get it delivered or to show by other means that she is entitled to free movement and residence.”

The second subsection of section 155 is thus proposed to be replaced by a new provision that is based on article 5.4 of the Directive. This new provision explicates the rule that if a Union citizen or a non-citizen family member does not hold the required documents when trying to enter the country, she should be given a fair opportunity to obtain the required documents or to present other proof of her right to enter the country before her entry can be prevented. It is emphasised in the Government Proposal 205/2006 that this provision does not exempt the person concerned from the requirement to establish her right of entry; if she can not present the required travel documents or other sufficient proof of her identity and right to enter after being offered an opportunity for that, her entry shall be prevented.

According to the Government Proposal 205/2006, section 156 of the Act concerning public order and security is proposed to be amended as follows:

## Section 156

**“Public order and security**

A requirement for an EU citizen's and his or her family member's entry into and residence in the country is that they are not considered to danger public order or public security.

Preventing an alien's entry into or removing an alien from the country on grounds of public order or public security shall be based solely on the alien's own behaviour and not merely on any previous crime convictions. The individual's behaviour has to constitute a real, immediate and sufficiently serious threat to fundamental interests of society. Grounds that are not related to the individual case or that are based on considerations of general prevention shall not be accepted as valid.”

The wording of section 156 of the Act is proposed to be amended on grounds of article 27 of the Directive. According to the Government Proposal 205/2006, the new formulation of the national provision emphasises the requirement that the danger to public order or public security has to be real, immediate and sufficiently serious and that it has to threaten the fundamental interests of society. Mere disturbance to public order or security is not sufficient ground for restricting freedom of movement. The Government Proposal 205/2006 refers to case 30/77 *Bouchereau*.

The Administrative Committee of the Parliament points out in its report concerning the Government Proposal 205/2006 (HaVM 34/2006) that by using in the Act the expression ‘public order and public security’ instead of ‘public order and security’ it is emphasized that these are two separate concepts that can be applied independently from each other.

Interestingly the Government Proposal 205/2006 refers in this connection to the Finnish Constitution and the protection of fundamental rights guaranteed in it. The Proposal states that the Finnish Constitution guarantees the right to security of a person and the protection of private life and property and that the protection of these rights may in many situations require preventing an alien's entry to Finland or removing an alien from the country. This is the case for example with continuous serious crimes. The prerequisite for the constitutionally guaranteed security of a person and the protection of private life and property is, according to the Proposal, a comfortable and safe living environment and removing from the country a person who has continuously committed serious crimes influences directly this environment. The interpretations of the legal text expressed in the Government Proposals are not legally binding on the courts and the administrative authorities. Very often they do though strongly influence in the way the laws are interpreted and applied as the Proposals of the Government and in particular the reports of the Parliamentary Committees, are regarded as expressions of the will of the legislator. It remains to be seen whether this reference to the constitutional protection of fundamental rights will have effect on the way section 156 of the Aliens Act shall be applied in practice.

The references to public health is proposed to be abolished from section 156; the proposed new section 156a of the Act shall concern the question of public health. According to this provision:

## Section 156a

**“Public health**

A Union citizen's or her family member's entry and residence may be restricted for reasons of public health. The restriction may only be based on diseases with epidemic potential as defined by the relevant instruments of the WHO, or other infectious diseases provided that it is possible to restrict the freedom of Finnish citizens who suffer or are suspected to suffer the disease in question in order to prevent the spreading of the disease.

A disease that jeopardises public health, that occurs after three-month period from the entry to Finland, shall not constitute a ground for preventing entry.

A union citizen or her family member may, if it is clearly necessary, be required within three months after the entry to Finland to undergo, free of charge, a medical examination to certify that the person concerned does not suffer from a condition referred to in subsection 1. A medical examination must not be required as a matter of routine.”

According to the Act on infectious diseases (tartuntatautilaki 583/1986), it is possible to restrict the freedom of movement of a person who suffers or is suspected to suffer from a dangerous infectious disease that is mentioned in the Decree on infectious diseases (tartuntatautiasetus 786/1986) in order to prevent the spreading of the disease. According to section 17 of the Act on infectious diseases, the person concerned may be hospitalized against her will if it is probable that the disease may spread to other people, and there are no other means of preventing the disease from spreading or the person concerned is not able or willing to undergo the other measures defined in the Act, the purpose of which is to prevent the disease from spreading. The diseases covered by the Act on infectious diseases are defined in section 2 of the Decree on infectious diseases and they include SARS, Rift Valley fever, Dengue and Ebola. The Government Proposal 205/2006 explains that when the requirements laid down in relevant instruments of the WHO, the Act on infectious diseases, and the Decree on infectious diseases are met, the person concerned may be regarded as a danger to public health and therefore his or her freedom of movement may be restricted and his or her entry prevented on this ground.

It is furthermore explained in the Government Proposal 205/2006 that in order to constitute a ground for restricting freedom of movement, the person concerned must have caught the disease already before entering the country, and that a disease caught after the entry may not constitute such ground. This is a clear improvement compared with the provision in force as that does not specify for how long after an individual's entry to Finland this ground for refusing entry can be appealed to.

Section 167 of the Aliens Act laying down the grounds for refusing EU citizens' and their family members' entry is also proposed to be amended. According to the Government Proposal 205/2006 the amended provision will be formulated as follows:

Section 167

**“Grounds for refusing EU citizen's and her family member's entry to Finland**

EU citizen's and her family member's entry to Finland may be refused if her right of residence has not been registered or she has not been issued with a residence card and if she:

- 1) does not meet the requirements for entry laid down in sections 155, 156 and 156a;
- 2) by resorting repeatedly to social assistance as provided in the Act on Social Assistance, or to other comparable benefits, or by other comparable means, during her short stay in the country burdens unreasonably the Finnish social assistance system;
- 3) would be required to have her right of residence registered or a residence card issued to her in order to continue her residence in Finland, but she does not meet the requirements for registering the right of residence or for being issued with a residence card; or
- 4) she has been prohibited from entering the country on grounds of public order and security. “

According to the Government Proposal 205/2006, compared with the legislation in force, the amended section 167 of the Act shall better meet the requirements laid down in article 14 of the Directive. The Government Proposal explains that those who burden unreasonably the national system of social assistance shall not be regarded to have the right of residence, and if a person does not have the right of residence, her entry may be refused. According to the Proposal, what constitutes an unreasonable burden to social assistance system shall be decided case by case. The Proposal refers in this connection to the Preamble and to article 14 (3) of the Citizenship Directive. It is further stated in the Proposal that the authorities shall use discretion when deciding whether to refuse the entry on the ground that the person concerned is regarded to burden unreasonably the Finnish social assistance system. Refusing entry is thus not an automatic consequence of it. The Proposal refers to cases C-456/02 *Trojani* and C-184/99 *Grzelczyk* and states that refusing an EU citizens entry on the ground of lack of resources comes into question only in very rare cases. It is further reminded that it is not possible to exclude an EU citizen from Finland on this ground and, thus, the person concerned can enter the country again despite of the previous refusal of entry.

According to the proposed new subsection 4 of section 167 of the Act, a person who has been excluded from Finland on grounds of public order and security may be prevented from entering the country on grounds of this valid decision on exclusion; there is no need to examine the circumstances of the case again. The person concerned may apply for lifting the

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exclusion order as provided for in the proposed section 170 § of the Act. Lodging the application on lifting the exclusion order does not prevent the enforcement of the decision on refusing entry. There is no provision in the Act concerning how the application on lifting the exclusion order should be lodged. According to the Proposal, the application should be lodged with the Finnish embassy abroad but it can also be lodged with the Finnish authorities at the border or in Finland.

Of relevance in this connection is also the proposed new subsection 4 of section 185 of the Aliens act. According to this provision:

Section 185 of the Aliens Act

**“Violation of the Aliens Act**

An alien who:

4. enters the country even though she has been issued with a decision on preventing entry on grounds of public order or security or public health, shall be sentenced for alien offence to a fine.”

The Government Proposal 205/2006 clarifies that as it is not possible to conduct border checks, EU citizens and their family members who have been issued with a decision on exclusion from Finland can in practice enter the country despite of this decision, and therefore this decision has only very limited significance. The Proposal continues that for this reason it is justifiable that in this kind of situations the person concerned may be sentenced to fine.

### *Judicial practice*

The Administrative Court of Turku upheld a decision taken by the municipal police to remove from Finland an EU citizen who had possessed only a photocopy of his identity card and not a passport or an official identity card. According to the Court the person concerned did not meet the preconditions laid down for an EU citizen’s entry and he could thus be removed. (Decision 06/0102/2 of 21.2.2006)

### *Miscellaneous (administrative practices, etc.)*

No information on this was found.

### *Recent legal literature*

No recent legal literature was found.

## **2. Residence**

### *Texts in force*

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

Section 158

**“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 Proposal 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 Proposal that the ECJ has interpreted EC law on free movement of workers broadly. According to the Proposal, 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**

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.

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

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.

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 entitled to freedom of movement *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 Proposal 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 Proposal 28/2003. According to the Proposal, 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.

According to the Government Proposal, when an EU citizen has registered her right of residence, she will be issued with 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**

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.

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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 Proposal 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

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.

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

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.

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.

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.

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.

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.

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.

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 Proposal 28/2003, section 162 reflects the relevant EC legislation and the proposal for the Citizenship 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 of them 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 Proposal 28/2003, in case the purpose of residence of a student changes, she may nevertheless 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 Proposal 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 and circulars*

The Government proposes in the Proposal 205/2006 amendments to section 158 of the Aliens Act concerning short term residence of Union citizens and their family members. According to the proposed provision:

#### Section 158

##### **“EU citizens’ short-term residence**

EU citizens may reside in Finland for a maximum of three months without registering their right of residence without other requirements or formalities than possession of valid identity card or a passport.

What is prescribed in the subsection 1 applies also to a Union citizen's family member who is not a Union citizen and who has a valid passport.

After three months, Union 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 Proposal, subsection 1 of the amended provision would correspond to article 6.1. of the Citizenship Directive. Proposed subsection 2 that concerns short-term residence of third-country national family members would be new. It is stated in the Government Proposal that the precondition for the right of residence under this section is that the person concerned does not burden the Finnish social assistance system. The Proposal refers in this connection to article 14 of the Citizenship Directive.

The government proposes a new section 158a that concerns the right to reside longer than three months. According to the proposed provision:

#### Section 158a

##### **“The right to reside for longer than three months**

A Union citizen is entitled to reside in Finland for longer than three months if:

- 1) she is engaged in economic activity as paid employee or self-employed person;
- 2) she has sufficient funds and, if necessary, health insurance for herself and her family members so that they do not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or to other comparable benefits or by other comparable means, constitute a burden to the Finnish social assistance system during their residence; or
- 3) she has enrolled as a student to a recognized educational institution in Finland with the main purpose of participating the education and she has sufficient funds and, if necessary, health insurance for herself and her family members so that they do not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or to other comparable benefits or by other comparable means, constitute a burden to the Finnish social assistance system during their residence; or
- 4) she is a family member of a Union citizen who meets the requirements laid down in 1-3 of this section.

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The right of residence as prescribed in subsection 1 of this section belongs also to a Union citizen's family member who is not a Union citizen if the Union citizen meets the requirements laid down in 1-3 of the subsection 1 of this section.

If the right of residence is based on studying in Finland, as family member is entitled to residence only

1) the married spouse of a Union citizen; and

2) a child under 21 years of age whose parent or custodian the Union citizen or her family member is.

A citizen of another Nordic country is entitled to residence even though her income would not be secure."

According to the Proposal 205/2006 the proposed section would correspond to section 159 of the present Act as well as to article 7.1 and 7.2 of the Citizenship Directive. The Proposal states that in case of employees and self-employed persons it is presumed that the person concerned earns from her employment or self-employed activities sufficiently to cover her residence. Furthermore, it is reminded in the Proposal that article 14.4 of the Directive prohibits the removal of an employee or a self-employed person even though she would burden the social assistance system of the host country.

According to the Proposal, when applying section 158 of the Act the crucial questions are *who is an employee and can the person concerned be regarded as such*. The Proposal continues that the employment has to be real and not merely ostensible and that before registering the right of residence, evidence of the employment shall be required. The Proposal states that it is not possible to define in the Aliens Act what constitutes employment but continues to clarify employment is real economic activity where the employee gets remuneration for her work. The work can be part-time or low-paid. Its purpose can, however, not be to circumvent the immigration legislation. The Proposal refers to case 139/85 *R. H. Kempf vs. Staatssecretaris van Justitie*.

What comes to the requirement concerning secured income of economically inactive EU citizens, the Proposal states that the person concerned can prove that she has sufficient resources for her stay by a manner chosen by herself, when she registers her right of residence.

The Government Proposal 205/2006 elaborates on what may be regarded as a burden to the social assistance system. According to the Proposal, resorting to social assistance has to happen repeatedly and regularly; a single incident of resorting to social security cannot be regarded as a burden meant in this provision. Furthermore, financial problems of temporary nature shall not be regarded as an unreasonable burden to the system. Each case has to be evaluated on its merits and factors such as the duration of the residence, personal circumstances, and the amount of the social assistance granted, shall be taken into account.

According to subsections 2 and 3 of the proposed provision, a health insurance may be required in certain cases. The Proposal, however, states that this requirement shall be applied in practice only in very rare cases because most Union citizens and their family members are covered by the public health care in Finland. The requirement concerning health insurance might come into question in case of job-seekers who remain in the country as job-seekers for longer than three months and who are therefore no longer covered by the insurance of their country of origin, but who are not yet entitled to the public health care in Finland, either.

The Proposal states that subsection 3 of section 158a is based on article 7.4 of the Citizenship Directive. In this connection the Proposal refers to the proposed subsection 3 of section 154 of the Aliens Act that lays down the conditions on which registered partners and co-habiting spouses shall be equated with married partners, and reminds that this provision is applicable in context of the proposed section 158a of the Act.

In the Government Proposal 205/2006 the Government proposes that a new section 153a shall be added to the Aliens Act. According to this new provision:

Section 153 a

**"An exception to the application of the provisions of this Chapter**



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A Union citizen, whose right of residence cannot be registered or confirmed under the provisions of this Chapter may, exceptionally, be granted a residence permit under the provisions of Chapter 4.

A non-citizen family member of a Union citizen shall be granted a residence permit under the provisions of Chapter 4, if the provisions of this Chapter are not applicable.”

According to the Proposal, the purpose of this provision would be to cover situations that fall outside the scope of freedom of movement on the ground that the person concerned does not meet the requirement for that, but where she should still be allowed to remain in Finland under chapter 4 of the Aliens Act concerning general residence permits. The Proposal emphasizes that the application of this proposed provision would be exceptional and that the main rule would always be the application of the provisions concerning freedom of movement. Section 153a may be applied, for example, in case of victims of trafficking on human beings; an EU citizen who is a victim of trafficking may be issued with a residence permit for a victim of trafficking under section 52a of the Act. Section 153a may also be applied in situations where it is regarded to be justifiable to depart from applying the requirement concerning secure income.

Proposed subsection 2 of section 153a of the Act concerns third country national family members. This provision would be applicable, for example, in situations where the third country national family member comes to Finland directly from a third country or where the marriage is concluded in Finland. According to the proposal these cases would fall outside the ambit of EC law on free movement - a position that appears to contradict the recent case law of the ECJ.

The Administration Committee of the Parliament clarified in its report HaVM 34/2006 concerning the Government Proposal 205/2006 that in cases where an EU citizen has been issued with a residence permit under chapter 4 of the Aliens Act, the right of residence can be registered at any stage when the requirements for that are met. The residence permit does not thus preclude registration of residence at any later stage.

According to the Government Proposal 205/2006 section 159 of the Act would concern registration of a Union citizen's right of residence. According to the proposed provision:

Section 159

**“Registration of a Union citizen's right of residence**

If a Union citizen resides in Finland for longer than three months, she has to register her residence. The application for registration shall be lodged with the local police of her place of residence within three months of the entry to Finland.

After a Union citizen has given clearance that she meets the requirements for registration, she shall immediately be issued with a certificate of registration. The certificate shall state the name and the address of the person concerned and the date of registration.”

Section 159 would thus contain the basic provision on how the registration of residence should be conducted. The requirements for registration would be contained in section 158a of the Act. The Proposal refers in this connection to proposed section 185 of the Act that criminalises the failure to register the right of residence. According to proposed section 185 of the Act, and alien who fails to register her residence or to apply for a residence card or a permanent residence card shall be sentenced to fine.

The Proposal clarifies that the Union citizen has to register her right of residence within three months of the entry. The registration can be done at any point during those three months. The requirement for registration is, however, that the person resides in the country for at least three months and the registration should thus not be done if the EU citizen resides in Finland for shorter than three months.

Subsection 2 of section 159 is, according to the Government Proposal, based on article 8.2 of the Directive. The Proposal explains that the obligation to issue immediately a certificate of registration should be interpreted so that the certificate shall be issued as soon as all the information needed for the registration has been received and the precondition for registration have been confirmed. If the authorities need, for example, information from the authorities of another country, the certificate shall be issued after this information has been

received and the Finnish authorities have confirmed that the person concerned meets the preconditions for registration. The Proposal reminds that after the registration of the residence, the person concerned will be assigned home municipality and thereby she becomes within the scope of the Finnish residence based social security system. Therefore, the Proposal argues, it is important that the requirements for registration of the residence are examined thoroughly, and the registration has to be refused if the requirements are not fulfilled. On the other hand, the Proposal stresses that in clear cases the registration has to happen very rapidly.

The Government proposes a new section 159a that concerns the information and evidence that the applicant has to present when she asks for the registration of her right of residence.

#### Section 159a

##### **“Proof required for the registration of the right of residence**

When getting the certificate for the registration, the applicant has to show a valid identity card or a passport and:

- 1)if the applicant is an employee, a confirmation of the engagement from the employer concerning the employment or a certificate of the employment;
- 2)if the applicant is a self-employed person, proof concerning the self-employed activity;
- 3)if the applicant is a Union citizen referred to in subsection 1.2 of section 158a, proof showing that she has sufficient resources for herself and her family, and when required, a health insurance;
- 4)if the applicant is a student as referred to in subsection 1.3 of section 158a, proof of the enrolment to an accredited educational institution in Finland and of comprehensive sickness insurance cover as well as personal declaration or other proof concerning the fact that she has sufficient resources for herself and her family; the applicant shall not be required to show that she has any specified amount of funds.”

According to the Proposal this provision corresponds to article 8.3 of the Directive. The Proposal reminds that no other proof or certificates can be requested from the applicant.

The Government proposes amendments also to section 160 of the Act that concerns retaining the status of a worker or a self-employed person. This provision is based on article 7.3 of the Directive. According to the proposed provision:

#### Section 160

##### **“Retaining the status as worker or self-employed person**

A Union citizen who is no longer a worker or a self-employed person retains her status as a worker or a self-employed person even though she;

- 1)is temporarily unable to work as the result of an illness or accident;
- 2)is, after having been employed for more than one year, in involuntary unemployment and has registered as a job-seeker with the employment office;
- 3)is, after completing a fixed-term employment contract of less than one year or after having become involuntarily unemployed during the first twelve months, in involuntary unemployment and has registered as a job-seeker with the employment office; in this case she retains the status as a worker for six months; or
- 4) she starts vocational training that is related to her previous employment, or she is in involuntary unemployment and starts other vocational training.

Proposed section 161f of the Aliens Act would be based on article 14.1 and 14.2 of the Directive. According to the proposed provision:

#### Section 161f

##### **“Retention of the right of residence**

A Union citizen and her family member shall have the right of residence as referred to in section 158 of the Act provided that she does not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or to other comparable benefits or by other comparable means constitute a burden to the Finnish social assistance system during their residence.

A Union citizen and her family member shall have the right of residence provided for in sections 158a, 161d or 161e, to reside in Finland for longer than three months provided that she meets the requirements laid down in these provisions.

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In specific cases where there is a reasonable doubt as to whether a Union citizen or her family member satisfies the conditions laid down in sections 158a, 161d or 161e, it may be verified if these conditions are fulfilled.”

The Government Proposal 205/2006 reminds that the Union citizens are entitled to equal treatment compared with the citizens of the host state also in what comes to the right to social security. They are therefore entitled to resort to the social assistance system and to get the same benefits as Finnish citizens. The Proposal states that the Union citizens must, however, not constitute an unreasonable burden to the social assistance system of the host state. That would be the case if a person would resort to the social assistance system on a regular basis. Temporary financial problems may, according to the Proposal, not be regarded as an unreasonable burden. The Proposal emphasizes that each case shall be assessed on its merits and factors such as the duration of the residence, personal circumstances, and the amount of the assistance shall be taken into consideration.

Proposed section 161g of the Aliens Act would concern the right of permanent residence. This provision would be based on Article 16 of the Directive. According to the proposed provision:

Section 161g

**“The right to permanent residence**

Union citizens who have resided legally for a continuous period of five years in Finland shall have the right of permanent residence. This right shall not be subject to the conditions provided for short term residence or residence lasting for longer than three months.

Subsection 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in Finland for a continuous period of five years.

Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.”

This amendment would bring a change to the legislation in force, because under the present Aliens Act, an EU citizen and her family member acquire permanent right of residence after four years of continuous residence in Finland. The Government justifies the amendment by arguing that it serves the purpose of harmonisation. The Government also argues that this amendment has very little practical effect in the actual position of the persons concerned.

Proposed section 161h would lay down rules on a document certifying the permanent residence of Union citizens. According to the proposed provision:

Section 161h

**“Document certifying permanent residence for Union citizens**

A Union citizen entitled to permanent residence shall be issued upon application with a document certifying permanent residence.

The document shall be issued as soon as possible after the duration of residence has been verified.”

This proposal would change the current practice as under the Aliens Act in force, EU citizens are issued with a permanent residence card. This would no longer happen after the amendment enters into force.

The Government proposes amendments to section 163 of the Act that concern exceptions to requirements for obtaining permanent residence cards.

Section 163

**“The right of permanent residence of those who are no longer working or engaged in self-employment**

The right of permanent residence shall be enjoyed before completion of continuous period of five years of residence by a worker or self-employed person who:

1) has, upon termination of his or her employment, reached the age entitling 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; if a self-

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employed person is not entitled to old age pension the age condition shall be deemed to have been met once the person concerned has reached the age of 60.

2) has terminated employment on grounds of permanent incapacity to work 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.

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 right of permanent residence.

For acquiring the right of permanent residence 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.

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 worker's or self-employed person's spouse is a Finnish citizen or has lost his or her Finnish citizenship upon marriage to the worker or self-employed person concerned.

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.

If the employee or the self-employed person dies while still in working life before obtaining a permanent right of residence in Finland under subsection 1 or 2, her family members residing with her 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 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 her Finnish citizenship upon marriage to the employee or self-employed person."

The Government proposes section 164 of the Aliens Act, too, to be amended. According to the amended provision:

Section 164

**"Employment and self-employment**

A person with the right of residence under this Chapter has an unrestricted right to gainful employment without a residence permit for an employed person and to self-employed activities without a residence permit for self-employed person."

### *Judicial practice*

The Administrative Court of Helsinki overruled a decision taken by the municipal police of Helsinki concerning registration of a Union citizen's right of residence in a case where the municipal police had not registered the right of residence of an under-aged Union citizen who had been found guilty of a drug offence and suspected of several other crimes. The Court held that the behaviour of the person concerned did not jeopardize public order and security and returned the matter to the municipal police. (Case number 06/0323/3 of 13.3.2006) In another decision the Administrative Court overruled and returned to the municipal police a matter in which the police had not registered the right of residence of a person who had been convicted of gross drunken driving and certain other crimes for a prison sentence of 45 days. The Court held that the person concerned did not constitute so severe danger to the public order and security that it had been justified to not register his right of residence. (Case number 06/0731/3 of 5.6.2006)

*Miscellaneous (administrative practices etc.)*

In certain police districts, for example in Helsinki, there is still two 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.

*Recent legal literature*

No relevant legal literature was found.

### **3. 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**

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.

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.

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 Proposal 28/2003, before being issued with a permanent residence card the person concerned has to meet the conditions on which her right of residence is registered or her fixed-term residence card is issued continuously. 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 on 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 the 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 Proposal 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 the 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 nevertheless be taken exceptionally and for a special reason 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 Proposal thus confirms that the preconditions for entry are not absolute. In this connection the Proposal 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 she would jeopardize public order or security or public health. The Government Proposal 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. The Government Proposal 28/2003 nevertheless states that it would 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. Secure 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**

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.

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.”

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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 Proposal 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 Proposal 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 Proposal, 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 jeopardizes the fundamental interests of society. As concerns public health, the Government Proposal 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**

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.

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 Proposal 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 factors such as 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 economic reasons. According to the Government Proposal 28/2003, 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. The Proposal states that 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 allows a person whose right of residence is already registered and who has a right of permanent residence to be deported on grounds of public health.

Section 170 of the Aliens Act concerns exclusion order.

## Section 170

**“Ordering and abolishing exclusion orders**

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.

Upon application, an exclusion order 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 Proposal 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*. It is stated in the Proposal that 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, such a decision has to be made for a fixed term not exceeding fifteen years. According to the Government Proposal 28/2003, 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 exclusion order starts from the day when the decision on removing the person concerned is taken. The exclusion order may be abolished upon application on grounds of a change in circumstances or for important personal reasons. No time limit is set for applying the abolishment of exclusion order.

Section 171 of the Aliens Act concerns the competent authorities.

## Section 171

**“Competent authorities**

The District Police enter a person’s right of residence in the Register of Aliens and issue a fixed-term or permanent residence card.

The District Police cancel a registered right of residence or a fixed-term or permanent residence card.

The Directorate of Immigration decides on an exclusion order under section 170.

The provisions of sections 151 and 152 apply to the competence of the authorities to make decisions on removal from the country.”



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According to section 151 and 152 of the Aliens Act the municipal 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**

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.

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.

A decision on deportation under section 168 or 169(2) may be enforced after a final decision.

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.

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 Proposal 28/2003, a decision on refusing entry or deportation becomes final after 30 days 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 for a leave to appeal the applicant may though apply for non-enforcement of the decision on removal. Furthermore, the Supreme Administrative Court may, when considering the leave to appeal, take *ex officio* a decision on preventing the enforcement of the removal. When a decision on removal 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 Aliens Act concerns the consent of the person concerned in situation of enforcement of a removal decision.

### 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.”

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 exclusion order and the duration of the exclusion order, 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 exclusion order 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 exclusion order 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 exclusion order. When considering the exclusion order and the duration of exclusion order 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 and circulars*

The Government proposes on grounds of the Citizenship Directive certain amendments to the national provisions concerning departure from Finland.

According to the Government Proposal 205/2006, section 156 of the Act concerning public order and security is proposed to be amended as follows:

#### Section 156

##### **“Public order and security**

A requirement for an EU citizen's and his or her family member's entry into and residence in the country is that they are not considered to danger public order or public security.

Preventing an alien's entry into or removing an alien from the country on grounds of public order or public security shall be based solely on the alien's own behaviour and not merely on any previous crime convictions. The individual's behaviour has to constitute a real, immediate and sufficiently serious threat to fundamental interests of society. Grounds that are not related to the individual case or that are based on considerations of general prevention shall not be accepted as valid.”

The wording of section 156 of the Act is proposed to be amended on grounds of article 27 of the Directive. According to the Government Proposal 205/2006, the new formulation of the national provision emphasises the requirement that the danger to public order or public security has to be real, immediate and sufficiently serious and that it has to threaten the fundamental interests of society. Mere disturbance to public order or security is not sufficient ground for restricting freedom of movement. The Government Proposal refers to case 30/77 *Bouchereau*.

Interestingly the Government Proposal 205/2006 refers in this connection to the Finnish Constitution and the protection of fundamental rights guaranteed in it. The Proposal states that the Finnish Constitution guarantees the right to security of a person and the protection of private life and property and that the protection of these rights may in many situations require preventing an alien's entry to Finland or removing an alien from the country. This is the case for example with continuous serious crimes. The prerequisite for the constitutionally guaranteed security of a person and the protection of private life and property is, according to the Proposal, a comfortable and safe living environment and removing from the country a person who has continuously committed serious crimes influences directly this environment. The interpretations of the legal text expressed in the Government Proposals are not legally binding on the courts and the administrative authorities. Very often they do though strongly influence in the way the laws are interpreted and applied as the Proposals of the Government and in particular the reports of the Parliamentary Committees, are regarded as expressions of the will of the legislator. It remains to be seen whether this reference to the constitutional protection of fundamental rights will have effect on the way section 156 of the Aliens Act shall be applied in practice.

The references to public health is proposed to be abolished from section 156; the proposed new section 156a of the Act shall concern the question of public health. According to this provision:

Section 156 a

**“Public health**

A Union citizen’s or her family member’s entry and residence may be restricted for reasons of public health. The restriction may only be based on diseases with epidemic potential as defined by the relevant instruments of the WHO, or other infectious diseases provided that it is possible to restrict the freedom of Finnish citizens who suffer or are suspected to suffer the disease in question in order to prevent the spreading of the disease.

A disease that jeopardises public health, that occurs after a three-month period from the entry to Finland, shall not constitute grounds for preventing entry.

A Union citizen or her family member may, if it is clearly necessary, be required within three months after the entry to Finland to undergo, free of charge, a medical examination to certify that the person concerned does not suffer from a condition referred to in subsection 1. A medical examination must not be required as a matter of routine.

According to the Act on infectious diseases (tartuntatautilaki 583/1986), it is possible to restrict the freedom of movement of a person who suffers or is suspected to suffer from a dangerous infectious disease that is mentioned in the Decree on infectious diseases (tartuntatautiasetus 786/1986) in order to prevent the spreading of the disease. According to section 17 of the Act on infectious diseases, the person concerned may be hospitalized against her will if it is probable that the disease may spread to other people and there are no other means of preventing the disease from spreading or the person concerned is not able or willing to undergo the other measures defined in the Act the purpose of which is to prevent the disease from spreading. The diseases covered by the Act on infectious diseases are defined in section 2 of the Decree on infectious diseases and they include for example SARS, Rift Valley fever, Dengue and Ebola. The Government Proposal 205/2006 explains that when the requirements laid down in relevant instruments of the WHO, the Act on infectious diseases, and the Decree on infectious diseases are met, the person concerned may be regarded as a danger to public health and therefore his or her freedom of movement may be restricted and his or her entry prevented on this ground.

It is furthermore explained in the Government Proposal 205/2006 that in order to constitute a ground for restricting the freedom of movement, the person concerned must have caught the disease already before entering the country and that a disease caught after the entry may not constitute such ground.

According to the Government Proposal section 165 of the Act would be amended as follows:

Section 165

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

The registration of the right of residence or a fixed-term residence card shall be 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.

Permanent right of residence or permanent residence card shall be cancelled if the Union citizen or her family member has resided continuously outside Finland for longer than two years.

Registration of the right of residence, permanent right of residence, or a fixed-term or permanent residence card shall be cancelled if the person concerned knowingly gave false information concerning her identity or other such facts that affected the decision, or concealed this kind of a fact or otherwise abused her rights.

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A person who has moved away from Finland may apply for non-cancellation of the registration of 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 Proposal, subsection 4 of this section is based on article 35 of the Directive. The Proposal explains that the cancellation of the right of residence shall be registered in the aliens register. When a residence card is cancelled, the person concerned should give the card to police or to border authorities.

Section 167 of the Aliens Act laying down the grounds for refusing EU citizens’ and their family members’ entry is also proposed to be amended. According to the Government Proposal 205/2006 the amended provision will be formulated as follows:

Section 167

**“Grounds for refusing EU citizen’s and her family member’s entry to Finland**

EU citizen’s and her family member’s entry to Finland may be refused if her right of residence has not been registered or she has not been issued with a residence card and if she:

- 1) does not meet the requirements for entry laid down in sections 155, 156 and 156a;
- 2) by resorting repeatedly to social assistance as provided in the Act on Social Assistance, or to other comparable benefits, or by other comparable means, during her short stay in the country burdens unreasonably the Finnish social assistance system;
- 3) would be required to have her right of residence registered or a residence card issued to her in order to continue her residence in Finland, but she does not meet the requirements for registering the right of residence or for being issued with a residence card; or
- 4) she has been prohibited from entering the country on grounds of public order and security. “

According to the Government Proposal 205/2006, compared with the text in force, the amended section 167 of the Act shall meet better the requirements laid down in Article 14 of the Directive. The Proposal explains that those who burden unreasonably the national social assistance system shall not be regarded to have the right of residence and if a person does not have the right of residence, her entry may be refused. According to the Proposal, what constitutes an unreasonable burden to social assistance system shall be decided case by case. The Proposal further refers to the Preamble of the Directive. Furthermore, it emphasizes the significance of article 14 (3) of the Directive. It is further stated in the Proposal that the authorities have to use discretion when deciding whether to refuse the entry or not. Refusing the entry is thus not an automatic consequence of burdening the social assistance system. The Proposal refers to cases C-456/02 *Trojani* and C-184/99 *Grzelczyk*. It is stated in the Proposal that refusing an EU citizens entry on the ground of lack of resources comes into question only in very rare cases. It is further reminded that it is not possible to exclude an EU citizen from Finland on this ground and, thus, she can try to enter the country again despite of the previous refusal of entry.

According to the proposed new subsection 4 of section 167 of the Act, a person who has been excluded from Finland on grounds of public order and security may be prevented from entering the country on grounds of this valid decision on exclusion; there is no need to re-examine the circumstances of the case. In this case the person concerned may apply for lifting of the exclusion order as provided for in the proposed section 170 § of the Act. Lodging an application on lifting the exclusion order does, however, not prevent the enforcement of the decision on refusing entry. The Aliens Act does not contain provisions on how the application on lifting the exclusion order should be lodged. According to the Proposal, the application should be lodged with the Finnish embassy abroad but it can also be lodged with the Finnish authorities at the border or in Finland.

The Government proposes amendments to section 168 of the Aliens Act concerning the grounds for deporting Union citizens and their family members. According to the proposed provision:

Section 168

**“Grounds for deporting a Union citizen and her family member**

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A Union citizen whose right of residence has been registered, or a Union citizen's family member who has been issued with a residence card, may be deported if she does not meet the requirements laid down in sections 158a, 161d or 161e, or she shall be regarded to jeopardize public order or public security as laid down in section 156 of this Act or public health as laid down in section 156a of this Act.

A Union citizen who has acquired permanent right of residence or a Union citizen's family member who has been issued with a permanent residence card, may be deported only on serious grounds of public policy or public security.

A Union citizen who has resided legally in the country for the previous ten years may be deported only on imperative grounds of public security.

A Union citizen who is a minor may be deported only on imperative grounds of public security except if the deportation is necessary for the best interest of the child.

As an imperative ground referred to in subsection 3 and 4 of this provision shall be regarded the fact that the Union citizen has committed a crime the statutory punishment of which exceeds one year imprisonment, and that due to the severity of the crime or continuity of the criminal activities she shall be regarded to jeopardize public security or to constitute a serious threat to the security of Finland or another state."

The Government Proposal 205/2006 states that the rules concerning deportation are applicable to Union citizens who have registered their right of residence and to non-citizen family members of EU citizens who have been issued with a residence card.

According to the Proposal, the proposed amendments of the Act shall be based on article 28 of the Directive, that is interpreted to apply only in cases of deportation, not in cases of refusal of entry. Because the Directive does not define the concepts of 'serious' and 'imperative' ground, they are elaborated on in the Proposal. The Proposal states that traditionally under the Finnish Aliens legislation, it has been possible to deport an alien who has committed a particularly serious crime even if she has resided in the country for a long time and has family connections in Finland. According to the Proposal, in this kind of situations it is not the crimes as such that would constitute the ground for deportation. Instead, it is argued, certain types of crime convictions may be regarded as to manifest behaviour that can be considered to constitute jeopardy to public order or security. In this kind of cases the precondition for deportation has been a high probability that the person concerned would continue her criminal activities in the future. Thus, according to the Proposal, rendering guilty to serious capital, sexual or drug offence may constitute a ground for deportation even though the crimes as such shall not cause the deportation. Committing crimes continuously or participating organised criminal activities or professional criminality may, according to the Proposal, constitute a real and sufficiently serious jeopardy to the fundamental interests of the society even though the person concerned had not committed such a serious crime that she could be deported solely on that ground. The Proposal refers to cases 41/74 *van Duyn*, 30/77 *Bouchereau*, C-348/96 *Calfa* and C-482/01 and C-493/01 *Orfanopoulos*.

Regarding persons who have resided in Finland for previous ten years, the Proposal states that at least terrorism that jeopardizes public security may lead to deportation. Regarding the treatment of a Union citizen who is a minor, the Proposal argues that deportation may normally be regarded to be in the best interest of the child in case where the child's parents are deported. The Proposal clarifies that this provision shall not be interpreted so as to prevent deporting the parents of a minor on the ground that the child would not be able to be deported.

Proposed section 168a of the Act would concern removal of a worker or a person seeking employment. According to this provision:

Section 168a

**"Removing from the country a worker or a person seeking employment**

As an exception to what is provided in subsection 2 of section 167 or subsection 1 of section 168, a Union citizen or her family member may be returned or deported only on ground of public order or security as laid down in section 156 or public health as laid down in section 156a of the Act, if the Union citizen is a worker or self-employed person or she has entered the country in order to seek employment and can show proof of a genuine chance of being engaged."

According to the Government Proposal 205/2006 this proposed provision is based on article 14.4 of the Directive.

The Government proposes to the Aliens Act a new section 168b concerning the general consideration in cases of deportation. The Proposal states that this provision shall be applied only in cases of deportation and not in cases of refusing entry. The proposed provision is based on article 28 of the Directive and according to it:

Section 168b

**“General consideration in cases of deportation**

Before taking a deportation decision on grounds of public policy or public security, the following facts shall be considered: the length of the Union citizen’s or her family member’s residence in the country, her age, her state of health, her family and economic situation, and how well the person concerned has integrated in the Finnish society and culture. A further factor to be taken into account in this consideration is the extent of links the Union citizen and her family member has with her country of origin.”

The Government proposes amendments to section 170 concerning exclusion. According to the amended provision:

Section 170

**“Ordering and abolishing exclusion orders**

If removing a Union citizen or her family member from the country is based on the fact that the person concerned is considered a danger to public order or public 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.

Upon application, the exclusion order may be abolished in part or in full on the basis of a change in the circumstances or for an important personal ground. The decision on this application shall be taken within six months of its application.”

The Government proposes that a new provision on the period of time within which the decision on lifting the exclusion order should be taken, would be added to subsection 2 of section 170. This amendment would be based on article 32.1 of the Directive.

The Government proposes amendments to section 172 of the Aliens Act concerning enforcement of the decision on removal an EU citizen and her family member.

Section 172

**“Enforcing removal of Union citizen and her family member from the country**

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.

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.

A decision on deportation under section 168 or 169(2) may be enforced after a final decision.

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.

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. Save in duly substantiated cases of urgency, this period has to last at least one month from the day when the decision was served to the person concerned. During that period, the authorities may not enforce the decision.

If the removal order is enforced more than two years after it was issued, the authority that enforces the decision shall confirm from the authority that had taken the decision that the individual concerned is currently and genuinely a threat to public order or public security and shall assess whether there has been any change in the circumstances since the expulsin order was issued.”

According to the Government Proposal 205/2006, for example the fact that the person concerned constitutes a danger to public order or public security may constitute a duly substan-

tiated case of urgency as referred to in subsection 5 of section 172. The Government Proposal further explains that the proposed subsection 6 of this provision is based on article 33.2 of the Directive and refers to case C-482/01 and C-493/01 *Orfanopoulos*.

The Government proposes new section 172a concerning the abuse of rights to be added in the Act. This provision would be based on article 35 of the Directive. According to the proposed provision:

Section 172a

**“Abuse of rights**

Any right conferred in this Chapter may be refused, terminated or withdrawn if the person concerned has consciously given false information concerning her identity or other circumstances relevant for the case or by concealing such information or by otherwise abusing her rights such as by concluding marriage with the sole purpose of acquiring rights conferred in this Chapter.”

The Government Proposal 205/2006 refers in this connection to the Resolution 97/C382/01 concerning the marriages of convenience.

*Judicial practice*

According to the Supreme Administrative Court, the deportation of a Union citizen could be justified on grounds of public order and security in a case where the person concerned, who had resided in Finland for eleven years and who had family ties and a part-time job in Finland, had in 1999 been convicted to five years and six months prison sentence for four gross drug offences and certain other crimes. The Court reached this decision by interpreting the provisions of the Aliens Act in light of the provisions of the Citizenship Directive that had not yet been transposed in Finland, and the ECJ judgment *Orfanopoulos* (Case 2959 of 9.11.2006). In another case the Supreme Administrative Court held that deportation of a Union citizen who had family ties in Finland and who was working in the country as a self-employed person could not be justified on grounds of public order and security even though he had been convicted to three years and ten months prison sentence for gross involuntary manslaughter and gross assault. This decision, too, was reached by the Court by interpreting the provisions of the Aliens Act in the light of the provisions of the Citizenship directive that had not yet been transposed in Finland, and the ECJ judgment *Orfanopoulos*.

The Administrative Court of Helsinki applied in one case the Citizenship Directive even though the Directive had not yet been transposed in Finland. The appellant had been convicted to 10 months prison sentence for three thefts and one gross theft. He had strong family ties to Finland and had resided in the country for several years. The Court held that the deportation of the person concerned would have been against article 28.3. of the Citizenship Directive that had to be taken into account when applying section 146 of the Aliens Act and therefore he could not be returned (06/0779/3 of 13.6.2006). The Court reached similar conclusion in judgment 06/0808/3 of 19.6.2006.

During the reporting period the Administrative Court of Helsinki gave several decisions in which it held that a conviction for gross drug offence shall be regarded as a manifestation of behaviour that constitutes danger to public order and public security. This was the case, for example in the following decision: 0670064/3 of 16.1.2006 (prison sentence for three gross drug offences); 06/0209/3 of 13.2.2006 (prison sentence for gross drug offence); 06/0210/3 of 13.2.2006 (gross drug offence) and 06/0228/3 of 16.2.2006 (gross drug offence). Furthermore, the Court held that a conviction to two years and six months prison sentence for robbery and to three years prison sentence for robbery and forgery was a manifestation of behaviour that jeopardized public order and security (decisions 06/0248/3 of 23.2.2006; 06/0249/3 of 23.2.2006 and 06/0323/3 of 13.3.2006). However, the Court overruled a decision by the municipal police of Helsinki of not issuing a Union citizen with a permanent residence card in a case where the person concerned had been found guilty of road traffic offences and certain other crimes. The Court held that the behaviour of the person concerned could be regarded as jeopardy to public order and security. The person con-

cerned had resided in Finland for several years and lived in a marriage-like relationship with a Finnish citizen (case 06/1424/3).

*Miscellaneous*

Nothing to report.

*Recent legal literature*

Nothing to report.

**4. 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.

Thus, 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.”

Under the law in force, a negative decision concerning a third country national family member’s visa can not be appealed. The Government proposes section 191 of the Aliens Act to be amended in this respect. The proposed amendment would be based on article 31.1 and article 15 of the Directive and according to it, a decision concerning a visa of a Union citizen’s or Finnish citizen’s family member, who shall be covered by Chapter 10 of the Act, may be appealed to an administrative court.



## CHAPTER II. ACCESS TO EMPLOYMENT

### **1. Equal treatment in access to employment (e.g. assistance of employment agencies)**

Persons whose residence in Finland is based on provisions of chapter 10 of the Aliens Act, that concern free movement of EU citizens and their family members, are entitled to public employment services, including assistance of employment agencies and other such measures, under the Act on the public employment services (Laki julkisesta työvoimapalvelusta 1295/2002, English text can be found at <http://finlex.fi>) under the same conditions as Finnish nationals.

It has been pointed out in a recent report that workers coming to Finland from the old Member States and from Estonia often come to work in an employment they have arranged already before entering the country. Therefore, it is not common for persons belonging to these groups to enter Finland as job-seekers and to use the public employment services in Finland.

The employment rate of Estonians who have arrived in Finland after 2000 is nearly as high as the employment rate of Finnish citizens (60 %). The situation of the citizens of the old Member States is relatively good, as well; more than half of the persons belonging to the age group 15-64 are employed and only 10 % of them unemployed (Myrskylä, Pekka (2006): Muuttoliike ja työmarkkinat. Työpoliittinen tutkimus. Työministeriö).

#### *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, as well.

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 covering also access to employment.

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.”

*Draft legislation, circulars etc.*

No draft legislation exists.

*Judicial practice*

No relevant judicial decisions were found.

*Miscellaneous*

Nothing to report.

*Recent legal literature*

Myrskylä, Pekka (2006) *Muuttoliike ja työmarkkinat. Työpoliittinen tutkimus.* Työministeriö. (Mobility and labour markets. Ministry of Labour. With an English summary.)

**2. Language requirement (private sector)**

There are no regulatory language requirements at the private sector. In practice it is rather common to require that to be employed the person concerned has to command either Finnish or Swedish. This does not necessarily apply to low-skilled jobs on the one hand and certain high-skilled on the other. Some companies, such as Nokia, use as their working language English and thus command of Finnish or Swedish is not required.

**3. Recognition of diplomas**

The Ministry of Education has started the project of transposition of the provisions of the Directive 2005/36/EC. The Government Proposal shall be given to the Parliament by the end of 2007. No fundamental changes to the national system are expected on grounds of the Directive.

The National Board of Education (Opetushallitus, <http://www.oph.fi/english/frontpage.asp?Path=447>) decides upon application on recognition of diplomas completed in another Member State. 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 the employers, decisions on recognition of diplomas are not 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 the 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 at 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 89 euros (+tax).

#### ***4. 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. The Government Proposal amending the Act in this respect will be given in 2007.

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 applicable to all persons working at Finnish ships independent of the nationality of the persons concerns.

## CHAPTER III. EQUALITY OF TREATMENT ON THE BASIS OF NATIONALITY

### 1. Working conditions

#### *Texts in force*

Section 2 of chapter 2 of the Act on Employment Contract prohibits discrimination at labour market and covers also 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 defined by collective bargaining agreements. The standards defined in these agreements apply to all workers independent of, for example, nationality and membership in national trade union.

#### *Draft legislation, circulars etc.*

Nothing to report.

#### *Judicial practice*

No relevant judicial decisions were found.

#### *Miscellaneous*

Nothing to report.

#### *Recent legal literature*

Nothing to report.

## **2. Social and tax advantages**

The Finnish system of social security is by and large based on residence. The personal scope of the social security system is defined by the Act on scope of application (Soveltamissalakki 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.

Finnish employers collect a 35-percent tax at source on the pay of a foreign employee who stays in the country for six months or less. Besides tax, the employer withholds also social security payments (amounting to approximately 7% all payments combined), unless the employee is posted. In case of posted workers the social security insurance shall be taken care of in the country of origin. If the pay from Finland constitutes 75% or more of the total annual gross earned income of the person concerned and if she is a resident of an EU/EEA country, she can, after the income year, claim a progressive taxation instead of the 35-percent tax. If the employment lasts for shorter than six months and the employer is not Finnish, the tax is not paid to Finland but instead to the country of origin.

If the employment in Finland lasts for longer than six months, the employee will pay tax on the wages in Finland under the same conditions as the Finnish tax-payers. In this case it does not make a difference if the employer is Finnish or foreign. Besides tax, the employer will also withhold social security payments from the pay (amounting to approximately 7 % all payments combined), unless the employee is posted. The Finnish income taxes on wages are the progressively figured state tax, the municipal (local) tax, and the church tax for the members of the national churches. The employee will be entitled to claim tax deductions for work-related costs and for payments of interest on any loan that the person concerned has taken to finance her permanent owner-occupied home. Premiums for obligatory pension and unemployment insurance are deductible, too. Subject to certain restrictions it is also possible to deduct voluntary pension insurance contributions paid to an insurance company established in the EU.

## **3. Other obstacles to free movement of workers**

It appears that most of the problems in the area of free movement of workers relate to the position of posted workers on the one hand, and to situations in which Finnish citizens enjoy their freedom of movement and move to another Member State, on the other. A large number of EU citizens working in Finland in 2006 were posted workers from the new Member States, in particular from Estonia. In many cases the posted workers performed their work in Finnish companies as so called 'hired workers' (*vuokratyö*). These situations fall within the ambit of freedom of services instead of freedom of workers and the conditions for work are in practice determined according to the standards of the country of origin remaining thereby often weaker than the conditions for work of the Finnish employees performing equivalent tasks. In this kind of situations it is, according to the occupational health and safety authorities (työsuojelupiirit) and Central Criminal Police (Keskusrikospoliisi), rather common that the minimum conditions for work are not applied and that, for example, the wages are below the minimum wages. New legislation concerning the treatment of posted workers was adopted in 2006. This legislation shall be discussed in this report under title VIII: EU enlargement. What comes to the Finnish citizens enjoying their freedom of movement, the problems relate mainly to exportability of social benefits.

Information concerning possible problems relating to the treatment of citizens of the other Member States who have entered the Finnish labour market is difficult to find.

#### **4. *Frontier workers***

The question of frontier workers actualises in Finland mainly in the northern parts of the country at the frontier between Finland and Sweden and Finland and Norway on the one hand, and at the southern part between Finland and Estonia on the other. The question of Estonian workers is discussed in this report under title 'Enlargement'. What comes to the Estonians working in Finland, the problems relate mainly to the treatment of posted workers and not to their position as frontier workers.

Free movement of labour within the area of the Nordic countries, including the treatment of frontier workers, is based on a web of treaties between the states concerned (see the ANNEX I and Chapter VII of this report). The Nordic citizens have since the 1950's been entitled to travel in the Nordic countries without a passport and to live and work in another country without a work or residence permit as well as to work in that country under the same working conditions as the nationals of that state. Special arrangements apply to the situation of frontier workers regarding social and unemployment issues as well as taxation.

No information was found on any particular problems related to the treatment of frontier workers.

## CHAPTER IV. EMPLOYMENT IN THE PUBLIC SECTOR

### 1. Access to public sector

#### 1.1 Nationality condition for access to positions in the public sector

No significant developments took place in this field in 2006.

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 subsection 1 of section 125 of the Constitution “it may be enacted in an Act of Parliament 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, under 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 (Valtion virkamieslaki) contains an exhaustive list of public offices to which may be appointed only a Finnish citizen. The Government Proposal to the Parliament for the Act on public offices (Hallituksen esitys Eduskunnalle valtion virkamieslaiksi ja laiksi valtion virkaehtosopimuslain muuttamisesta HE 291/1993 vp) argues that 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 policeofficer 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, nationality, 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.”

### 1.2 Language requirement

No significant developments took place in this field in 2006.

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 and certificate showing that she has completed her education and passed a maturity test at a Finnish university in a given language. 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 Proposal of Government to the Parliament concerning the act on languages and other related legislation (Hallituksen esitys kielilainsäädännön muuttamisesta 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. In fact, in 2006 attention was drawn at the Parliament to the fact that due to the rather rigid requirements concerning the proficiency of both Finnish and Swedish laid down in the national legislation concerning the qualification requirements for the personnel of the police, there are difficulties in recruiting qualified police officers to open posts. 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.

### 1.3. Recruitment procedures: follow-up of *Burbaud* case

No developments took place in 2006 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.



#### 1.4. Recognition of diplomas

The Ministry of Education has started the project of transposition of the provisions of the Directive 2005/36/EC. The Government Proposal shall be given to the Parliament by the end of 2007. No fundamental changes to the national system are expected on grounds of the Directive. Other than that, no significant developments took place regarding the rules and practices on recognition of diplomas for access to the public sector in 2006.

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 diplomas<sup>2</sup>.

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 on 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 given. 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 the 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.

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

According to the Act Implementing the EC System of Recognition of Diplomas the decisions on recognition must be taken in four months. Currently the average time the decision making takes is two months. The fee for the decision is 184 e.

Between 1.1.1997 and 31.12.2004 the number of applications for recognition of a diploma was 3040 and in 2005 510. Between 1.1.1997 and 31.12.2005 in 1212 cases the applicant was a Finnish citizen and in 395 cases a citizen of another EU state. In 339 cases the diploma was acquired in the United Kingdom, in 307 cases in Sweden, in 173 cases in Germany, in 110 cases in Estonia, in 85 cases in France, in 43 cases in Hungary and in 37 cases in Poland (<http://www.oph.fi>).

Citizens of the Nordic countries do not need a decision on recognition of a diploma for eligibility to posts in the public sector if the diploma was obtained in another Nordic country and the content of that diploma can be shown to be by and large comparable with a corresponding Finnish diploma (Act 651/1998).

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

### *1.5. Recognition of professional experience for access to the public sector*

No developments took place in 2006 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. 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.

## **2. Equality of treatment**

### *2.1. Recognition of professional experience for the purpose of determining the professional advantages*

No developments took place in 2006 in this area. There are no formal rules concerning the way the professional experience acquired in another Member State should be taken into account for the purpose of the determination of professional advantages. All relevant matters contributing to the professional competence should be taken into account in determining professional advantages. 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.

#### *Judicial practice*

No relevant judicial decisions were found.

#### *Recent legal literature, reports, etc.*

Nothing to report.

## CHAPTER V. MEMBERS OF THE FAMILY (ESPECIALLY TREATMENT OF THIRD COUNTRY FAMILY MEMBERS)

### 1. *Residence rights*

#### *Visas*

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 their special treatment compared with the other third-country nationals. If visa officials consider rejecting a family member's visa application, 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 fully respected.

The Government proposes in Proposal 205/2006 that the grounds for a negative decision taken in a matter concerning a Union citizen's family member's visa application should be given in writing, and the negative decision could be appealed to an administrative court. Under the law in force, there is no obligation to state the reasons for a negative decision and it is not possible to appeal.

#### *Texts in force*

According to the Aliens Act, the right of residence of an EU citizens' family member or other relative who herself 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 of other categories of persons; 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**

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.

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

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.

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

#### Section 159

##### **"Registering EU citizens' right of residence**

## FINLAND

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.

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

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.

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."

According to the Government Proposal 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 Proposal, 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 they have maintained their relationship during their separation.

According to the Government Proposal 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**

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).

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.

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.

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 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 Proposal 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 preconditions for registering her right of residence, and in case 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. The issuance of a permanent residence card to a family member or other relative who is not an EU citizen presupposes that the person concerned lives continuously together with the EU citizen whose family member or relative she is. According to the Government Proposal, 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 duration of the family member’s residence. If the residence 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’.)

In addition to these provisions, the following provisions already stated above apply to Union citizens’ family members: 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.

#### *Draft legislation and circulars*

The Government proposes in the Government Proposal 205/2006 to the Aliens Act several amendments that concern EU citizens’ family members. The proposed amendments are based on the Directive 2004/38/EC.

The Government proposes amendments to section 153 of the Act that defines the scope of application of chapter 10 of the Act that concern the freedom of movement of Union citizens and their family members. These amendments have been discussed in this report in Chapter I.

The Government proposes amendments to section 154 of the Act defining the Union citizen’s family members. According to the proposed provision:

## Section 154

**“EU citizens’ family members**

A Union citizens’ family members are her:

- 1) married spouse;
- 2) direct descendants who are under the age of 21 or are dependants and those of her spouse;
- 3) the dependent direct relatives in the ascending line and those of the spouse;

If the Union citizen residing in Finland is a minor, her guardian is her family member.

When this Act is applied, persons living continuously in a marriage-like relationship within the same household regardless of their sex are comparable to a married couple provided that they have lived together at least for two years. When applying this Chapter of the Act their relationship is treated as equivalent to marriage. The requirement concerning living together for two years shall not be applied if the cohabiting partners have a child in their joint custody or there is another weighty ground for that.

As a Union citizen’s family member is regarded another relative irrespective of her nationality provided that

- 1) she, in the country from which they have come, is dependent or member of the household of the union Citizen having the primary right of residence; or
- 2) where serious health grounds strictly require the personal care of the family member by the Union citizen.”

According to the Proposal, the wording of the section 154 is proposed to be amended so that it better corresponds to the wording of article 2.2 of the Directive.

The proposed provision contains requirements for when the other relatives of an EU citizen shall be placed on a par with family members. These requirements are based on article 3.2.a of the Directive. When the requirements are met, the provisions concerning family members contained in chapter 10 of the Act are applicable to other relatives, as well. This amendment broadens the definition of a family member. Under the law in force, only children and parents, but not grandchildren or grandparents are regarded as family members. The expressions used in the proposed provision (‘direct descendants’ and ‘relatives in the ascending line’) would cover grandchildren and grandparents, as well. Furthermore, it is clarified in the Proposal that even though the proposed provision uses the term ‘descendants’ and not ‘children’, the provision covers also adopted children as is the case also under the legislation in force.

It is clarified in the Proposal that the term ‘dependent’ means that the family member has to be financially dependent on the sponsor. Whether this is the case, shall be decided on grounds of the personal circumstances and needs of the person concerned. The dependency has to be proved with documentary evidence.

The Government proposes that the references to registered partnership shall be abolished from the Aliens Act. The reason for this is that under section 8 of the Act on registered partnership (Rekisteröidystä parisuhteesta annettu laki 950/2001) any provision contained in legislation or decree that concerns marriage or a married spouse shall be applied to registered partnerships and registered partners, unless otherwise provided explicitly in the provision in question. Thus, a reference to registered partnership is not needed in the Aliens Act.

Concerning cohabiting partners, the Government proposes that a requirement of living together for two years, or having a child in joint custody, or existence of other weighty grounds, shall be added to subsection 3 of section 154. According to the Proposal, this requirement is in fact applied in practice even though it is not laid down in the law in force.

In this connection the proposal makes a reference to proposed section 172a of the Act and states that if the marriage or registered partnership is concluded for the purpose such as circumventing the rules concerning entry and residence, the family life shall not be regarded as real and, thus, the registration of the right of residence or the issuance of a residence card shall be refused. Proposed section 172a concerns abuse of rights. The Proposal states that in case of Union citizen’s family there is normally no need to examine whether the relationship is real or not. Such examination is needed only if there are well-grounded reasons for that.

The Government proposes a new section 155a concerning an EU citizen’s family member’s entry to be added to the Act. According to the proposed provision:

Section 155a

**“EU citizen’s family member’s entry**

A precondition for the entry and residence of an EU citizen’s family member who is not an EU citizen is that she holds a valid passport. A family member may be required to have a visa if she is a citizen of a State whose citizens are required to have a visa under Council Regulation

A family member who holds a valid residence card as referred to in the Directive on free movement of Union citizens shall not be required to have a visa and her passport shall not be stamped at the border. The family member concerned shall present the residence card when arriving to the country from outside the Schengen area.

The negative decision on issuing a visa shall be notified to the applicant in writing and the grounds for the decision shall be informed to the applicant, unless this is contrary to the interests of security of Finland or another Member State.”

According to the Government Proposal 205/2006 this provision would be based on article 5 and article 30 of the Citizenship Directive. The Proposal clarifies that the residence card as referred to in the proposed provision would mean both fixed-term and permanent residence cards issued by any of the Member States. Under this provision, the person concerned would be obliged to show the residence card when arriving to Finland from outside the Schengen area.

Regarding subsection 3 of the proposed provision, the Proposal states that in addition to the grounds for the negative decision, the written decision would include information on how to appeal.

The Government proposes amendments to section 161 of the Act that concern the residence card. According to the proposed provision:

Section 161

**“Residence card**

Upon application, an EU citizen’s family member who is not an EU citizen is issued with a Union citizen’s family member’s residence card if the sponsor meets the requirements laid down in sections 157 or 158a.

The card shall be issued if the purpose of the family member is to reside in Finland for longer than three months.”

According to the Government Proposal 205/2006, this provision is applicable to a Union citizen’s other relatives, too, if the requirements laid down in the proposed subsection 4 of section 154 concerning the equation of the other relatives with the family members are met.

Furthermore, the Government proposes a new section 161a to the Act. This provision is based on article 10.2 of the Directive. According to the proposed provision:

Section 161a

**“Application of a residence card**

The Union citizen’s family member’s residence card shall be applied for within three months of the entry to country.

When applying for the card, following documents shall be presented:

- 1) valid passport;
- 2) a document attesting to the existence of a family relationship or of a registered partnership;
- 3) the registration certificate of the Union citizen whom they are accompanying or joining;
- 4) in cases referred to in subsection 1.2 and 1.3 of section 154 proof of the relationship;
- 5) in cases referred to in subsection 3 of section 154 proof of the existence of a durable relationship with the Union citizen;
- 6) in cases referred to in subsection 4 of section 154 a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen.”

The Proposal explains that the term ‘document’ in this provision refers to any documentary evidence and not only to official documents.

A new section 161b is proposed to be added to the Act. According to the proposed provision:

Section 161b

**“Issuing a residence card**

The residence card of a family member of a Union citizen shall be issued no later than six months of the date on which the application was submitted. A certificate of application for the residence card shall be issued immediately.”

Furthermore, the Government proposes to the Act a new section 161c, according to which:

Section 161c

**“Validity of the residence card**

The residence card of a family member of a Union citizen shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.

The validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.”

Section 161d of the Act proposed by the Government concerns retention of the right of residence by family members in the event of death or departure of the Union citizen. According to the proposed provision:

Section 161d

**“Retention of the right of residence by family members in the event of death or departure of the Union citizen**

The Union citizen’s death or departure from the host state shall not affect the right of residence of his/her family members who are national of a Member State. Before acquiring a right of permanent residence, the family member must, however, meet the requirements laid down in subsection 1 of section 158a.

A Union citizen’s family member who is not a citizen of a Member State and who has resided in Finland as a family member of a Union citizen for at least one year before the Union citizen’s death shall not lose her right of residence when the Union citizen dies. Before acquiring a right of permanent residence, the right of residence of the person concerned shall remain subject to the requirement that she is able to show that she is a worker or a self-employed person or that she has sufficient resources for herself and her family members not to become a burden on the Finnish social assistance system and has comprehensive sickness insurance cover in Finland, or that she is a member of the family, already constituted in the host Member State, of a person satisfying these requirements. Such a family member shall retain her right of residence exclusively on a personal basis.

The Union citizen’s death or her departure from the country shall not entail loss of the right of residence of her children or of the parent who has actual custody of the children irrespective of nationality, if the children reside in Finland and are enrolled at an educational establishment for the purpose of studying there, until the completion of their studies.”

Proposed section 161e of the Act concerns retention of the right of residence by the family member in the event of divorce, annulment of marriage or termination of registered partnership. According to this provision:

Section 161e

**“Retention of the right of residence by family members in the event of termination of marriage**

The termination of a Union citizen’s marriage shall not affect the right of residence of her family member who is a Citizen of a Member State. Before acquiring the right of permanent residence, the person concerned must meet the requirements laid down in subsection 1 of section 158a.

The termination of a marriage shall not entail loss of the right of residence of a Union citizen’s family member who is not a national of a Member State if

- 1) the marriage has lasted at least three years, including one year in Finland;
- 2) by agreement between the spouses or by court order, the spouse who is not a national of a Member State has custody of the Union citizen’s children;



- 3) this is warranted by particularly difficult circumstances, such as having been victim of domestic violence during the marriage;
- 4) by agreement by the spouses or by court order, the spouse who is not a national of a Member State has the right of access to a minor child, provide that the court has ruled that such access must be in the host Member State.

Before acquiring a right of permanent residence, the right of residence of a person referred to in subsection 2 who is not a citizen of a Member State shall remain subject to the requirement that she is able to show that she is a worker or a self-employed person or that she has sufficient resources for herself and her family members not to become a burden on the Finnish social assistance system and has comprehensive sickness insurance cover in Finland, or that she is a member of the family, already constituted in the host Member State, of a person satisfying these requirements. Such a family member shall retain her right of residence exclusively on a personal basis.”

Proposed section 161f of the Act would be based on article 14.1 and 14.2 of the Directive. According to the proposed provision:

Section 161f

**“Retention of the right of residence**

A Union citizen and her family member shall have the right of residence as referred to in section 158 of the Act provided that she does not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or to other comparable benefits or by other comparable means, constitute a burden to the Finnish social assistance system during their residence.

A Union citizen and her family member shall have the right of residence provided for in sections 158a, 161d or 161e, to reside in Finland for longer than three months provided that she meets the requirements laid down in these provisions.

In specific cases where there is a reasonable doubt as to whether a Union citizen or her family member satisfies the conditions laid down in sections 158a, 161d or 161e, it may be verified if these conditions are fulfilled.”

The Government Proposal 205/2006 states that the Union citizens are entitled to equal treatment compared with the citizens of the host state also in what comes to the access to the social assistance system. They are therefore entitled to get equivalent benefits as the citizens. The Union citizens must, however, not constitute an unreasonable burden to the social assistance system of the host state. Such may be the case if the person concerned resorts to the social assistance system regularly. Temporary problems may not be regarded as unreasonable burden. Each case shall be assessed on its merits and factors such as the duration of the residence, personal circumstances and the amount of the assistance shall be taken into consideration.

Proposed section 161g of the Act would concern the right of permanent residence. This provision would be based on Article 16 of the Directive. According to the proposed provision:

Section 161g

**“The right to permanent residence**

Union citizens who have resided legally for a continuous period of five years in Finland shall have the right of permanent residence. This right shall not be subject to the conditions provided for short term residence or residence lasting for longer than three months.

Subsection 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in Finland for a continuous period of five years.

Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.”

This amendment would mean a change compared with the legislation in force as currently an EU citizen and her family member acquire permanent right of residence after four years of continuous residence. The Government justifies this amendment by arguing that it serves the purpose of harmonisation. The Government also argues that this change has very little practical influence in the actual position of the persons concerned.

Proposed section 162 of the Aliens Act would concern permanent residence card. According to this provision that is based on Article 20 of the Directive:

Section 162

**“Permanent residence cards**

A Union citizen’s family member who is not a Union citizen and who is entitled to permanent residence shall, upon application, be issued with a permanent residence card within six months of the submission of the application.

The application for a permanent residence card shall be submitted before expiry of the residence card.

Interruptions in residence not exceeding two consecutive years shall not affect the validity of permanent residence card.”

The Government Proposal 205/2006 states that other relatives of Union citizens are equated to family members if the conditions laid down in section 154 of the Act for that are met. Thus the proposed section 162 of the Act would be applicable to other relatives, as well. According to the Proposal, this provision should not be interpreted to require that the person concerned has to apply for a permanent residence card. Instead she may as well continue her residence with a regular residence card and not apply for the permanent card if she so chooses.

The Government proposes amendments to section 163 of the Act that concern exceptions to requirements for obtaining permanent residence cards. Subsection 3 of this provision concern EU citizens’ family members.

Section 163

**“The right of permanent residence of those who are no longer working or engaged in self-employment**

The right of permanent residence shall be enjoyed before completion of continuous period of five years of residence by a worker or self-employed person who:

- 1) has, upon termination of his or her employment, reached the age entitling 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; if a self-employed person is not entitled to old age pension the age condition shall be deemed to have been met once the person concerned has reached the age of 60.
- 2) has terminated employment on grounds of permanent incapacity to work 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.

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 right of permanent residence.

For acquiring the right of permanent residence 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.

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 worker’s or self-employed person’s spouse is a Finnish citizen or has lost his or her Finnish citizenship upon marriage to the worker or self-employed person concerned.

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.

If the employee or the self-employed person dies while still in working life before obtaining a permanent right of residence in Finland under subsection 1 or 2, her family members residing with her 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 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 her Finnish citizenship upon marriage to the employee or self-employed person.”

Regarding the proposed amendments to concerning public order and public security (section 156), public health 156a), cancellation of the right of residence or a residence card (section 165), refusal of entry (section 167), deportation (section 168), general consideration in cases of deportation (168b), enforcement of removal (section 172) and abuse of rights (172a) see Chapter 1 of this report.

### *Judicial practice*

The Administrative Court of Helsinki dismissed two appeals which concerned decisions taken by the municipal police of Helsinki on not registering EU citizen’s right of residence. The right of residence was not registered in these two cases, because the income of the persons concerned was not regarded as secure. The income consisted solely of various social benefits and allowances. The persons were not regarded to meet the conditions for freedom of movement.

### *Miscellaneous (administrative practices etc.)*

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 application for a family member’s residence card is handled jointly with and in a similar manner as the application for registration of the right of residence. In case of 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 with applications for regular residence permits.

### *Recent legal literature*

No legal literature on this issue was found.

## **2. Access to work**

According to section 164 of the Aliens Act, persons who are entitled to residence under chapter 10 of the Aliens Act have unrestricted right to gainful employment. This covers also third country national family members of Union citizens as long as their right of residence is based on chapter 10 of the Act.

The Government proposes in Proposal 205/2006 section 164 of the Act to be amended. According to the amended provision:

Section 164

#### **“Employment and self-employment**

A person with the right of residence under this Chapter has an unrestricted right to gainful employment without a residence permit for an employed person and to self-employed activities without a residence permit for self-employed person.”

The purpose of this amendment is to clarify that the provision covers also self-employed activities.

## **3. Access to education (study grants)**

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%5>

[Bpika%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 under the same conditions as Finnish citizens provided that she lives permanently in Finland and that the ground for her residence is other than studying in the country.

The Parliament accepted in the beginning of 2007 an amendment of section 1 of the Act on study grant. According to the amended provision the provisions of the Act on study grant that are applicable to Finnish citizens shall also be applied to those who have a right to permanent residence under the provisions of chapter 10 of the Aliens Act. This includes the third country national family members of Union citizens.

#### ***4. Other issues concerning equal treatment (social and tax advantages)***

There are no special rules concerning social and tax advantages of EU citizen's family members and no information on any problems particular to this field have come up. Generally on this question see Chapter 2 of this report.

## 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; the Government Proposal 205/2006 offers an example on this.

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) and the courts, and taken into account in the functioning and internal training of these authorities. This follow-up has though criticised for not being sufficiently systematic and efficient.

### *Trojani*

The case *Trojani* was taken into account in the Government Proposal 205/2006 for the Act amending the Aliens Act, the purpose of which is to transpose the provisions of the Directive 2004/38/EC to national legislation. Section 167 of the Aliens Act laying down the grounds for refusing EU citizens' and their family members' entry is proposed to be amended as follows:

Section 167

#### **“Grounds for refusing EU citizen’s and her family member’s entry to Finland**

EU citizen’s and her family member’s entry to Finland may be refused if her right of residence has not been registered or she has not been issued with a residence card and if she:

- 1) does not meet the requirements for entry laid down in sections 155, 156 and 156a;
- 2) by resorting repeatedly to social assistance as provided in the Act on Social Assistance, or to other comparable benefits, or by other comparable means, during her short stay in the country burdens unreasonably the Finnish social assistance system;
- 3) would be required to have her right of residence registered or a residence card issued to her in order to continue her residence in Finland, but she does not meet the requirements for registering the right of residence or for being issued with a residence card; or
- 4) she has been prohibited from entering the country on grounds of public order and security. “

According to the Government Proposal, the amended section 167 of the Act shall better correspond to the requirements laid down in Article 14 of the Directive, than does the legislation in force. The Government Proposal explains that those who burden unreasonably the national system of social assistance shall not be regarded to have the right of residence, and if a person does not have the right of residence, her entry may be refused. According to the Proposal, what constitutes an unreasonable burden to social assistance system shall be decided case by case. The Proposal refers in this connection to the Preamble of the Directive. Furthermore, the Proposal emphasizes the significance of Article 14 (3) of the Directive. It is further stated in the Proposal that the authorities shall use discretion when deciding whether to refuse the entry or not on the ground that the person concerned does not meet the requirement of not burdening unreasonably the Finnish social assistance system. Refusing the entry is thus not an automatic consequence of burdening the social assistance system. The Proposal refers to cases C-456-02 *Trojani* and C-184/99 *Grzelczyk*. It is stated in the Proposal that refusing an EU citizens entry on the ground of lack of resources comes into question only in very rare cases. It is further reminded that it is not possible to exclude an EU citizen from Finland on this ground and, thus, the person concerned can enter the country again despite of the previous refusal of entry.

### *Collins*

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

***Ioannidis***

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

***Van Lent and Commission v. Denmark***

Finland has amended the tax legislation so that now a person who resides permanently in Finland and whose employer is permanently established in another Member State can use in Finland a company car registered in the other Member State temporarily for work purposes without paying the car tax in Finland. The use of the car is regarded as temporary if, during a period of 12 months, the car is used less in Finland than abroad. This same applies to self-employed persons. This amendment of the legislation is based on the decision by the ECJ in case C-232/03. The main rule on taxation of cars is still that a person residing permanently in Finland is obliged to register her car and to pay the tax for the car in Finland.

***Sports sector***

No information was found on whether the public authorities would have taken any measures on grounds of the practice of the ECJ in the sports sector.

## **CHAPTER VII. OTHER POLICIES WITH REPERCUSSIONS ON FREE MOVEMENT OF WORKERS**

### ***1. Application of the community preference principle***

Before the Directorate of Immigration may issue a third country national applying for a residence permit for the purpose of working in Finland with the permit, employment office considers whether there is labour suitable for the work in question already available in the labour market, and ensures that issuing the applicant with the permit will not prevent a person already in the labour market from finding employment. In this consideration, as persons already at the labour market are Finnish citizens and the citizens of the other Member States as well as third country nationals residing lawfully in Finland. The provisions on residence permits for employed and self-employed persons are contained in chapter 5 of the Aliens Act.

### ***2. Application of general rules of the Aliens Act to cases involving Union citizens or their family members***

Section 50 of the Aliens Act concerns issuance of residence permits to Finnish citizens' family members. The Government proposes in Government Proposal 205/2006 that new subsection 3 would be added to this provision. According to the amended provision:

Section 50

#### **“Issuing residence permits to family members of Finnish citizens**

Family members of Finnish citizens living in Finland, and minor unmarried children of the family members, are issued with a continuous residence permit on the basis of family ties upon application filed in Finland.

Relatives other than family members of Finnish citizens living in Finland are issued with a continuous residence permit if refusing a residence permit would be unreasonable because the persons concerned intent to resume their close family life in Finland or because the relative is fully dependent on the Finnish citizen living in Finland. Such other relatives shall remain abroad while the application is processed.

If a Finnish citizen has enjoyed her right to freedom of movement as laid down in the Directive 2004/38/EY and moved to or resided in another Member State, and a family member has moved with her or followed her later, the provisions laid down in Chapter 10 of this Act shall be applied in the family member's entry to and residence in Finland.

Issuing a residence permit referred to in this section does not require that the alien has secure means of support.”

Thus, provisions of chapter 10 concerning free movement of EU citizens shall be applied to cases involving family members of Finnish citizens, provided that the condition of previous legal residence is fulfilled. If this requirement is not met, the general provisions on residence permit for family members of Finnish citizens as laid down in chapter 4 of the Aliens Act are applicable. It is worth noting that the notion of ‘family’ as defined in chapter 4 of the Act is more restricted than under chapter 10 of the Act.

Furthermore, the Government proposes a new section 50a to be added in the Act. According to the proposed provision:

Section 50a

#### **“Issuing a residence permit to a family member of a Union citizen who lives in Finland**

A family member or a minor child of a family member of a Union citizen or a person compared to Union citizens who lives in Finland and who has registered her right of residence, whose right of residence can not be registered under Chapter 10 of this Act, shall be issued with a continuous residence permit on grounds of a family tie. The residence permit shall be applied either in Finland or abroad.

Issuing a residence permit under this provision to a family member of a citizen of a Nordic state or a minor child of such person does not require secure income.”

This proposed provision would be applied in cases where the right of residence of a Union citizen's family member could not be registered because the requirements for that such as the requirement concerning secure income would not be met. Furthermore, according to the Proposal 205/2006, this provision would be applied in cases where a Union citizen concludes marriage after arriving in Finland and where the condition of previous legal residence would thus not be met. The notion of family in chapter 10 of the Aliens act is more extensive than the notion of family under the general rules on residence permit on ground of family ties. Under the general rules on family reunification, the notion of family covers children under the 18 years of age and the spouse, but not the sponsor's and her spouse's parents.

The Administrative Committee of the Parliament (HaVM 34/2006) proposed a new subsection 3 to section 47 of the Act. The proposed provision would be applicable in situations where the new family members of a (former) family member of a Union citizen, who has acquired an independent right of residence, would like to enter to Finland and to reside there as family members of the former family member of a Union citizen.

### ***3. Treatment of the citizens of the other Nordic countries***

Due to various agreements and historical arrangements between the Nordic countries special arrangements apply to the entry, residence, and departure of the citizens of the other Nordic countries. Provisions concerning the citizens of the Nordic countries are included in chapter 10 of the Act concerning EU citizens.

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 obliged to register their right of residence or to have a residence card. Furthermore, according to the Government Proposal 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. In case where a Nordic citizen is not able to prove her identity by an identity document, 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 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.

The Government proposes in Government Proposal 205/2006 amendments to the provisions concerning the Nordic citizens. Concerning section 157 of the Act, the Government proposes that the expression 'or holding a permanent residence card' would be abolished from subsection 1 because under the amended Act, residence cards would no longer be issued. Furthermore, the Government proposes amendments to section 169 of the Act concerning removing Nordic citizens from Finland. According to the Proposal, a citizen of Iceland, Norway, Sweden or Denmark, who has resided in the country legally for longer than five years may be deported from the country only on serious grounds of public order or public security, and who has resided legally in the country for the previous ten years may be deported only on imperative grounds of public security.

#### ***4. 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. The participation to integration measures is not compulsory.

According to the Act on integration, an immigrant who has moved to Finland after the 1<sup>st</sup> 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. Subsistence during the plan period is secured with integration assistance.

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.

No significant developments took place in this respect in 2006.

#### ***5. 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 countries and for citizen of Switzerland and their family members. Applicants must have resided 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 have been 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.

FINLAND

## CHAPTER VIII. EU ENLARGEMENT

### **1. Information on transitional arrangements regarding EU 8**

#### *1.1. Changes in national law and practice since previous national reports*

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, Liettuan, Unkarin, Puolan, Slovenian ja Slovakian kansalaisten ansiotyön edellytyksistä 309/2004, English version at <http://www.mol.fi/finnwork/en/trans.pdf>) laid 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 was applied to the access of citizens of these states to the Finnish labour market. During the transitional period the citizens of the states concerned were able, with some exceptions, to be engaged in gainful employment in Finland only if the employment authority issued a decision approving it. The employment authority could issue a permit if it considered that the vacancy in question could not be filled by persons already present at the Finnish labour market. As persons already at the Finnish labour market were counted the citizens of Finland and the old Member States as well as such citizens of third countries, who were entitled to work in Finland. The decisions by the employment authority approving access to the Finnish labour market were bound to a particular branch and not to a particular post. Therefore, it was possible to change jobs within the branch in question even without applying for a new permit from the employment authority. Changing branches required a new permit.

The Act on transitional measures was 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 had not left the Finnish labour market. Furthermore, the Act was not applied to the citizens of new Member States, who had, 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 were involved in the Finnish labour market. In additions to these situations, the Act was not applied in cases where the person concerned would have had a right to work in Finland without the permission of the employment authority if she had been a citizen of a non-EU state; the person concerned had a right of residence in Finland on some other ground than working (for example family members); and in situations of freedom of services where the employer was established in a new Member State and the work performed in Finland.

#### *1.2. Changes in position with regard to the second phase of the transitional arrangements*

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 labour markets (Valtioneuvoston selonteko Eduskunnalle siirtymäaikalain vaikutuksista sekä työvoiman ja palvelujen vapaan liikkuvuuden vaikutuksista työmarkkinatilanteeseen eri aloilla) (<http://www.eduskunta.fi>). The Government proposed in the report that the transitional measures should not be continued after the 30th of April 2006. The Parliament followed the proposal and thus the transitional measures were not continued. The transitional measures shall not be applied to citizens of Bulgaria and Romania.

#### *1.3. Details of the legal regime, including relevant legislation, applicable for the second phase*

The transitional measures applicable to the citizens of the new Member States are not continued in Finland. Worth noting in this context are, however, measures adopted by the Par-

liament in 2006, the purpose of which is to address, in particular, the problems related to the position of posted workers where the worker is in a contractual relationship with the company established in another state but where the work is performed in a company established in Finland (*vuokratyö*).

The Act concerning registration of information on employment of citizens of certain EU Member States (Laki eräiden Euroopan unionin valtioiden kansalaisten työntekoa koskevien tietojen rekisteröinnistä 418/2006) and the Act amending section 85 of the Aliens Act (Laki ulkomaalaislain 85 §:n muuttamisesta 419/2006) and the Act amending sections 5 and 7 of the Act on alien's register (Laki ulkomaalaisrekisteristä annetun lain 5 §:n ja 7 §:n muuttamisesta 419/2006) that were given on 2.6.2006 and that entered into force on 5.6.2006. This Act concern registering specified information concerning the employment of citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia at the aliens register in cases where the employment lasts for the minimum of 14 days and where the worker concerned has not registered her right of residence. The Act covers not only employees employed directly but also workers posted from another Member State to perform work in Finnish companies. The information to be registered includes the name, 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 in the employment. This information has to be given to the employment authority within 14 days of the day when the employment started. The employment authority registers the information in the aliens register. This registration procedure does not influence the EU citizen's duty to register her right of residence under the Aliens Act. Furthermore, there are no sanctions for the failure to register under this act. The act shall be in force for three years. Its objective is to enhance compiling statistics concerning the employment of the citizens of the new Member States and following up their employment situation. The act also facilitates the supervision of the working conditions in this kind of situations.

Furthermore, in 2006 the Act on posted workers (Laki lähetetyistä työntekijöistä 1146/1999) was amended so that now the minimum wage paid to workers 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. Agencies posting workers to Finland are obliged to have a representative in Finland. The agency or the representative is under a duty to collect information on the posted workers and the conditions for 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 of the work place. This reform entered into force on 1.1.2006. Furthermore, the Act on safety at work (Työturvallisuuslaki 738/2002) was reformed so that now all workers working at large construction works have to hold an identity card that indicates the employer of the worker concerned. This reform entered into force on 1.2.2006.

The Parliament also amended legislation that concern the taxation of income paid to workers posted from abroad (Tulooverolaki 1535/1992, Verotusmenettelystä annettu laki 1558/1995, Rajoitetusti verovelvollisen tulon verottamisesta annettu laki 627/1978, Ennakokoperintälaki 1118/1996 sekä Yritys ja yhteisötietolaki 244/2001). According to the amended legislation, the income earned from work performed in Finland shall be regarded as income earned from Finland and thus taxed in Finland independent of for how long the worker stays in the country. The employer established in another state or the representative of the employer is under obligation to give to the tax authority information on posted workers working in Finland. This shall, however, not be applied if an international tax treaty prevents taxing the income in question in Finland. The amended legislation shall be applied to income earned after the 1.1.2007. The purpose of this legislative reform is to bring the treatment of workers posted from companies established abroad better in line with the treatment of workers employed directly.

#### 1.4. Practical problems, individual cases and national case law pertaining to the transitional arrangements

As the transitional measures did not apply to movement of workers within the framework of freedom of services, the citizens of the new Member States could enter the Finnish labour market as posted workers through agencies that were established in the other Member State and that hired workers to Finland. In fact, it is argued that the Act on transitional measures was an important factor in creating a situation in which it is for the potential employers easier to by a service from another Member State than to employ a worker directly. In case of posted 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. Posted workers are used in particular but not only in construction and restaurant sectors.

The majority of the persons admitted to the Finnish labour market under the Act on transitional measures were Estonian citizens. Estonians constitute also the largest group of the posted workers. 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 near 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.

In 2006 there were signs indicating that due to the labour shortage in Estonia the number of Estonian workers in the Finnish labour market has started to decrease.

#### *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)<sup>3</sup>*

	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/o4\\_maahanmuutto/o2\\_ulkom\\_tyonteko/workeuhyv.pdf](http://www.mol.fi/mol/pdf/fi/o4_maahanmuutto/o2_ulkom_tyonteko/workeuhyv.pdf))

<sup>3</sup> No updated information is available.

## FINLAND

*Decisions by the labour offices according to the branch (May – December 2004)<sup>4</sup>*

<b>Branch</b>	<b>Positive</b>	<b>Negative</b>	<b>Total</b>
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
<b>Total</b>	<b>2104</b>	<b>161</b>	<b>2265</b>

Source: *Ministry of Labour*

([http://www.mol.fi/mol/pdf/fi/04\\_maahanmuutto/02\\_ulkom\\_tyonteko/workeuhyv.pdf](http://www.mol.fi/mol/pdf/fi/04_maahanmuutto/02_ulkom_tyonteko/workeuhyv.pdf))

***2. Information on the discussion in 2006 on possible transitional measures for workers from Bulgaria and Romania including short summary of transitional measures applicable on 1 January 2007***

No transitional measures are applied to citizens of Bulgaria and Romania.

<sup>4</sup> No updated information is available.

## CHAPTER IX. STATISTICS

*Number of citizens of the other EU States living in Finland: 31.12.2006*

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<i>Country</i>	<i>total</i>	<i>men</i>	<i>women</i>
Austria	317	194	123
Belgium	211	142	69
Bulgaria	353	196	157
Check	239	109	130
Cyprus	less than 40		
Denmark	657	441	216
Estonia	17 543	7 927	9 616
France	1 233	809	424
Germany	2 957	1 857	1 100
Great Britain	2 915	2 340	575
Greece	396	326	70
Hungary	719	349	370
Italy	1 204	897	307
Ireland	332	269	63
Latvia	513	195	318
Lithuania	463	185	278
Luxemburg	less than 20		
Malta	less than 20		
The Netherlands	926	736	190
Poland	1 088	529	559
Portugal	239	165	74
Romania	743	404	339
Slovakia	148	83	65
Slovenia	less than 40		
Spain	855	566	289
Sweden	8 295	4 743	3 552

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Source: Väestörekisterikeskus/Population Register Centre

Compared with the previous year, the numbers concerning all Member States have increased.

## FINLAND

*Number of Registrations of the EU citizens Right of Residence<sup>5</sup>*

<i>2004</i>				
<i>Country</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>total</i>
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: *Väestörekisterikeskus/Population Register Centre*

<sup>5</sup> There are no published statistics available on the situation in 2006.



## FINLAND

*Immigration and emigration by country of exit/entry and sex*

2005

*Immigration (Foreign citizens)*

<i>From</i>	<i>total</i>	<i>men</i>	<i>women</i>
Austria	42	20	22
Belgium	41	24	17
Czech Rep.	38	23	15
Cyprus	12	7	5
Denmark	91	54	37
Estonia	1930	920	1010
France	191	129	62
Germany	338	199	139
Greece	43	35	8
Hungary	81	37	44
Ireland	41	33	8
Italy	142	102	40
Latvia	88	38	50
Lithuania	66	23	43
Luxemburg	-	-	-
Malta	3	1	2
the Netherlands	142	97	45
Poland	116	53	63
Portugal	25	14	11
Slovakia	37	29	8
Slovenia	5	3	2
Spain	149	105	44
Sweden	743	461	282
United Kingdom	327	252	75

Source: *Tilastokeskus/Statistics Finland*

## FINLAND

2005

*Emigration (Foreign citizens)*

Finnish citizens

<i>To</i>	<i>total</i>	<i>men</i>	<i>women</i>	<i>total</i>	<i>men</i>	<i>women</i>
Austria	115	43	72	87	30	57
Belgium	206	101	105	189	95	94
Czech Rep.	48	29	19	19	16	3
Cyprus	18	6	12	17	5	12
Denmark	363	146	217	303	107	196
Estonia	545	368	177	281	206	75
France	293	127	166	218	78	140
Germany	717	338	379	577	261	316
Greece	66	27	39	55	18	37
Hungary	64	37	27	42	26	16
Ireland	143	61	82	134	55	79
Italy	198	72	126	165	53	112
Latvia	27	13	14	21	11	10
Lithuania	16	9	7	7	6	1
Luxemburg	63	29	34	60	27	33
Malta	1	1	0	1	1	0
Netherlands	201	90	111	159	61	98
Poland	62	34	28	33	19	14
Portugal	31	18	13	22	12	10
Slovakia	5	2	3	4	2	2
Slovenia	4	1	3	3	0	3
Spain	643	334	309	584	292	292
Sweden	3301	1691	1610	2823	1418	1405
UK	1319	474	845	1133	354	779

*Source: Tilastokeskus/Statistics Finland*

## FINLAND

*Finns' (aged 15 or over) immigration and emigration by country of exit/entry and educational level*

2005							
Country of exit	total	1	2	3	4	5	6
Austria	52	7	21	6	2	16	0
Belgium	115	21	26	9	10	45	4
Czech Rep.	4	0	2	0	1	1	0
Cyprus	4	2	0	1	1	0	0
Denmark	219	20	130	11	22	27	9
Estonia	103	30	42	15	7	9	0
France	131	42	32	10	16	29	2
Germany	446	104	121	49	51	108	13
Greece	40	15	15	6	2	2	0
Hungary	26	5	9	2	4	6	0
Ireland	60	8	22	6	15	9	0
Italy	78	18	31	8	11	9	1
Latvia	14	1	6	1	1	5	0
Lithuania	7	0	3	2	0	2	0
Luxemburg	29	9	6	3	2	9	0
Malta	0	0	0	0	0	0	0
The Netherl.	117	15	48	12	17	22	3
Poland	20	4	7	1	3	5	0
Portugal	16	2	4	4	2	4	0
Slovakia	0	0	0	0	0	0	0
Slovenia	2	0	2	0	0	0	0
Spain	434	161	141	64	26	35	7
Sweden	2702	1 181	984	159	177	180	21
United King.	496	82	213	58	59	78	6

1 Basic education or unknown

2 Upper secondary education

3 First stage of tertiary education

4 Lower level of upper education

5 Higher level of upper education

6 Second stage of tertiary education

*Source: Tilastokeskus/Statistics Finland*

## FINLAND

*Finns' (aged 15 or over) immigration and emigration by country of exit/entry and educational level*

2005							
Country of exit	total	1	2	3	4	5	6
Austria	71	8	36	6	7	11	3
Belgium	153	17	42	11	19	56	8
Czech Rep.	19	4	8	2	3	2	0
Cyprus	13	2	5	2	2	2	0
Denmark	277	30	168	8	29	34	8
Estonia	248	59	116	34	16	18	5
France	172	25	69	12	28	37	1
Germany	462	75	154	43	49	124	17
Greece	41	4	24	7	2	4	0
Hungary	37	3	14	6	3	11	0
Ireland	126	13	65	9	20	17	2
Italy	134	26	53	10	15	25	5
Latvia	18	2	6	2	2	6	0
Lithuania	7	1	4	1	1	0	0
Luxemburg	39	2	10	1	4	20	2
Malta	1	0	0	0	0	1	0
Netherlands	141	131	57	8	25	34	4
Poland	27	7	6	2	3	9	0
Portugal	20	5	8	4	1	2	0
Slovakia	4	0	2	0	0	2	0
Slovenia	3	0	2	0	1	0	0
Spain	521	143	178	77	58	60	5
Sweden	2431	959	1014	107	160	170	21
UK	936	144	421	92	119	145	15

1 Basic education or unknown

2 Upper secondary education

3 First stage of tertiary education

4 Lower level of upper education

5 Higher level of upper education

6 Second stage of tertiary education

Source: Tilastokeskus/Statistics Finland

*Finnish citizenship granted*

2005	
Former citizenship	
Denmark	2
Estonia	291
France	14
Germany	29
Italy	10
Poland	12
Sweden	198
United Kingdom	33

Source: Statistical Yearbook of Finland 2006

**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 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 (Työttömyysturvalaki 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 and only 2-3 % of pension coverage is based on supplementary schemes. The provisions of the Directive 98/49/EC were implemented in the national legislation by the Act amending the act on private sector pension insurance companies (Laki työeläkevakuutusyhtiöistä annetun lain muuttamisesta 419/2003), the Act amending the act on insurance offices (Laki vakuutuskassalain muuttamisesta 420/2003) and Act amending the act on company pension funds (Laki eläkesäätiölain muuttamisesta 421/2003). No indication on possible problems in this area was found during the reporting period.

*Legal practice*

No relevant court decisions were found.

The case 3001/4/04 of 31.10.2006 by the Parliamentary Ombudsman is, however, worth noting in this connection. The Ombudsman issued a reminder to the members of the Insurance Court for having acted unlawfully when reaching a decision on a complaint concerning pensioners' care allowance in 2004. When making its decision, the Insurance Court failed to take into account the Regulation 1408/71 and the relevant case law of the ECJ. The Insurance Court as the final appeal instance did not equate the disability pension that the complainant received from Sweden with pensions paid from Finland although equal treatment as specified by the Regulation would have required it. In this decision the Ombudsman also criticised the Social Insurance Institution for not guiding the work of its local offices sufficiently in what comes to benefits covered by Regulation 1408/71 and the case law of the ECJ.

*Recent national reports, legal literature*

Nothing to report.

**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 nevertheless not required; the statement of the person concerned is sufficient indication of the secure income. She resorts continuously 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 condition 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 in force in 2006, students could not be issued with a permanent residence card. The Government Proposal 205/2006 proposes, however a change to this and under the amended Aliens Act student’s, too, would be entitled to permanent residence.

No foreign student’s quotas are applied in Finnish universities.

According to section 18 (1) of chapter 5 of the Act on universities (Yliopistolaki), each university has autonomy to decide on admitting students. According to section 18b of chapter 5 of the same Act, a university may admit a person who does not have formal qualifications, if the university considers that she has otherwise acquired sufficient knowledge and facilities. This makes it possible to admit a person who has obtained a diploma from a private institution. The decisions on admittance are taken in this kind of situations on a case by case basis. The question of diplomas obtained from private institutions has not become an issue in Finland.

*Recent legal literature*

Nothing to report.

**CHAPTER XII. MISCELLANEOUS**

Nothing to report.

## 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 yhteisestä 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>.



## APPENDIX II

### *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>.