

REPORT
on the Free Movement of Workers
in Finland in 2007

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Introduction

The Act amending the Aliens Act, that transposed the provisions of the Directive 2004/38/EC (hereafter the Citizenship Directive) to the domestic legislation entered into force on 1.5.2007. With certain exceptions, the transposition of the Citizenship Directive resulted in treatment that may be regarded from the point of view of EU citizens and their third country national family members as more favourable than the previous domestic legislation. More questions are now dealt with in a more detailed manner in legislation instead of being left for administrative and judicial practice. For example the 'sliding scale' of the grounds for expulsion is now taken to the Aliens Act.

The most significant amendments made to the Act on the basis of the Citizenship Directive concerned treatment of Union citizens' third country national family members and students. Regarding third country national family members, the amended legislation lays explicitly down the requirement of previous lawful residence as a precondition for enjoying the free movement. This means that to fall within the scope of application of the rules on free movement, third country national family member must have resided previously lawfully in another Member State with her family member. Under the amended Act 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. Furthermore, third country national family members can now appeal to an administrative court in case of a negative decision on a visa application. Other third country nationals do not have this right. Before the transposition of the Citizenship Directive the Finnish legislation did not recognise the right to permanent residence in case of students. Now students and their family members have a right to permanent residence under the same conditions as other EU citizens and their family members. Under the amended legislation, the right to permanent residence shall be acquired in all cases after five years of residence in Finland. Before the amendment the right to permanent residence was acquired after four years of residence.

According to some estimates the number of posted workers from Estonia and the other Baltic countries as well as from Poland continued to increase in 2007. No exact figures on this are available, though. According to the Central Criminal Police and the occupational safety and health authorities, it is relatively common that even severe problems pertain to the working conditions of posted workers. For example the wages are often below the wages paid for Finnish employees or even below the minimum wages, supplementary payments, such as overtime compensation, are not paid, the workers are not sufficiently insured, and occupational health care is not organised. The legislative measures adopted in 2006 with the purpose of alleviating these problems have turned out to be relative ineffective.

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. An 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 transposed the provisions of the Directive 2004/38/EC to the domestic legislation entered into force on 1.5.2007.

The EC rules concerning entry, residence and departure of EU citizens and their family members were attempted to be taken into account already in the overall reform of the aliens' legislation, that took place in 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 concerning free movement of EU citizens and their family members and other relatives were based on EC free movement legislation and the relevant decisions by the European Court of Justice (hereafter ECJ). Furthermore, 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 Act. As the text of the Directive was still being drafted when the Aliens Act was adopted, the Act was not completely concordant with what became the final version of the Directive. Therefore further amendment of the Aliens Act was needed to bring it in line with 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 the 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 amendment entered into force on 1.5.2007. In this report the Aliens Act as amended by the Act 360/2007 is treated as the 'text in force'.

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 citizens of Iceland, Liechtenstein, Norway and Switzerland.

A. ENTRY

Texts in force

Section 155 of the Aliens Act concern EU citizen's 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.

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 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, according to the Government Proposal 205/2006 based on article 5.4 of the Directive. This domestic provision expresses the rule that if a Union citizen or her (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 the 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.

Section 156 of the Act concerns public order and security. Aliens Act defines the fact that a person does not jeopardize public order and security and public health as a requirement for entry and residence. This is not in line with community law according to which public order and security and public health are grounds for restricting the right to free movement.

Section 156

"Public order and security

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

Preventing entry into or removal 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 convictions. The behaviour of the alien must represent a genuine, immediate and sufficiently serious threat to fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention will not be accepted."

The wording of new section 156 of the Act is, according to the Government Proposal 205/2006 based on article 27 of the Directive. According to the Government Proposal 205/2006, the current formulation of the national provision emphasises more strongly than the previous formulation 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. The Proposal clarifies that mere disturbance to public order or security is not a sufficient ground for restricting freedom of movement. The Government Proposal 205/2006 refers in this context to case 30/77 *Bouchereau*.

The Administrative Committee of the Parliament pointed 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 with distinct meanings and that they 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 laws are interpreted and applied in practice, 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 public order and public security grounds will be applied in practice in Finland.

New section 156a of the Aliens Act concerns public health. According to this provision:

Section 156a

“Public health

A Union citizen's or her family member's entry and residence can be restricted on grounds 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 which would justify restrictions to freedom of Finnish citizens who suffer or are suspected to suffer the disease in question to prevent the spreading of the disease.

A disease that jeopardises public health, that occurs after three-months from the entry to Finland, may 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 she 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 disease from spreading. 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.

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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 previous legislation as that did not specify for how long after the individual's entry to Finland this ground for refusing entry could have been appealed.

Amended section 167 of the Aliens Act lays down the grounds on which EU citizens' and their family members' entry to Finland may be refused. Refusal of entry may take place either at the frontier when the person in question is trying to enter Finland, or after she has *de facto* entered the country, but before her right of residence has been registered or she has been issued with a residence card. Refusal of entry may thus take place months after the EU citizen or her family member has entered Finland and *de facto* settled there. Once a person has registered her right of residence or obtained residence card, she shall be removed from the country by deporting. The position of an individual is stronger in context of deportation than in context of refusal of entry. The domestic arrangement concerning removal from the country is problematic in light of community standards: EU citizens' and their family members' treatment depends on whether their right of residence has been registered or they have obtained residence card and not on the existence of the right of residence.

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 excluded from Finland on grounds of public order and security. “

Subsections 1 and 4 apply in particular in situations where the foreigner is trying to enter the country, and subsections 2 and 3 when the foreigner is already in Finland but has not yet registered her right of residence or obtained a residence card. It is argued in the Government Proposal 205/2006 that compared with the previous legislation, the amended section 167 of the Aliens Act meets better 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 states further 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 citizen's 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.

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Subsection 3 of section 167 refers to situations where the person in question is in a position where she should register her right of residence or apply for a residence card, i.e. she has resided in Finland already for three months and she is not a job-seeker, but she does not meet the requirements for continuing her residence. The fact that she does not meet the requirements for the right to reside in the country for longer than three months is decisive in this case, not the fact that she has not registered her right of residence or applied for residence card. The formulation of the provision is, however, misleading because it refers to requirements for *registering the right of residence or being issued with the card* and not to requirements for *right of residence*.

According to new subparagraph 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 exclusion order as provided for in the section 170 § of the Act. Lodging the application on lifting the exclusion order does not prevent the enforcement of the decision on refusing entry. Furthermore, 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. The formulation of subsection 4 of section 167 is problematic because the refusal of entry is defined as the automatic consequence of the previous exclusion from Finland. According to this provision the authorities may rely on the earlier decision on refusal of entry no matter for how long time ago it was issued and are not obliged to assess whether the behaviour of the person concerned continues to constitute a real, immediate and sufficiently serious threat to fundamental interests of the society so that the refusal of entry is still justifiable.

Section 168b of the Aliens Act that implements Article 28 of the Citizenship Directive and lays down obligation to carry out general consideration when taking the decision on deporting an EU citizen or her family member, is not applicable in situations of refusal of entry. This means that under the Aliens Act authorities are not under obligation to perform general consideration when removing from the country a person who has not registered her right of residence or obtained a residence card no matter for how long she has *de facto* resided in Finland. This situation is hardly in line with the Citizenship Directive.

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

Section 172

“Enforcing the removal of a 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 ur-

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gency, this period has to last at least one month from the day when the decision was served to the person concerned. During this period, the authorities may not enforce the decision.

If the removal order is enforced after more than two years from when 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 expulsion order was issued.”

From this provision follows that if the matter is justifiably urgent, the decision on refusing an EU citizen’s and her family member’s entry at the border when she is entering Finland on the ground that she does not meet the conditions laid down for entry - or in other words on the ground that she does not hold a valid passport or identity card, or the required visa, or that she is regarded as a danger to public order or public security or to public health - may be enforced immediately unless an administrative court orders otherwise. If the person concerned is already in Finland but has not registered her residence or obtained residence card, the decision on refusing her entry may be enforced immediately if it is based on the fact that she is regarded as a danger to public order or security and the matter is justifiably urgent. The Government Proposal uses as an example of substantiated case of urgency - and thus of a case where the removal decision may be enforced immediately - a situation where the behaviour of the person to be removed jeopardizes public order or public security without qualifying this any further. An interim order preventing the enforcement of the decision on refusing entry may be applied from an administrative court. Neither from the Aliens Act nor from general administrative law follows a clear prohibition to enforce the removal decision before the court has given the decision on the interim measure. The decision on deporting an EU citizen or her family member may be enforced only when it has become final. The reach of the legal protection afforded to EU citizens and their family members in the context of removal is thus very problematically dependent on whether the right of residence has been registered or residence card obtained.

Of relevance in the context of EU citizens’ and their family member’s entry is also subparagraph 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 exclusion from the country 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 such situations the person concerned may be sentenced to fine.

The normal punishment for this offence is 20 day-fines, but depending on the circumstances it can vary between 15 and 50 day-fines. Issues to be taken into account when deciding on the number of day-fines include the ground for the exclusion decision, and whether the person in question has tried to enter Finland only once or several times. The amount of one day-fine is 1/60 of the net monthly income minus 255 euros. Each minor child reduces the amount for 3 euros. The minimum day-fine is 6 euros.

B. RESIDENCE

Texts in force

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

Section 158

“EU citizens’ short-term residence

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

What is prescribed in 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, a Union citizen may reside in Finland as a jobseeker for a reasonable time without registering her right of residence if she continues to look for employment and has a real chance of finding it.”

The Government Proposal 205/2006 states that subsection 1 of section 158 is based on article 6.1. of the Citizenship Directive. Subsection 2 that concerns short-term residence of third-country national family members was added to the Act when transposing the Citizenship Directive. It is stated in the Government Proposal that according to this section the precondition for the right of residence 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.

Section 158a of the Aliens Act concerns the right to reside longer than three months.

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 an economic activity as a paid employee or a self-employed person;
- 2) she has for herself and her family members sufficient funds and, if necessary, health insurance so that they do not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or to other comparable benefits or in other similar manner, become a burden on the Finnish social assistance system during their residence; or
- 3) she has enrolled as a student to a accredited educational institution in Finland with the main purpose of following a course of study 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 in other similar manner, become a burden on 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.

The right of residence as prescribed in subsection 1 of this section also applies 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 subsection 1 of this section.

If the right of residence in bases on studying in Finland, the following persons only have the right of residence as family members of a Union citizen:

- 1) the married spouse of a Union citizen; and
 - 2) children under 21 years of age of the Union citizen or her spouse or children dependent on her.
- Family members of Nordic citizens have a right of residence even if they do not have secure means of support.”

Section 158a was added to the Act when the Citizenship Directive was transposed. According to the Government Proposal 205/2006, this provision corresponds to previous section

159 of the Act as well as 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. No further proof of sufficiency of income may be required. Furthermore, it is reminded in the Proposal that article 14.4 of the Directive prohibits removal of an employee or a self-employed person even though she would constitute a burden on the social assistance system of the host country.

According to the Proposal 205/2006, when applying section 158a of the Act the crucial questions are *who is an employee* and *can the person in question be regarded as such*. The Proposal continues that the employment has to be real and not merely ostensible and that before the right of residence can be registered, evidence of the employment must be shown. The Proposal states that it is not possible to define in the Aliens Act what constitutes employment, but continues to clarify that employment is real economic activity where the employee gets remuneration for her work. The work can be part-time or low-paid. The purpose must, however, not be to circumvent immigration legislation. The Proposal does not clarify what is meant by 'circumvention of immigration legislation' and there is no judicial practice on this. Probably that would be the case for example in situations where the parties have concluded employment contract with the sole purpose of registering the right of residence, but no work is really done and no remuneration paid. 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 when registering her right of residence the person concerned can prove that she has sufficient resources for her stay by a manner chosen by herself.

The Government Proposal 205/2006 elaborates on what may be regarded as a burden on 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 as 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 assessed 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.

Subsections 2 and 3 of section 158a lay down the requirement of health insurance. The Government Proposal 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 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 section 158a of the Act.

Section 153a lays down exceptions to the application of chapter 10 of the Aliens Act.

Section 153 a

“An exception to the application of the provisions of this Chapter

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.

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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 may not be applied.”

According to the Government Proposal 205/2006, this provision covers situations that fall outside the scope of freedom of movement on the ground that the person concerned does not meet the preconditions for that, but where she should still be allowed to remain in Finland under chapter 4 of the Aliens Act concerning issuance of residence permits to foreigners. The Proposal emphasizes that the application of section 153 a is exceptional and that as the main rule the provisions concerning freedom of movement should be applied. 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 in case where she would not meet the requirements laid down for freedom of movement as defined in chapter 10 of the Aliens Act. Section 153a may also be applied also in situations where it is regarded to be justifiable to depart from applying the requirement concerning secure income.

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 later stage when the requirements for that are met. The obtained residence permit does not preclude registration of the right of residence.

Section 159 of the Act concerns registration of a Union citizen’s right of residence.

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 provided proof 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 of the Act describes how the registration of residence should be conducted. The requirements for registration are contained in section 158a of the Act. The Government Proposal refers in this connection to section 185 of the Act that criminalises the failure to register the right of residence. According to section 185 of the Act, an 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 entry. The registration can be done at any point during those three months. The requirement for registration is, however, that the residence lasts at least for three months. The residence should thus not be registered if the person in question intends to reside in Finland for shorter than that.

Subsection 2 of section 159 is, according to the Government Proposal, based on article 8.2 of the Citizenship 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 by the authorities, and the existence of 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. After the registration of

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the residence, the person concerned will be assigned home municipality. Thereby she enters 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.

Section 159a of the Act defines what information and proof the EU citizen 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 seeking to obtain the certificate for registration, the applicant has to present a valid identity card or a passport and:

- 1) if the applicant is an employee, a confirmation of engagement from the employer or a certificate of 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, proof of 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 that she has comprehensive health insurance coverage as well as a declaration or other proof indicating that she has sufficient funds for herself and her family; the applicant must 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.

Section 160 of the Act concerns retaining the status of a worker or a self-employed person. This provision is based on article 7.3 of the Directive.

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.

New section 161f of the Aliens Act is based on article 14.1 and 14.2 of the Directive.

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 her residence.

A Union citizen and her family member shall have the right provided for in sections 158a, 161d or 161e to reside in Finland for longer than three months if 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 with respect 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.

Section 161g of the Aliens Act concerns the right to permanent residence. This provision is based on Article 16 of the Directive.

Section 161g

“The right to permanent residence

Union citizens who have resided in Finland lawfully for a continuous period of five years shall have the right to permanent residence. This right is not subject to the preconditions laid down for short term residence or for residence lasting for longer than three months.

Subsection 1 shall apply also to third-country national family members who have resided lawfully 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.”

Before the transposition of the Citizenship Directive and the entering into force of section 161g of the Act, the right to permanent residence was obtained after four years of continuous residence in Finland. In the Government Proposal 205/2006 the Government justifies this amendment by arguing that it serves the purpose of harmonisation by bringing the Finnish legislation in line with that of the other Member States. The Government also argues that this amendment has very little practical effect in the actual position of the persons concerned.

Section 163 of the Act concerns the right to permanent residence in cases of persons no longer working.

Section 163

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

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

- 1) has, upon termination of her employment, reached the age entitling her to old-age pension and worked or been engaged in self-employed activity in Finland for at least the 12 months immediately preceding the termination of her employment, and has 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 returning to Finland daily or at least once a week.

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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 to permanent residence.

For acquiring the right to 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 her Finnish citizenship upon marriage to the worker or self-employed person concerned.

Family members of an employee or a self-employed person who has acquired the permanent right of residence under subsection 1 or 2, have a permanent right of residence in Finland.

If an employee or a self-employed person who has not yet acquired the right to permanent residence under subsection 1 or 2 dies while still engaged in working life, 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."

Section 161h lays down rules on a document certifying the permanent residence of Union citizens.

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 the permanent residence.

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

EU citizens entitled to permanent residence are no longer issued with a permanent residence card.

Section 164 of the Aliens Act concerns the right to gainful employment and self-employed activities.

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."

Worth noting here is section 185.1 of the Aliens Act that concern violation of the Act.

Section 185

"An alien who ... through negligence fails to comply with the obligation to register her residence or apply for residence card of permanent residence card ... shall be sentenced to a fine for violation of the Aliens Act."

The number of day-fines for this offence is normally 10, but it may vary between 6 and 50. See under title 'A. Entry' on how the amount of day fines is counted.

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Miscellaneous (administrative practices etc.)

Fee for the registration of the right of residence and for the issuance of a family members residence card is 40e.

In certain police districts such as in Helsinki there is still about 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.

C. DEPARTURE

Texts in force

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

Section 156

"Public order and public security

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

Preventing entry into or removal 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 convictions. The behaviour of the alien must represent a genuine, immediate and sufficiently serious threat to fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention will not be accepted."

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.

See under title 'A. Residence' for further information on these provisions.

Section 165 of the Aliens Act concerns cancellation of registration of the right of residence and a 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 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.

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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.

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 accepted, the decision shall state the period during which the right or the card shall not be cancelled.”

According to the Government Proposal 205/2006, subsection 4 of section 165 is based on article 35 of the Citizenship 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 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.”

Section 167 of the Aliens Act lays down grounds for refusing EU citizens’ and their family members’ entry. It is worth noting that as stated above under title ‘A. Residence’, refusal of entry means, according to section 142 of the Aliens Act, 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 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. According to section 143 of the Aliens Act, deportation means removing from the country an alien whose residence has been registered or who has obtained residence card, or who continues to reside in the country after her registered residence or residence card has expired.

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. “

Further information on this provision is included under title ‘A. Residence’.

Section 168 of the Aliens Act concerns the grounds for deporting Union citizens and their family members.

Section 168

“Grounds for deporting a Union citizen and her family member

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 pub-

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lic 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."

According to the Government Proposal 205/2006, section 168 is 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', they are elaborated on in the Government 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 ties in Finland. The Proposal clarifies that 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 a behaviour that can be considered to constitute jeopardy to public order or security. In this kind of cases a further precondition for the deportation has been the existence of 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 would not lead to deportation. Committing crimes continuously, or participating to 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 be a ground for deportation. Regarding 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 to prevent deporting the parents of a minor.

Section 168a of the Aliens Act concerns removal of a worker or a person who seeks employment.

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."

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This provision was added to the Aliens Act when the Citizenship Directive was transposed. According to the Government Proposal 205/2006 it is based on article 14.4 of the Directive.

Section 168b of the Aliens Act concerns the general consideration in cases of deportation. This provision, too, was added to the Act when the Citizenship Directive was transposed. The Government Proposal 205/2006 states that this provision, based on article 28 of the Directive, shall be applied only in cases of deportation and not in cases of refusing entry. This is very problematic because refusal of entry under section 167 § of the Aliens Act can take place months after the person concerned has *de facto* entered the country. It is difficult to see any justifiable grounds for why general consideration as meant in Article 28 of the Directive should not be carried out in such situations.

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, 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.”

Section 170 of the Aliens Act concerns exclusion from the country.

Section 170

“Deciding on exclusion and abolishing exclusion decisions

If the decision on removing a Union citizen or her family member from the country is based on the fact that the person concerned is regarded as a danger to public order or public security or public health, she may be prohibited from entering the country for a maximum of fifteen years.

Upon application, the exclusion order may be abolished in part or in full on the ground of a change in the circumstances or on an important personal ground. The decision given to such an application shall be taken within six months from when the application was lodged.”

Subsection 2 of section 170 is based on article 32.1 of the Directive.

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 a 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.”

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 from the country.

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Section 172

“Enforcing the removal of a 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 this period, the authorities may not enforce the decision.

If the removal order is enforced after more than two years from when 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 expulsion order was issued.”

Further information on this provision is included under title ‘A. Residence’.

Section 172a concerns the abuse of rights. This provision is based on article 35 of the Directive.

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.

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.”

Judicial practice

In 2007 the administrative courts gave several decisions that concerned application of section 156 of the Aliens Act in cases of expulsion. Compared with the previous practice, the latest decisions indicate that the Finnish practice is now better in line with the EU law on free movement. Courts tend to accept expulsion on grounds of public policy and public security in cases where the person concerned has rendered guilty of crimes that manifest professionalism such as repeated grave drug offences, armed robbery, or trafficking on human beings. This was the case for example in following decisions by the Administrative Court of Helsinki: decision 07/0136/3 of 30.1.2007, 07/0936/3 of 25.6.2007 (repeated drug offence); 07/1095/3 of 13.8.2007 and 07/0733/3 of 14.5.2007 (trafficking of human beings); 07/1225/3 of 13.9.2007 and 07/1226/3104 of 13.9.2007 (armed robbery). Minor offences such as possession of small amounts of drugs or traffic offences were no longer regarded as manifestations of behaviour that jeopardizes public order and security and therefore the expulsion was not justified in such cases.

D. REMEDIES

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

Section 190

“A decision taken by the Directorate of Immigration, the police, the border check authority, 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.

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 taken by an administrative court as referred to in this Act may be appealed to the Supreme Administrative Court if the Supreme Administrative Court grants a leave to appeal. A leave to appeal may be granted 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 granting the leave.”

Chapter II

Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

Texts in force

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 as laid down in 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.

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. This 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.”

Miscellaneous

It was pointed out in a report published in 2006, that those citizens of the other Member States who move to Finland with the purpose of working in the country have often pre-arranged employment there. It is therefore not very common for EU citizens to enter Finland as job-seekers and to use the public employment services.

The employment rate of Estonians who have arrived in Finland after 2000 was 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). More recent information on this issue was not found.

2. LANGUAGE REQUIREMENT (PRIVATE SECTOR)

There are no regulatory language requirements at the private sector. In practice though it is rather common to require that to be employed, one has to command either Finnish or Swedish. Studies concerning integration of immigrants from third countries indicate that the lack of knowledge of the national languages is the most significant impediment to the access to labour market. Command of the national languages is, though, not required to all low-skilled jobs on the one hand and certain high-skilled on the other. For example some IT-companies, such as Nokia, use as their working language English and, thus, command of Finnish or Swedish is not required.

According to information received from the Occupational Safety and Health Authority of Uusimaa (Uudenmaan työsuojelupiiri, interview with Markku Marjamäki and Katja-Pia Jenu on 26.3.2008), the authorities regularly screen job announcements and may issue the employer with an admonition if possession of particular citizenship is required or if the required level of proficiency of Finnish is disproportionately high. No statistics on the exact number of admonitions issued is available.

3. RECOGNITION OF DIPLOMAS

The Act on recognition of professional qualifications (Laki ammattipätevyyden tunnustamisesta 1093/2007) that transposed the provisions of the Directive 2005/36/EC to the domestic law entered into force on 1.1.2008.

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 is going 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 normally 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 and to assess the applicant's competency. The question of recognition of diplomas is discussed in more detail below in Chapter IV

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‘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).

The right to practice a profession with a foreign qualification is granted by the following bodies:

- Health-care professionals: National Authority for Medicolegal Affairs (<http://teo.fi/>)
- Veterinary surgeons: Finnish Food Safety Authority (<http://www.evira.fi/>)
- Chartered Public Finance Auditors: Board of Chartered Public Finance Auditing (<http://www.jhtt-lautakunta.fi/>)
- Chartered Accountants: Central Chamber of Commerce of Finland
- Advocates: Finnish Bar Association (<http://www.asianajajaliitto.fi/>)
- Seafarers: Finnish Maritime Administration (<http://www.fma.fi/>)

Chapter III Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES

A. Working conditions

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 a collective bargaining agreement apply to all workers working in the field covered by the agreement independent of, for example, nationality and membership in national trade union. The collective bargaining agreements define issues such as the minimum salary.

No information of any court decisions concerning discrimination at work of EU citizens was found. According to information received from the Occupational Safety and Health Authority of Uusimaa (Uudenmaan työsuojelupiiri, interview with Markku Marjamäki and Katja-Pia Jenu on 26.3.2008), incidents of discrimination against citizens of the old Member States are not common at the Finnish labour market. No such cases were reported to or discovered by the Occupational Safety and Health Authority of Uusimaa in 2007. The situation of citizens of the new Member States was different, though. The authorities had discovered discrimination against both employees employed directly by Finnish employers, and posted

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workers. In case of posted workers discrimination tends to be more severe. Incidents of discrimination however proceed to courts very rarely either because the police and the prosecutor tend to regard such offences minor or because the victims of discrimination seldom claim their rights.

B. 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 (Soveltoamisalakia 1573/1993) and related legislation that lay down the criteria for residence for the purposes of social security coverage. Even though the person concerned would not meet the domestic criteria for the eligibility to social security, she still qualifies for that provided that she may be regarded as a worker within the meaning of Regulation 1408/71. Two alternative set of criteria are thus applied when defining whether the person in question is entitled to social security in Finland. Family members of persons who are workers within the meaning of the Regulation 1408/07 are entitled to benefits covered by this Regulation regardless of their country of residence.

A worker or a self-employed person who is insured according to the employee pension scheme is entitled to entitlements such as work pension and accident insurance as well as public health care, home care subsidy and maintenance allowance since the moment when the employment starts. Regarding certain benefits, the precondition for obtaining them 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 person concerned is entitled to these benefits since the moment when the employment or the activities of a self-employed person start. This 'four months rule' covers national health insurance, child care subsidy, accruing credits towards national pension and survivor's pension, and to being covered by the Act on unemployment allowances (Työttömyysturvalaki 1290/2002). If the employment contract is made for the time being or for longer time than two years, the person concerned is regarded as a permanent resident for the purpose of application of social security legislation. In addition to the aforementioned benefits, a permanent resident is entitled to special benefits for disabled persons, for maternity benefit, and for general housing allowance.

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 received 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. This applies also to home that is located abroad. 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.

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

A relatively large number of EU citizens working in Finland in 2007 were posted workers in particular from Estonia. Often posted workers performed their work in Finnish companies as so called 'leased employees' (*vuokratyö*) or in other words, they were in a contractual relationship with a company established in another state but they performed their work in Finland for a Finnish company. Furthermore, in particular in building and metal trade it is rather common to use foreign subcontractors. These situations fall within the ambit of freedom of services instead of freedom of workers. In these situations the conditions for work are often weaker than the conditions for work of the Finnish employees performing equivalent tasks. According to the occupational safety and health authorities (*työsuojelupiirit*) and Central Criminal Police (*Keskusrikospoliisi*), it is rather common that in this kind of situations the wages are below the wages paid for Finnish employees or even below the minimum wages, supplementary payments, such as overtime pay, are not performed, and the employer has neglected its obligation to insure the employee and to arrange occupational health care. New legislation concerning the treatment of posted workers was adopted in 2006. The purpose of this legislation was to alleviate the problems related to the position of posted workers. This legislation shall be discussed in this report under title 'EU enlargement'.

No information was found on discrimination experienced by citizens of the old Member States. Furthermore, the situation of those workers from Estonia and other Baltic States who were employed directly by the Finnish employers was generally speaking better than the position of posted workers. However, at certain sectors such as cleaning sector problems appeared also in cases of direct employees.

3. SPECIFIC ISSUES

A. 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, and at the southern part between Finland and Estonia.

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. Furthermore, special arrangements apply to treatment of frontier workers regarding social and unemployment issues as well as taxation.

It has been estimated that the number of Estonian frontier workers has started to increase (*Helsingin Sanomat*, 23.3.2008). According to information received from the Occupa-

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tional Safety and Health Authority of Uusimaa (Uudenmaan työsuojelupiiri, interview with Matti Marjamäki and Pia-Katri Jenu on 26.3.2008) this has not yet had any noticeable impact on the number of posted workers; the estimated number of posted workers, too, continues to increase at least at sectors such as house building.

No particular problems came up in 2007 in this respect and no information on possible impact of the *Hartman*-case was found.

B. Sportsmen / sportswomen

According to the Competition Regulation given by the Football Association of Finland, the playing line-up on each team may include no more than three foreign players. Players who come from UEFA-countries or from countries with which EU has concluded a treaty that prohibits discrimination of labour are not included in this quota.

The situation in some other sports is problematic in light of community law. The teams playing in the National Ice-Hockey League, Basket Ball League and Volleyball league applied in season 2007-2008 'gentlemen's agreements' that limited the number of foreign players in the playing line-up. In Ice-Hockey and Volley Ball the quota for foreign players was two players, and in Basket Ball three players. In each of these three cases players from the other EU states were included in the quota. The agreements on quotas were concluded among the teams themselves. The sport organisations were not formally parties to them. There were no formal sanctions for breaching the agreements. In practice they were though followed. No information was found on any measures taken by authorities in this respect.

C. The Maritime sector

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 was not given by the end of 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 members of the crew have to command the working language of the vessel well enough to understand safety information and orders given in that language (Asetus aluksen miehityksestä, laivaväen pätevydestä ja vahdinpäidosta 1256/1997 5 §, Decree on crew of a ship, qualifications of the crew, and keeping watch) and the fact that the working language at Finnish ships is normally either Finnish or Swedish. Thus the requirement concerning language proficiency may in practice impede the access of 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 in question or membership in a national trade union.

No information on incidents of discrimination at the Maritime sector was found.

4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68

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.

Finnish Government argues contrary to the Commission's view that the disabled children's benefit that is paid to the parents of a disabled child under 16 years of age is a special benefit that can be restricted to those residing in Finland. The Commission argues that this benefit is a family benefit as meant in Regulation 1408/71 and should thus be exportable.

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.

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 2007.

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 750/1994) contains an exhaustive list of public offices to which Finnish citizenship is required. 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 police officer 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 compared with other persons on the grounds of birth, ethnic origin, nationality, sex, sexual orientation, 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 the field of language requirements in 2007.

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 the language 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*. 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 the 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 Language Decree. Hence, 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 kielilainksi ja muuksi siihen liittyväksi lainsäädännöksi 9/2002), this flexibility of means in proving the command of languages reflects the requirements following from the EC law.

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

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

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

No developments took place in 2007 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 Act on recognition of professional qualifications (Laki ammattipätevyyden tunnustamisesta 1093/2007) that transposed the provisions of the Directive 2005/36/EC to the domestic law entered into force on 1.1.2008.

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 decisions on recognition taken by the Board are always based on individual applications and taken on a case by case basis. Decisions concerning general correspondences between Finnish diplomas and diplomas obtained in other Member States are not given. 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.

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, a particular exam, or completion of specified supplementary study requirements may be set as additional requirements.

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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.

In 2000 the total number of applications for recognition of a diploma was 362, in 2001 399, in 2002 437, in 2003 505, in 2004 611, in 2005 510 and in 2006 543. These number include also diplomas taken outside the EU. Between 1.1.1998 and 31.12.2006 the total number of applications for recognition was 3915. In 1385 cases (35,4 %) the applicant was a Finnish citizen and in 505 cases (12,9 %) a citizen of another EU state. In 380 cases the diploma was acquired in the United Kingdom, in 343 cases in Sweden, in 197 cases in Germany, in 167 cases in Estonia, and in 102 cases in France ([http:// www.oph.fi](http://www.oph.fi)).

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 2007 in this respect. There are no specific rules on how professional experience and seniority obtained in another EU 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 2007 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.

Chapter V Members of the Family

1. RESIDENCE RIGHTS

Visas

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. The special position of third-country national family members is regularly emphasized when educating visa officials. If visa officials consider rejecting a family member's visa application, the application is submitted 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.

It is stated in the Guidelines given by the Legal Department of the Ministry for Foreign Affairs on issuance of visa to third country national family members (Ohje HEL5058-2, 04.07.2007) that third country national family members may be granted visas for a longer duration than other categories of persons. It is emphasised in the Guidelines that to gain the special treatment as a Union citizen's family member, the person concerned has to establish firm evidence, such as statements from the authorities of the country of origin proving that the family member is dependent upon the sponsor, of this family relationship.

According to the main rule, a negative decision given to a visa-application can not be appealed. This applied previously to third-country national family members of EU citizens, as well. However, the Aliens Act was amended in this respect when the provisions of the Citizenship Directive were transposed to the national legislation. Under the amended provision, 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. There is full review in such cases but not suspensive effect.

The requirement that to be covered by the rules on free movement, the family member has before entering Finland had to reside lawfully with her EU citizen family member in another member state, has problematic consequences regarding the right to appeal in visa cases. If the requirement of previous lawful residence is not conformed to, the case is not regarded to fall within the ambit of free movement and therefore there is no right 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 transposition of the provisions of the Citizenship Directive caused several changes to the domestic legislation concerning EU citizens' family members.

Section 153 of the Aliens Act defines the scope of application of chapter 10 of the Act concerning freedom of movement of Union citizens and their family members. 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 citizens of Iceland, Liechtenstein, Norway and Switzerland. According to subsection 3 of section 153 of the Act, Union citizen's family members are entitled to freedom of movement as family members only if they have before entering Finland resided with the Union citizen in another Member State lawfully and in non-temporary manner. The Government Proposal 205/2006 clarifies that by temporary residence is meant residence that is short-term and not permanent. Furthermore, it is stated in the Guidelines given by the Legal Department of the Ministry for Foreign Affairs on issuance of visa to a third country national family member (Ohje HEL5058-2, 04.07.2007) that it is not sufficient that the family member has resided in another Member State by virtue of a visa or that she has applied for a residence permit or a residence card there and is currently waiting for the decision to her application. The provisions on free movement are, thus, not applied to family members who come to Finland directly from a third country or with whom the Union citizen concludes marriage or other relationship after arriving in Finland. It is argued in the Government Proposal 205/2006 that this provision meets the requirements flowing from the Community law as the Citizenship Directive and the national provisions that transpose this Directive apply only to intra-community movement and not to 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 to case C-109/01 *Akrich*. This domestic provision appears, however as problematic in light of the judgment of the ECJ in C-1/05 *Yunying Jia v. Migrationsverket*.

According to the Government Proposal 205/2006, chapter 10 of the Aliens Act apply also to non-Finnish family members of Finnish citizens in cases where the family returns to Finland after residing in another Member State. The preconditions for this are that the non-Finnish family member had resided with the sponsor in another Member State and that the residence there had been lawful. The Government Proposal refers to case C-370/90 *Singh* and states that the ECJ concluded in this 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 settles down with the Finnish citizen in another Member State and the family thereafter returns to Finland, the third country national family member does not need to apply for a residence permit but will instead be issued with a residence card under the provisions laid down in chapter 10 of the Act. 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.

What comes to the treatment of EU-citizen family members of Finnish citizens, according to the main rule the family member's right of residence is registered under the rules on freedom of movement. The family member is thus treated not as a family member of a Finnish citizen under the general rules on family reunification laid down in chapter 4 of the Act, but instead as a Union citizen entitled to freedom of movement. However, if the Union citizen family member does not meet the requirements laid down for practicing the freedom of movement, she can be issued with a Finnish citizens' family member's residence permit under the general rules of the Aliens Act.

Section 154 of the Aliens Act defines who shall be regarded as the Union citizen's family members within the meaning of Chapter 10 of the Act.

Section 154

“EU citizens’ family members

The following persons are considered Union citizen’s family members:

- 1) her spouse;
- 2) her descendants who are under the age of 21 or dependent on her, and the descendants of similar status of her spouse;
- 3) her direct relatives in the ascending line who are dependent on her, and relatives of similar status of her spouse;

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

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

Other relatives are treated in the same manner as family members of EU citizens, regardless of their citizenship, if:

- 1) the relative is, in the country of departure, dependent on the EU citizen who has the primary right of residence, or the relative lived in the same household with the EU citizen in question; or
- 2) serious health grounds absolutely require the EU citizen in question to give the relative personal care.”

According to the Government Proposal 205/2006, section 154 is based on article 2.2 of the Directive.

Compared with the previous legislation, the amended provision broadens the definition of a family. Previously only children and parents, but not grandchildren or grandparents were regarded as family members. The expressions used in the new provision (‘direct descendants’ and ‘relatives in the ascending line’) cover also grandchildren and grandparents. It is clarified in the Government Proposal 205/2006 that even though the amended provision uses the term ‘descendants’ and not ‘children’, the provision covers also adopted children as was the case also under the previous legislation.

It is clarified in the Proposal that the term ‘dependent’ means that the family member has to be *de facto* financially dependent on the sponsor. Whether this is the case shall be decided on grounds of the personal circumstances and the needs of the person concerned. The dependency has to be proved with documentary evidence. Compared with the previous legislation, the amended Aliens Act is in this respect better in line with community law.

Even though registered partners are not explicitly mentioned in this provision, the notion of family covers them as well. Under section 8 of the Act on registered partnership (Rekisteröidystä parisuhteesta annettu laki 950/2001) any provision contained in any 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. Registered partners are therefore treated equally to married partners in this context.

Subsection 4 of section 154 of the Aliens Act contains requirements for when 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.

The Government Proposal refers to section 172a of the Aliens Act concerning the abuse of rights, 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 resi-

dence card shall be refused. The Proposal however stresses 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 strong reasons for that.

Section 155a concerns an EU citizen's third country national family member's entry.

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 under a Council regulation required to have a visa.

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 security interests of Finland or another Member State.”

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

Regarding subsection 3 of section 155a, the Proposal 205/2006 states that in addition to the grounds for the negative decision, the written decision would include information on how to appeal.

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 158 a

“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 an economic activity as a paid employee or a self-employed person;
- 2) she has for herself and her family members sufficient funds and, if necessary, health insurance so that they do not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or to other comparable benefits or in other similar manner, become a burden on the Finnish social assistance system during their residence; or
- 3) she has enrolled as a student to a accredited educational institution in Finland with the main purpose of following a course of study 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 in other similar manner, become a burden on 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.

The right of residence as prescribed in subsection 1 of this section also applies 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 subsection 1 of this section.

If the right of residence in bases on studying in Finland, the following persons only have the right of residence as family members of a Union citizen:

- 1)the married spouse of a Union citizen; and
 - 2)children under 21 years of age of the Union citizen or her spouse or children dependent on her.
- Family members of Nordic citizens have a right of residence even if they do not have secure means of support.”

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The treatment of the family members of Nordic citizens differs from the treatment of the other EU citizens' family members. The income of the Nordic citizen's family members does not have to be secured. According to the Nordic Treaty on Social Services (Pohjoismainen 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.

Section 161 of the Aliens Act concerns the residence card.

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 subsection 4 of section 154 concerning the equation of the other relatives with the family members are met.

New section 161a of the Aliens Act is based on article 10.2 of the Citizenship Directive and it lays down rules on application for a residence card.

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 government Proposal 205/2006 explains that the term ‘document’ in this provision refers to any documentary evidence and not only to official documents.

New section 161b of the Aliens Act concerns issuance of a residence card.

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.”

New section 161c of the Aliens Act concerns validity of the residence card.

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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 concerns retention of the right of residence by family members in the event of death or departure of the Union citizen.

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 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.”

New section 161e of the Aliens 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.

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 for 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, provided 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

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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.”

Section 161f of the Act is based on article 14.1 and 14.2 of the Directive.

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 Finnish 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.

Section 161g of the Act concerns the right of permanent residence. This provision is based on Article 16 of the Directive.

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 to 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 provided that they 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.”

Under the previous legislation EU citizens and their family members acquired permanent right of residence after four years of continuous residence in Finland. Now after the transposition of the provisions of the Citizenship Directive a continuous residence of five years is required. The Government justified this amendment by arguing that it serves the purpose of harmonisation. The Government also argues that this amendment has very little practical influence in the actual position of the persons concerned.

Section 162 of the Aliens Act concerns permanent residence card and 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 Union citizens’ other relatives are equated to family members if the conditions laid down in section 154 of the Act for that are met. Thus, section 162 of the Act is applicable to other relatives, as well. According to the Proposal, this provision should not be interpreted to require that the person concerned is under obligation to apply for a permanent residence card. Instead, if she so prefers, she may continue her residence with a regular residence card.

Section 163 of the Act concerns exceptions to requirements for obtaining permanent residence cards. Subsection 3 of this provision concerns EU citizens’ family members.

Sections 155 (EU citizen’s entry into and residence in the country) 156 (public order and public security), 156a (public health), 158 (short-term residence), 158a (residence for more than three months), 161f (retaining the right of residence), 161g (right of permanent residence), 163 (right of permanent residence or persons who are no longer working), 165 (cancelling registration of the right of residence or a residence card), 166 (expiry of registration of the right of residence or a residence card), 167 (refusal of entry), 168 (deportation), 168b (general consideration in cases of deportation), 172 (enforcement of removal) and 172a (abuse of rights) are also applicable to EU citizens’ family members. See Chapter 1 of this report.

Draft legislation and circulars

Guidelines given by the Legal Department of the Ministry for Foreign Affairs on issuance of visa to third country national family members (Ohje HEL5058-2, 04.07.2007)

Judicial practice

Two decisions by the Administrative Court of Helsinki given in 2008 concerned registration of the right of residence of an EU citizen’s family member in the direct ascending line. In case 08/0177/3, judgment of 14.2.2008, the appellant’s daughter’s right of residence had been registered on ground of a marriage to a Finnish citizen. The appellant, who was seriously ill, and her daughter had lived together in the same household before the daughter moved to Finland. When registering her right of residence, the daughter had announced that her mother will join her later and that they intend to continue their family life in Finland. The appellant’s daughter was not a worker. Therefore, the establishment of the appellant’s right of residence required that she was able to show that her income was secure. The Court held that the appellant had shown that her daughter’s husband had sufficient resources to cover also the appellant’s living expenses and her right of residence had therefore to be registered.

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In case 08/0176/3 of 14.2.2008 the Court reached different conclusion. In this case the appellant, who had widowed and whose children lived in Finland as workers, wanted to move to live with his children. The appellant argued that he was dependent on his children because his pension (40 e/month) was not sufficient to cover his living expenses. Furthermore, he claimed that due to severe health problems he needed his children's help in his everyday life because there was no-one in the country of origin to help him. The police had not registered the appellant's right of residence because he was not regarded to be dependent on his children within the meaning of section 154(1)(3) of the Act and could therefore not be regarded as his children's family member. Furthermore, the appellant was not regarded to have sufficient funds for his residence and therefore his right of residence was not registered under section 158a(1)(2). The Court sustained the decision taken by the police. It referred to cases 316/85 *Lebon* and C-200/02 *Chen* as well as C-1/05 *Jia* and stated that the appellant was not dependent on his children within the meaning of section 154(1)(3) of the Aliens Act and community law and could thus not be regarded as his children's family member. Furthermore, the Court held that the applicant's pension (40 € month) was not to be regarded as sufficient funds for his stay in Finland and therefore his right of residence could not be registered. In this context the Court did not attach any significance to the fact that the appellant's children had declared that they will take care of the appellant's subsistence in Finland. It is questionable whether the way the Court applied the notion of 'dependency' was in line with community standards.

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.

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 including also self-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.

According to section 164 of the Aliens Act:

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.”

3. ACCESS TO EDUCATION AND 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%5Bpika%5D=opintotuki%2A#a7.5.2004-345>), a citizen of another EU State or a person comparable to that, and a family member of such person as defined in section 153 or 154 of the Aliens Act, whose right of residence has been registered or who has been issued with a residence card as provided for in section 159 of the Aliens Act, may be granted study grant under the same conditions as Finnish citizens. A precondition for this is that the person concerned lives in Finland permanently and that the ground for her residence is other than studying in the country.

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 III under title 'Working conditions, social and tax advantages'.

Chapter VI

Relevance/Influence/Follow-up of Recent Court of Justice Judgments

C-212/05 *Hartmann*: According to the Finnish Social Insurance Institution, this judgment has not had and is not likely to have any impact on the domestic system in Finland because it is already regarded to be in line with it. The family members of workers who are insured in Finland under the employee pension insurance scheme are entitled to home care subsidy provided that they meet the general requirements for obtaining this benefit. The subsidy is paid under equal conditions for family members living in Finland and in another Member State.

C-213/05 *Geven*: According to the Finnish Social Insurance Institution, this judgment has not had and is not likely to have any impact on the domestic system.

C-287/05 *Hendrix*: According to the Finnish Social Insurance Institution, this judgment has not had and is not likely to have any impact on the domestic system.

C-291/05 *Eind*: No information on possible impact of this judgment was obtained.

C-208/05 *ITC*: No information on possible impact of this judgment was obtained.

C-1/05 *Jia*: The Ministry of Interior is of the opinion that the *Jia* case does not preclude the application of the requirement of previous lawful residence in case of third country national family members. Therefore the national legislation and practice are not expected to be amended in this respect.

C-97/05 *Gattoussi*: This judgment has not had any impact on the domestic law and practice.

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 with a residence permit for the purpose of working in Finland, the employment office considers whether there is labour suitable for the work in question already available at the labour market and ensures that the issuance of the permit will not prevent a person already at the labour market from finding employment. In this consideration, as persons already at the labour market are regarded 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 third country nationals 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 family members of Finnish citizens. New subsection 3 was added to this provision when the provisions of the Citizenship Directive were transposed. 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 a referred to in this section does not require that the alien has secure means of support.”

The 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. 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.

A new section 50a was added to the Act when the Citizenship Directive was transposed. According to this provision:

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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 comparable 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 provision applies 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. According to the Proposal 205/2006, this provision is applicable also in cases where a Union citizen concludes marriage after arriving in Finland and where the condition of previous lawful residence would thus not be met.

3. TREATMENT OF THE CITIZENS OF THE OTHER NORDIC COUNTRIES

Due to various agreements and historical arrangements among the Nordic states, special arrangements apply to entry to, residence in, and departure from Finland in case of the citizens of the other Nordic countries. Provisions concerning Nordic citizens are contained 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 directly from any of these States without a passport and to reside in Finland without registering their right of residence.

(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 with the purpose other than short-term residence shall register their residence as agreed among the Nordic states on the registration of the residence of the Nordic citizens.”

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 to Finland and for deporting them.

Section 169

“Grounds for refusing Nordic citizens entry to or deporting Nordic citizens from the country

Citizens of Iceland, Norway, Sweden or Denmark whose residence in Finland has not been registered in the manner laid down in section 157(3) may be refused entry if they are considered a danger to public order or security under section 156 or to public health under section 156a.

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Citizens of Iceland, Norway, Sweden or Denmark whose residence in Finland has been registered in a manner laid down in section 157(3) may be deported if they are considered a danger to public order or security or to public health.

If a citizen of Iceland, Norway, Sweden or Denmark has resided in Finland for over five years, he or she may only be deported on serious grounds of public order or security, and if the residence has lasted for more than ten years, he or she can only be deported 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 1st of May 1997, who has been entered in the population data system of her home municipality, and who is eligible for labour market subsidy and/or social assistance, is entitled to a personal integration plan. 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 to enter into the Finnish society and working life. These measures include courses in Finnish or Swedish languages and 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 2007.

Chapter VIII EU Enlargement

1. TRANSITIONAL ARRANGEMENTS REGARDING EU-8 MEMBER STATES

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

The application of transitional arrangements regarding Member States who joined the EU in 2004 was finished on 30th of April 2006. No transitional measures are applied to citizens of Bulgaria and Romania.

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

No changes in position have taken place.

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

The application of transitional measures was not continued after the 1st of May 2006.

The Parliament adopted in 2006 several measures, the purpose of which was to alleviate problems relating particularly to the position of posted workers in situations where the worker is in a contractual relationship with a company established in another state but where the work is performed in a company established in Finland (*leased workers*), and of workers working for subcontractors.

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), 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) were given on 2.6.2006 and entered into force on 5.6.2006. This legislative reform 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. These measures cover not only employees employed directly but also workers posted from another Member State to perform work as leased employees in Finnish companies. The information that has 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 purpose is to enhance compiling of statistics concerning the employment of the citizens of the new Member States and following up their em-

ployment 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 leased workers working for agencies established in Finland. Furthermore, agencies posting workers to Finland are obliged to have a representative in Finland. The agency or its 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 building works have to hold an identity card that indicates the employee's employer. This reform entered into force on 1.2.2006 and its purpose is to facilitate supervision of the working conditions of foreign workers.

The Parliament amended also legislation that concern 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 and Yritys ja yhteisötietolaki 244/2001). According to the amended legislation, the income earned for work performed in Finland shall be regarded as income earned in 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.

According to information received from the Occupational Safety and Health Authority of Uusimaa (Uudenmaan työsuojelupiiri, interview on 26.3.2008 with Markku Marjamäki and Pia-Katri Jenu), it is not uncommon that the above mentioned acts are not followed in practice and thus they have not had the impact that was intended. The authorities don't have sufficiently effective means of controlling the observance of these arrangements.

The Parliament adopted on 22.12.2006 the Act on contractor's obligations and liability when the work is contracted out (Laki tilaajan selvitysvastuusta ja vastuusta ulkopuolista työvoimaa käytettäessä 1233/2006). This act entered into force on 1.1.2007. According to its section 1: "The objectives of this act are to promote equal competition between enterprises, to ensure observance of the terms of employment and to create the conditions in which enterprises and organisations governed by public law can ensure that enterprises concluding contracts with them on temporary agency work or subcontracted labour discharge their statutory obligations as contracting parties and employers." Under this act, before an employer concludes a contract on the use of a leased worker or on work based on a subcontract, it has to require from the contracting partner among other information certificates of pension insurance taken out and of a pension insurance premiums paid, and an account of the collective agreement or the principal terms of employment applicable to the work. The employer shall be obliged to pay negligence fee if the required information is not

collected. The compliance of this act is supervised by occupational safety and health authorities. According to the Occupational Safety and Health Authority of Uusimaa, this act has proven to be rather efficient means of supervising the working conditions of posted and sub-contracted workers due to the possibility to order the negligence fee.

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

As the transitional measures that were applied until the end of April 2006 did not apply to the movement of workers within the framework of freedom of services, the citizens of the new Member States were able to enter the Finnish labour market as posted workers through agencies that were established in another Member State and that leased workers for Finnish companies, and as workers of subcontractors. In fact, it is argued that the Act on transitional measures was an important factor in creating a situation where it is for those who need labour easier to buy 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 safety and health authorities (työsuojelupiiri) and the 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 lower than the wages paid to Finnish employees, no supplementary payments are paid, the workers are not sufficiently insured and no occupational health care is arranged. Furthermore, it is not uncommon that the social security regulations are circumvented. Posted workers are used in particular but not only in building, metal, and increasingly at cleaning sectors.

The Occupational Safety and Health Authority of Uusimaa conducted in 2007 inspections to 70 large building sites. 36% of the workers met during the inspections were citizens of other states than Finland. 30 % of the foreign workers were posted workers mainly from Estonia, the other Baltic states and from Poland. In 72 % of the cases involving foreign workers, including both those employed directly and posted workers, the wages were in accordance with the collective agreement i.e. at least the minimum wage was paid. In 66 % of the cases the occupational health care was arranged properly. During the same period 20 inspections were made to companies working at metal sector such as shipyards. 19 % of the workers were non-Finnish. More than half of them were citizens of new Member States. 80 % of the foreign workers were posted workers, most of them worked for subcontractors. Severe problems came up regarding the treatment of posted workers. The wages were often below the minimum wages and no occupational health care was arranged. According to the observations of the authorities, the working conditions of those foreigners who were employed directly by a Finnish employer were in line with the working conditions of Finnish citizens. No discrimination occurred in such situations. (Source: interview with Markku Marjamäki and Katja-Pia Jenu from the Occupational Safety and Health Authority of Uusimaa on 26.3.2008.)

The majority of persons admitted to the Finnish labour market under the Act on transitional measures were Estonians. Estonians constitute also the largest group of the posted workers. According to the number of citizens of the other Baltic countries and Poland are increasing, though.

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

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(about 500 euro per month) and in Finland (about 2 500 euro per month) is regarded as a pull factor for workers. The difference in the average wages and in the standard of living between these two countries is, however, expected to decrease in future. The average wages in Tallinn and its surroundings have increased more rapidly than in the other areas in Estonia. Due to this development an increasing number of Estonians working in the Finnish labour market do no longer originate from Tallinn but instead from the other regions of the country.

2. INFORMATION ON THE TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2007

No transitional arrangements are applied to citizens of Member States who joined the EU in 2007.

Chapter IX Statistics

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

<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

Source: Väestökisterikeskus/Population Register Centre

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

FINLAND

Job-seekers from the EU and EEC States in Finland, 31.1.2008

Nationality	During the month	End of month	Number of unemployed
AUSTRIA	41	39	12
BELGIUM	31	27	10
BULGARIA	95	87	35
CYPRUS	11	11	7
CZECH REPUBLIC	30	29	11
DENMARK	47	46	29
ESTONIA	2467	2270	1105
FRANCE	158	148	69
GERMANY	316	289	115
GREECE	108	101	48
HUNGARY	85	80	31
IRELAND	53	48	20
ITALY	191	179	80
LATVIA	99	91	43
LITHUANIA	97	89	34
MALTA	2	2	0
THE NETHERLANDS	99	93	42
POLAND	181	159	65
PORTUGAL	50	50	20
ROMANIA	126	115	42
SLOVAKIA	30	29	14
SLOVENIA	3	3	1
SPAIN	177	160	62
SWEDEN	690	631	351
UK	430	394	183
EU TOTAL	5,617	5,170	2,429
ICELAND	13	12	6
NORWAY	78	72	33
TOTAL	5,708	5,254	2,468

Source: Ministry of employment and the economy, 14.2.2008

FINLAND

Employment services offered for job-seekers from the other EU countries in 2007

Nationality	Total	Men	Women	15-24	25-44	44-
AUSTRIA	72	45	27	4	38	30
BELGIUM	51	34	17	8	30	13
BULGARIA	130	59	71	14	64	52
CYPRUS	13	12	1	0	6	7
CZECH REP	44	12	32	7	31	6
DENMARK	93	64	29	16	38	39
ESTONIA	3772	1215	2557	475	1368	1929
FRANCE	275	175	100	23	184	68
GERMANY	497	255	242	45	239	213
BUNDESREP						
GERMANY	13	3	10	0	7	6
GREECE	141	120	21	7	65	69
HUNGARY	145	43	102	13	91	41
IRELAND	78	68	10	4	50	24
ITALY	325	258	67	16	181	128
LATVIA	156	36	120	30	74	52
LITHUANIA	136	42	94	22	61	53
MALTA	4	3	1	0	4	0
NETHERLANDS	173	140	33	10	100	63
PORTUGAL	81	60	21	4	54	23
ROMANIA	188	85	103	26	129	33
SLOVAKIA	46	16	30	11	27	8
SLOVENIA	8	5	3	0	7	1
SPAIN	296	195	101	23	189	84
SWEDEN	1079	612	467	120	458	501
UK	669	562	107	48	353	268

Source: Ministry for employment and the economy

FINLAND

Number of Registrations of the EU citizens Right of Residence 2004¹

<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
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*

¹ There are no published statistics available on the situation in 2006.

FINLAND

Immigration and emigration by country of exit/entry and sex

2005

To Finland

<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
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

2006

To Finland

<i>From</i>	<i>men</i>	<i>women</i>	<i>total</i>
Austria	60	48	108
Belgium	102	102	204
Bulgaria	23	19	42
Czech Rep.	39	32	71
Cyprus	10	10	20
Denmark	158	192	350
Estonia	1403	1331	2734
France	229	179	408
Germany	471	509	980
Greece	43	37	80
Hungary	40	46	86
Ireland	71	61	132
Italy	170	120	290
Latvia	40	53	93
Lithuania	42	48	90
Luxemburg	22	31	53
Malta	2	2	4
Netherlands	153	119	272
Poland	134	88	222
Portugal	41	26	67
Romania	57	45	102
Slovakia	7	8	15
Slovenia	2	5	7
Spain	421	281	702
Sweden	1860	1588	3448
United Kingdom	526	474	1000

Source: *Tilastokeskus/Statistics Finland*

FINLAND

2005

From Finland

<i>To</i>	Finnish citizens			Foreign citizens		
	<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

2006

From Finland

<i>From</i>	<i>men</i>	<i>women</i>	<i>total</i>
Austria	60	48	108
Belgium	72	115	187
Bulgaria	4	7	11
Czech Rep.	15	22	37
Cyprus	9	15	24
Denmark	185	243	428
Estonia	220	440	660
France	161	173	334
Germany	327	384	711
Greece	21	26	47
Hungary	34	27	61
Ireland	112	128	240
Italy	85	114	199
Latvia	27	10	37
Lithuania	13	9	22
Luxemburg	42	48	90
Malta	5	8	13
Netherlands	95	123	218
Poland	35	18	53
Portugal	11	13	24
Romania	6	3	9
Slovakia	8	1	9
Slovenia	2	2	4
Spain	273	255	528
Sweden	1547	1524	3071
United Kingdom	478	712	1190

Source: *Tilastokeskus/Statistics Finland*

FINLAND

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

2005

Country of

<i>exit</i>	<i>total</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
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
Netherlands	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
UK	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

<i>2005</i>							
<i>Country of exit</i>	<i>total</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
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

FINLAND

Finnish citizenship granted

2006

Former citizenship

Denmark	5
Estonia	176
France	10
Czech	1
Germany	27
Greece	2
Hungary	8
Ireland	3
Italy	6
Latvia	4
Lithuania	6
Netherlads	2
Poland	15
Romania	10
Slovakia	1
Slovenia	1
Spain	5
Sweden	178
United Kingdom	16

Source: Tilastokeskus/Statistics Finland

Chapter X Miscellaneous

The Central Organisation of Finnish Trade Unions (SAK) and its partner organisations have in Tallinn Finnish Working Life Information Point that provides information and advice about working in Finland. The Information Point is not an employment agency. It provides basic information on Finnish wage levels, taxation, terms of employment and labour legislation as well as on how trade unions function in Finland. The services are free of charge and they are offered in Estonian and Russian languages. Information Point won an award from the European Commission as part of the European Year of Workers' Mobility for its success in promoting labour mobility.

For further information see: <http://netti.sak.fi/workinginfinland/en/index.html>

Internet sites containing information for foreigners on moving to and working in Finland

Ministry of Employment and the Economy:

[http://www.mol.fi/mpl\(fi/02_tyosuhteet_ja_lait/02_ulkom_Suomessa/index.jsp](http://www.mol.fi/mpl(fi/02_tyosuhteet_ja_lait/02_ulkom_Suomessa/index.jsp)

Finnish Immigration Service:

<http://www.migri.fi/netcomm/default.asp>

Police:

<http://www.poliisi.fi/poliisi/home.nsf/pages/1804AF1D983CF7B6C2256ECC0035C981>

Internet sites containing information on legislation and court decisions

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/vakuutusoikeus>.

APPENDIX I

The most relevant treaties concluded between the Nordic states

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

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

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

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

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

Sopimus Tanskan, Suomen, Islannin, Norjan ja Ruotsin välillä pohjoismaisista työmarkkinoista henkilöille, jotka ovat saaneet ammattipätevyysantavan, 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>.