

A Proposition

for the Council of State's Report to the Parliament
On the Impacts of the Transition Period Act
and
the Free Movement of Labour and Services
on the Labour Market Situation in Various Sectors

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1. Introduction

With the EU enlargement on 1 May 2004, regulations concerning the mobility of citizens in the new EU member states changed. The mobility of workers to Finland within the framework of the provision of services was liberated completely. The access of persons to the Finnish labour market within the framework of mobility of labour was liberated for the part that it is not restricted by the Act on the Preconditions of Gainful Employment by the Citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia (309/2004, below the *Transition Period Act*). This Act does not apply to the citizens of Cyprus and Malta. In the background of the passing the Transition Period Act was an understanding reached between the Government and labour market organisations on a transition period concerning the mobility of labour to be introduced at the time of the EU enlargement.

When passing the Transition Period Act, the Parliament expected the Government in good time before this Act ceases to be in force to submit to the Parliament a report evaluating not only the impacts of the Transition Period Act and the need to extend its period of validity but also the impacts of free mobility of labour and services in a larger sense on the labour market situation in various sectors (EV 45/2004 vp).

The proposition for a report on the impacts of the Transition Period Act and the impacts of free mobility of labour and services on the labour market situation in various sectors was prepared by the Ministry of Labour. This report is based on a follow-up and assessment of the impacts of the Transition Period Act jointly conducted by the various Ministries, the central labour market organisations, the Federation of Finnish Enterprises and the Central Union of Agricultural Producers and Forest Owners. In connection with the preparative work, the representatives of the National Authority for Medicolegal Affairs, the Tax Administration, the Finnish Centre for Pensions, the occupational safety and health authorities, the Ulteva 2 working group, the PUT unit of the Central Criminal Police, the Director of Information Management at the Directorate of Immigration as well as the social partners in the construction industry were heard.

2. Starting points

2.1. Labour mobility at the time of EU enlargement of 1 May 2004: The Finnish opinion and its preparation

The Finnish opinions on free mobility of people and services were formulated in good time before the EU enlargement, and they have been systematically adhered with all the time. The Finnish opinions were prepared in early 2001 by the Advisory Board on Enlargement Talks, the Committee for EU Affairs and the tripartite enlargement subcommittee under this Committee. An ad hoc working group was also set up for the enlargement subcommittee in order to hear the interest groups and other stakeholders. The EU Ministerial Committee confirmed the basic policies of Finland in the Council.

Finland supported the Commission's proposition that was later incorporated in the Accession Treaty on restrictions of free movement of labour. While the Accession Treaties were being prepared, Finland announced that the country was introducing a transition period of labour mobility. Finland did not find it necessary to restrict the free movement of workers within the framework of services - which had partly already been liberated in the association treaties between the candidate countries and the EU. The mobility of services had not been restricted during the previous rounds of accession, either.

In the preparation of the Finnish opinions, co-operation with the central labour market organisations played an important role. The Confederation of Unions for Academic Professionals in Finland, the Commission of Church Employers, the Local Authority Employers, the Employers' Confederation of Service Industries, the Central Organization of Finnish Trade Unions SAK, the Confederation of Finnish Industry and Employers TT, the Finnish Confederation of Salaried Employees STTK and the State Employer's Office gave their joint opinion on the EU enlargement towards the East (17 April 2001). In this opinion, they e.g. stated that:

"The current enlargement differs from previous ones because of the greater differences in the starting points. In order to ensure that the enlargement can be implemented as successfully as possible, various transition period arrangements may be necessary on both sides. The transition periods to be applied shall be appropriately justified and limited in time. During them and by means of them, the preparedness of the labour market to adapt to the implementation of free mobility should be promoted and the structural reforms needed in the new member states accelerated. At the same time, the candidate countries will have a possibility of developing social dialogue and good labour market practices. The accession countries have actually requested a significant amount of transition period arrangements. On the part of the EU, the Commission also proposes flexible transition periods for the free mobility of labour. The Finnish Government, on the other hand, has found it necessary to impose protective measures in case of disturbances. The parties emphasise the fact that the general transition period set for labour mobility, which Finland should also apply, is flexible. This is why Finland should have the right to make a decision on any shortening of the transition period based on tripartite preparation."

2.2. Main features of the Accession Treaties

2.2.1. Provisions on restricting the free mobility of labour

On 16 April 2003, the member states of the European Union signed treaties with the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia on the accession of these states in the European Union (below *accession treaties*). In accordance with these accession treaties, the "old" member states will apply national provisions on the access to the national labour markets to the citizens of the new member states excluding Cyprus and Malta for two years. The application of these transition measures may be extended by three years and after this, for further two years, in case the labour market of the member state is affected by serious disturbances or the threat of such disturbances owing to the free mobility of labour.

The provisions concerning transition periods in the accession treaties include numerous exceptions, which limit the possibilities of making exceptions to the application of Community regulations. The so-called 12-month rule prevents the countries from restricting the access to the national labour market of those citizens of the new member states who, on the date of the accession, were legally employed in a current member state and who had been allowed access to the labour market of the member state in question for a continuous period of a minimum of 12 months. This also applies to those citizens of the new member states who after the accession date had been allowed access to the labour market of a current member state for a continuous minimum period of 12 months.

Within the framework of the accession treaties, a family member of an employee is entitled to access to the labour market of a new member state. As regards Finland, the transitional arrangements of the accession treaty do not apply to the mobility of labour within the framework of provision of services. This means that employees posted in Finland by an employer operating in a new member state, such as hired labour employees and self-employed workers, are not within the scope of the transitional arrangements.

Pursuant to the accession treaties, the application of transitional arrangements may not result in making access to the labour markets of the current member states more difficult for the citizens of the new member states than what it was on the date of the signing of the accession treaties (*prohibition of constricting rights*). The accession treaty was signed on 16 April 2003. Those member states applying transitional arrangements shall also favour the citizens of the new member states in access to the labour market compared to citizens of third countries (*community preference*). Employees who are legally residing and working in a member state and who have the citizenship of another member state as well as the families of such employees may not be subjected to stricter treatment than the citizens of third countries resident and working in the member state in question (*requirement of equal treatment*).

The application of transitional arrangements involves a notification procedure to the Commission and a review procedure by the Council. The "old" member states shall let the Commission know by 30 April 2006 if they intend to extend the transitional arrangements over the next three years or not. By this deadline, the Council will also review the functioning of transitional arrangements applied in various countries based on the Commission's report. This report was published on 8 February 2006. The Council intends to debate the Commission's report in March. A member state applying transitional arrangements for five years may continue the application of these measures until 30 April 2011, in case its labour market is affected or threatened by serious disturbances.

The so-called safeguard clause is applicable to member states that have given up transitional arrangements. In case a disturbance of the labour market occurs or can be anticipated in a member state that results in a serious disruption threatening the standard of living or employment in a certain profession, the member state has the option of reapplying national regulations. The accession treaty does not prevent the registration of labour force coming from the new EU countries, even when a member state does not place restrictions on labour mobility. For 7 years after the enlargement, member states may grant work permits to the citizens of the new member states for supervisory purpose, as long as these are granted without particular measures.

2.2.2. Prohibition of national road transports within another EU country

The accession treaties also include a fixed-term prohibition of engaging in national road traffic in another EU country (the so-called ban on cabotage). The transition period for cabotage differs from that for mobility of labour (2+2+1 years, for Poland and Hungary 2+3+1 years). In addition, not only Malta and Cyprus but also Slovenia have been excluded from this. Transports immediately crossing the borders (150 km) also are excluded from the transition period for cabotage.

During the transition period for cabotage, a carrier located in a new member state is completely banned from engaging in national traffic in Finland. Consequently, the starting point is that the question of a driver coming from a new member state to work in Finland will not arise, excepting the exemptions to the transition period for cabotage. As the transition period act concerning labour mobility does not apply to the provision of services, it does not restrict the working of drivers coming from the new member countries during the transition period for cabotage. It seems that in a normal situation, the Aliens Act does not place restrictions on the use of labour from third countries either. The transition period for cabotage, on the other hand, has an impact on the mobility of labour in that it partly also prevents the provision of services in the sector of road transports.

A working group under the Ministry for Transport and Communications involving representatives of labour market organisations and other stakeholders in the sector has discussed the potential extension of the transition periods for cabotage.

2.3. The Transit Period Act and other Acts that entered into force on 1 May 2004

The Transition Period Act is a law passed for a fixed term and separate from the Aliens Act. According to Government Bill (HE 172/2003), the aim of the Transition Period Act is, based on transitional provisions in the accession treaties, to pass legislation that restricts the access to the national labour market of citizens in the new member states during the transition period. In the justifications for the Bill it was assumed that the implementation of free mobility of labour without restrictions would not result in a significant increase of permanent immigration of workers to Finland. It was, however, expected that working in the country on a temporary basis, such as commuting across the border, might possibly increase. In the Bill, a temporary restriction of the access of citizens of the new member countries to the national labour market was considered appropriate, as unemployment rates were still high in Finland in many sectors and areas.

According to the Transition Period Act, the precondition for a citizen of a new EU country to work in Finland is an approval by the Employment Office. Before entering the country, the application is submitted

to a Finnish diplomatic mission or, after the arrival, to the police station or an employment office. The Employment Office will make a favourable decision on the same basis as it decides on the labour market conditions for granting an employee's permit of residence pursuant to the Aliens Act. This means that the Employment Office issues an approval after establishing that it is not possible to find labour force suitable for the intended work and available at the labour market within a reasonable time. As a part of this assessment, the Employment Office also ensures that the pay and other working conditions offered are appropriate and that the employer has taken care and will in the future be capable of taking care of their obligations as an employer.

The basic starting point for the Transition Period Act consequently is that in principle, the citizens of the new EU countries will be treated similarly as if they were the members of third countries as regards access to the labour market (approval by the Employment Office). The processing of an application pursuant to the Transition Period Act is obstructed by the fact that in the perspective of the administrative procedure, there are two interested parties. An inquiry concerning one party often involves the duty to hear both parties, including deadlines. In 2005, the processing of an application in the Work Permit Unit of Uusimaa took 28 days on an average and in the other Employment Offices 16 days.

The Transition Period Act also takes in consideration the principle of community preference required by the accession treaties for citizens in the new EU countries compared to citizens of third countries. The Employment Office's decisions for citizens in the new EU countries will in all cases be issued notwithstanding whether the application was submitted before or after entry in the country. For the citizens of third countries, on the other hand, an employee's residence permit can mainly only be granted when the application has been made before entering the country. In case of applications submitted after entry in the country, an employee's permit of residence may only be granted for particular reasons, or for example when not issuing the permit would be unjustified for the employer or the employee.

Secondly, community preference is evident when the Employment Office is deliberating the issuing of a positive partial decision concerning an employee's permit of residence for citizens of third countries. In this connection, the citizens of the new member states are regarded as union citizens when establishing the availability of suitable labour force at the labour market. Thirdly, the processing fee of an application concerning an approval for working (€20) is considerably lower than the fee collected from the citizens of third countries for the processing of a permit application (€175).

The Transition Period Act will be applied as part of a whole body of legislation that has undergone wide-reaching changes. One significant amendment was the Act Amending the Public Employment Services Act (306/2004, entry in force 1 May 2004). Section 7.1 of this Act excluded the possibility of registering as a job-seeker in an Employment Office of an EU citizen whose entitlement to free movement of labour was at the discretion of the Employment Office. Consequently, persons within the scope of the Transition Period Act do not have the possibility of registering as job-seekers or receiving employment benefits. Neither do persons within the scope of the Transition Period Act have the possibility of seeking employment in Finland supported by the unemployment benefits of their own country (using form E 303).

The Act Amending the Act on the Application of Residence-Based Social Security Legislation (635/2004) restricts the entitlement of employees and enterprisers from EU and EEA countries to social security based on residence. Pursuant to Section 3 b of this Act, to an employer or enterpriser whose entitlement to the Finnish social security is determined following the EU regulation on social security, the Finnish social security legislation shall be applicable from the time the work or enterprising activities start, in case the person works continuously for a minimum period of four months or when he or she has been continuously engaged in enterprising for a minimum period of four months. In that case, the employee is entitled to a daily sickness allowance and medical care benefits as well as a children's home care benefit and children's allowance. He/she also starts accumulating national pension and survivors' pension.

In case an employee from an EU or EEA country has an employment relationship valid indefinitely or for a fixed term of at least two years, when applying social security legislation based on residence, he or she will be regarded as living permanently in Finland. In that case, he/she will also be entitled to a childcare benefit,

benefits for handicapped person, maternity benefit and general housing subsidy. The amendment to the Act on the Application of Residence-Based Social Security Legislation, which entered into force on 1 August 2004, applies to both those within the scope of the Transition Period Act and other EU citizens. An employee posted in Finland from abroad is within the scope of the social security legislation in the posting country.

The most significant one of the amendments that entered into force together with the Transition Period Act is the new Aliens Act (301/2004). The new Aliens Act is significant in two ways when assessing the impacts of the Transition Period Act. Firstly, the labour political expediency consideration pursuant to the Transition Period Act is, through the reference provision, to a great extent the same as the employee's residence permit procedure pursuant to the Aliens Act. Compared to the earlier system of residence and work permits, the employee's permit of residence system contains a number of reforms. Secondly, all situations covered by the Aliens Act in which a foreigner is entitled to work without an employee's permit of residence are also valid in the Transition Period Act. This is due to the prohibition of constricting rights in the accession treaty. In the new Aliens Act, the entitlement to work without an employee's permit of residence (discretion of the Employment Office) was considerably extended compared to the earlier situation.

Such groups of foreigners, who compared to the earlier situation have an extended right to work without the expediency consideration of the Employment Office, include persons in top and mid-range managerial positions, various experts, instructors and consultants, fruit pickers, scientists and artists.

Certain exceptions in the scope of application of the Transition Period Act also are due to the accession treaty and the national interpretations of the accession treaties. For example, the Transition Period Act will not be applied to a citizen of a new EU member state who has been resident and working in Finland for a minimum of 12 months or who is entitled to be resident in the country for other grounds than work - e.g. as a family member of an EU citizen or a student.

3. On the implementation of the Transition Period Act, organisation of monitoring and the information base for evaluating the impacts

3.1. Preparations for implementing the Transition Period Act

The implementation of the Transition Period Act within the Labour Administration started simultaneously with the liberation of the provision of services and the implementation of the overall reform of the Aliens Act. The simultaneously entry into force of the new Aliens Act required considerable efforts from the Labour Administration as the implementor of the Transition Period Act, as it involved major reforms of many aspects of the regulations and procedures concerning the working of foreigners. While the Transition Period Act was being prepared, it was generally believed that the overall reform of the Aliens Act would enter into force no later than 1 January 2004. This, however, did not happen.

Because of the simultaneous entry into force of the Transition Period Act and the Aliens Act and because of their interconnections, the amended legislation as a whole was taken in consideration in information activities on the new legislation and staff training. Before the entry into force of the new legislation in 2004, press conferences were arranged in Helsinki, and an information event was held for the press and general public in Tallinn. The staff of the Employment Offices and the Employment and Economic Development Centres received training in both national and regional events around the country.

In the implementation of the Transition Period Act, the only authority taking part in decision-making is the Employment Offices. Until now, there has been over 50 Employment Offices processing applications pursuant to the Transition Period Act. From 1 March 2006 on, the Ministry of Labour intends to concentrate the processing of permits for foreigners in three offices, i.e. the Employment Offices of Vantaa (Uusimaa Work Permit Unit), Tampere and Lappeenranta. The justifications for this include not only an attempt to harmonise the decision-making practices but also the significantly reduced number of applications due to the liberation of provision of services and the new Aliens Act.

Even if the Employment Offices are the only authority issuing permits involved in the implementation of the Transition Period Act, it is important that the Employment Offices act in co-operation with Finnish diplomatic missions and police who receive the applications, and the Occupational Safety and Health Directorates, which supervise the right to work. The efforts to hone the practices between the various authorities started in early 2004. The development of the Register of Aliens to conform with the Transition Period Act and provisions concerning work in the new Aliens Act started in 2004. The Directorate of Immigration started training the staff in the Employment Offices in the use of the Register of Aliens even before the reform of the Register was completed. However, the Register of Foreigners was only ready for use by the Employment Offices in spring 2005.

Co-operation between various authorities is also important in the supervision of the right to work and working conditions of the foreigners. Before the enlargement in February 2004, a unit for supervising illegal foreign labour force (the so-called PUT unit) started working in the Central Criminal Police. The task of this unit is to monitor and uncover companies illegally and professionally using and exploiting foreign labour. In summer 2006, the number of staff in this unit will be increased from 16 to 24 people. In spring 2005, a total of 9 new positions were created in the Occupational Safety and Health Inspectorates, in which the supervision of the right to work and working conditions of foreign workers is a central part of the job description. The tax authorities, too, have taken part in the operative co-operation between the PUT unit and the Occupational Safety and Health Inspectorates. Additionally, the Labour Administration has been involved in the training co-operation.

The labour market organisations have also prepared for the EU enlargement. An Information Centre on Working Life in Finland maintained by the Central Organization of Finnish Trade Unions (SAK) and certain other trade unions was set up in Tallinn in 2002 as part of the EU's Interreg project. This project aiming at developing labour market co-operation between Finland and Estonia concluded in summer 2005. The information centre project will, however, continue financed by the SAK, its affiliated unions and the Union of Salaried Employees until the end of 2008. The activities of the information centre have included advising those interested in the Finnish labour market, organising seminars and information events and publishing leaflets and information material.

With the EU enlargement, Estonia joined the Eures (*European Employment Services*) network, which is co-ordinated by the public employment services in the member states. In Estonia, the activities are coordinated by the Labour Market Authority (Työmarkkinavirasto). The Eures unit in Tallinn Employment Office has offered advice for Estonian job-seekers interested in working in Finland and Finnish employers interested in hiring Estonian workers.

3.2. Organisation of monitoring of the Transition Period Act's impacts

When passing the Transition Period Act, the Parliament required the Government to closely monitor the impacts of the Act on the employment situation and the use of labour force in various sectors and, if significant problems do arise, after negotiating with the social partners to speedily bring a proposition on shortening the period of validity of the Act or reducing its scope of application up for debate by the Parliament (EV 45/2004).

In 2004, the Ministry of Labour established a subcommittee on international mobility in the Advisory Committee on Labour Policy under the Ministry of Labour. As one of the tasks of this subcommittee was set the monitoring and assessment of the impacts of the Transition Period Act. The subcommittee works under the leadership of the Ministry of Labour, and its members represent the Ministry of Labour, the Ministry of the Interior, the Ministry of Finance, the Ministry of Social Affairs and Health and the central labour market organisations (the Confederation of Finnish Industries EK, the Central Organization of Trade Unions SAK, the Confederation of Unions for Academic Professionals in Finland Akava, the Finnish Confederation of Salaried Employees STTK and the Local Authority Employers). In addition, the Federation of Finnish Enterprises and the Central Union of Agricultural Producers and Forest Owners MTK are represented in the

subcommittee. The subcommittee has met regularly since the end of 2004, and a number of experts have been heard.

The impacts of the Transition Period Act have partly also been monitored by other authorities and organs, such as the co-operative working group set up by the Estonian Ministry of Social Affairs and the Permanent Secretaries of the Finnish Ministry of Labour in 2002, as well as the Ulteva 2 working group under the leadership of the Ministry of Labour, which also involves representatives of the central labour market organisations. On the Scandinavian level, the labour market impacts of the EU enlargement have been assessed in such as the study¹ commissioned by the Nordic Council of Ministers, in whose steering group representatives of the Ministry of Labour have also taken part. The Tax Administration commissioned a report on the grey economy in the construction sector and the significance of foreign labour at building sites.²

At the EU level, the labour market impacts of the EU enlargement have been debated in such as the Committees on free movement of labour established by the Commission and the top level working group established towards the end of the year 2005. The Ministry of Labour has also taken part in the work of these organs. NGO reports have additionally been published in the EU assessing the labour market impacts of the enlargement.³

The labour market organisations, too, have to a variable degree engaged in independent monitoring of the impacts of the Transition Period Act. The Confederation of Finnish Construction Industries RT conducted a telephone inquiry in the turn of the year 2004/2005 and 2005/2006 concerning labour force at the most significant building sites in Southern Finland. In the labour force inquiry conducted by the Confederation of the Finnish Industries EK in the turn of the year 2005/2006 was included a question concerning the foreign labour force used by affiliated companies.

3.3. Information basis for estimating the impacts of the Transition Period Act

3.3.1. Statistics

What makes the monitoring of the Transition Period Act and the impacts of this Act more difficult is that a major part of the mobility of workers from the new EU countries towards Finland is not included in any statistics. It is not even possible to compile statistics on mobility within the framework of the exceptions to the Transition Period Act. Of labour force moving within the framework of provision of services, for example, only estimates can be given, which are based on statistics compiled on some relevant aspect - such as the certificates or tax information of posted employees. Direct statistics only exist on the decisions by the Employment Offices pursuant to the Transition Period Act. In addition, there are factors of uncertainty embedded in the various statistics.

Statistics on decisions made pursuant to the Transition Period Act. Between the entry into force of the Act on 1 May 2004 and the end of January 2005, the Employment Offices made their decisions pursuant to the Transition Period Act using the work permit application of the Labour Administration. Statistics gathered through the work permit application were comprehensive. From the beginning of February 2005, the Employment Offices moved on to make the decisions pursuant to the Transition Period Act in the Register of Foreigners maintained by the Directorate of Immigration. The development of the Register of Foreigners statistics system was delayed, however, so that in practice, data was only available on the Employment Offices' decisions in matters concerning the working of foreigners towards the end of 2005. The statistics,

¹ Dølvik, Jon Erik & Eldring, Line (2005), Arbeids- og tjenestemobilitet etter EU-utvidelsen. Nordiske forskjeller og fellestrekk. Sluttrapport fra en arbeidsgruppe under Nordisk Ministerråd. TemaNord 2005:566. <http://www.norden.org/pub/velfaerd/arbetsmarknad/sk/TN2005566.pdf>

² Lith, Pekka (2005), Rakentamisen harmaa talous ja ulkomaisen työvoiman merkitys rakennustyömailla (The grey economy of the building sector and the significance of foreign labour at building sites).

³ E.g. Traser, Julianna (et al.) (2005), Who's Afraid of EU enlargement? Report on the free movement of workers in EU-25, European Citizen Action Service, September 2005. http://www.ecas.org/file_uploads/810.pdf.

however, still remain open to interpretations and are generalised in their nature. In addition, because of the different compilation methods, comparing the statistics of the years 2004 and 2005 is problematic. One general problem of compiling statistics on permit decisions pursuant to the Transition Period Act is that work performed within the scope of exceptions to the Transition Period Act is completely excluded from the statistics. Consequently, work performed within the framework of provision of services is not directly reflected in the statistics on permit administration concerning the Transition Period Act.

Statistics on registering the right to reside of an EU citizen. Pursuant to Section 158 of the Aliens Act, European Union citizens and any persons comparable to them in the Aliens Act may reside in Finland for a maximum of three months without registering their right of residence. In the capacity of a job-seeker, an EU citizen may also reside in Finland for a reasonable period of time after this without registering his/her right of residence, in case he/she is still looking for a job and has realistic possibilities of finding one. This is how an EU citizen may be legally resident in Finland for more than three months without their stay leaving any traces in the statistics of the permit administration.

Once the right to reside of an EU citizen and a person comparable to them comes to an end pursuant to Section 158 of the Aliens Act, he/she shall register their right of residence. This registration is performed by the police in the population register district. Even if the entry in the Register of Foreigners is included in the statistics, these statistics are uninformative for various reasons. They do not accurately specify the basis for the person being resident in Finland. As a starting point, a foreigner cannot be registered unless his/her livelihood in Finland is ensured.

The registration practices of the right of residence of the various police departments have also been dissimilar. In addition, due to the right of free movement of the EU citizens, no penalties for neglecting the registration have been provided in the Aliens Act. Pursuant to the Aliens Act, neglecting the registration alone is not sufficient grounds for deporting a person. It is thus to be expected that not all EU citizens residing in Finland for more than three months do register their stay. In addition, the completion of the three months' stay is nearly impossible to supervise in practice, as the date of entry in the country of EU citizens is usually not indicated in their passport or other travel documents.⁴

Pursuant to Section 162 of the Aliens Act, an EU citizen who applies for this can be issued a permanent permit of residence card, once he/she has lived in Finland continuously for four years. In terms of evaluating the impacts of the Transition Period Act, statistics on permanent residence permit cards are not significant.

Statistics of the Finnish Centre for Pensions. Pursuant to the EU social security regulation, workers posted in Finland from another EU country shall also have applied for a certificate of a posted worker issued by the pension authority of the posting country. This so-called E-101 certificate shows that the posted worker is covered by the social security system of the posting country. The Finnish Centre for Pensions records the E-101 certificates of employees posted in Finland in their data management system. These statistics are already available from the time preceding the enlargement from the year 2002.⁵ The reliability of these statistics, however, is undermined by many factors. The Finnish Centre for Pensions needs to acquire the population register numbers of the persons concerned individually and manually enter the information in the certificate in the database. It can also be expected that in all cases, the certificate of a posted worker is not applied for at all, as the duty to apply for this certificate has not been prescribed as being the liability of any particular party and because there are no penalties for neglecting to obtain this certificate. It may also be due to ignorance or a conscious attempt to avoid obtaining the certificate, e.g. because the certificate shows the date on which the EU citizen became resident in the country. Along with the EU enlargement, employers and clients probably know more about the E-101 certificates, which makes the statistics less comparable in the evaluation of long-term changes.

⁴ In 2005, 1,162 registrations of the right of residence had been made according to the Register of Foreigners. Of these, 963 were Estonian and 114 Polish citizens. The citizens of other countries within the scope of the Transition Period Act were few in number.

⁵ Before the EU enlargement, for such as workers posted in Finland from Estonia, the requirement of applying for a certificate of a posted worker was based on a social security agreement between the two countries.

The National Authority for Medicolegal Affairs. The constitutional duty of the National Authority for Medicolegal Affairs is to maintain a central register of health care professionals for supervisory purposes. This register also contains entries of rights to practice and operating licenses issued to citizens of foreign nations. For the purposes of this report, the Ministry of Labour obtained in this register information on health care professionals coming from the new EU countries.

Statistics of the Tax Authority. From the salary of an employee coming to Finland for no more than six months, as a starting point a source tax of 35% is withheld (a non-residents tax liability). The earned income of a person coming to Finland for a continuous stay of more than six months is subject to the same kind of progressive taxation as that of a person permanently resident in Finland (a resident's tax liability). In the statistics of the Tax Administration, information can be searched based on citizenship. It is not, however, possible to pick out based on the citizenships of those with a resident's tax liability any information significant to the evaluation of the impacts of the Transition Period Act. A majority of those citizens of the EU countries coming to work in Finland without immigrating in the sense intended in the Municipality of Residence Act, perform "jobs" that take less than six months. Consequently these persons are subject to a non-resident's tax liability in Finland instead of a resident's tax liability. The information in the statistics compiled by the tax authorities on citizens of the new member states that are liable to a non-resident's tax are useful in the evaluation of the impacts of the Transition Period Act, even if specialists, who are subject to source tax even if they lived in Finland on a more permanent basis pursuant to the so-called Key Persons Act result in inaccuracies in the figures. It can, however, be estimated that few persons of this type come from the new EU states. For the preparation of the draft report, the Ministry of Labour bought from the Tax Administration statistical information on the source tax paid in Finland by citizens of the new member states.

3.3.2. Other information

Labour inquiry by the Confederation of the Finnish Industries The Confederation of the Finnish Industries EK annually conducts an inquiry amongst its member companies to gather information on such as the numbers of labourers, ways of using labour and future intentions to recruit of the member companies. The inquiry conducted in the turn of the year 2005/2006 was directed to the affiliated companies through the Internet based on a sample. Approx. 450,000 salaried employees work in the around 2,000 member companies who responded. Some 10,000 of these salaried employees were foreigners. The preliminary information of the labour force inquiry also includes the results of the inquiry conducted by the Confederation of Finnish Construction Industries RT in the turn of the year 2005/2006. This inquiry was implemented at sites everywhere in the country, and replies were received from around 600 sites, where 4,500 employees worked in the companies' own payroll. The preliminary information of these inquiries has been expanded to concern all member companies of the Confederation of Finnish Industries.

Opinion polls Opinion polls concerning the population's opinions on restricting the mobility of labour force coming from the new EU countries have after the enlargement mainly been commissioned by Mtv3 and the Central Organization of Finnish Trade Unions. In the polls commissioned by both, majority of those who replied generally felt that this mobility should be restricted.

3.4. Regulations applied by other EU countries during the transition period

3.4.1. The Commission's opinion

According to the Commission's report, movement of labour from the new EU countries towards the old ones has mainly been minor. In those countries - such as the United Kingdom and Ireland - in which the number of citizens of the new EU countries has increased at the labour market, this development has been based on a demand for labour. A direct connection between labour force flows and transitional measures has not been observed in any of the old EU countries. In the Commission's opinion, labour force from the new EU

countries has had a positive effect on the labour markets of the old EU countries. The citizens of the new EU countries have played a complementary role at the labour markets of the old EU countries. There has been no evidence of the labour force at the market being displaced.⁶

3.4.2. EU countries that do not apply transitional arrangements

Sweden does not apply transitional arrangements. A permit of residence is required, however, of all employees, posted employees and entrepreneurs coming from EU countries, in case they stay in the country for more than three months.⁷ To the application for a permit of residence, a certificate of employment signed by the employer (employee), registration documents of the company (entrepreneur) or information signed by the client of the services concerning the services bought by the client (a posted worker) shall be attached. Based on the documents attached to the application, the Immigration Authority can ensure that the foreigner has a means of livelihood while staying in Sweden. Through the permit of residence procedure, Sweden has reasonably good possibilities of monitoring labour force staying in the country for more than three months.

The citizens of the new member states are entitled to be registered as job-seekers in the Employment Offices and receive assistance in finding a job. The citizens of the new EU countries also have the right to seek employment in Sweden supported by an unemployment benefit paid by their home countries (E 303 certificate).

The numbers of citizens of the new member states have not significantly increased at the Swedish labour market compared to the period before the enlargement. From the date of enlargement till the end of November 2005, 9,200 applications for permits of residence had been submitted by citizens of the new member states. Of these 5,700 had been submitted by Polish citizens.

In Sweden, the enlargement has not resulted in disturbances at the labour market. Pressures to use posted workers from the new EU countries have been created by the fact that even if collective agreements cover some 90% of the employees, there are no generally binding collective agreements. Workplace level strikes are not uncommon in the building industry to pressurise a (foreign) employer outside the scope of the collective agreement to conclude a collective agreement for the individual workplace. At the moment, the European Court of Justice is hearing a disagreement on whether the Swedish accession treaty or the Latvian collective agreement is applicable to posted construction industry workers (the so-called Vaxholm case).

In the United Kingdom, a Worker Registration Scheme was introduced in connection with the liberation of the labour market, imposing on citizens of the new EU countries a duty to register within no more than a month after starting work. A certificate of employment issued by the employer shall be attached to the registration application. The registration procedure allowed by the accession treaties only concerns employees coming to work directly, not posted employees. The registration requirement has given the authorities an opportunity to monitor labour force coming from the new member states. In connection with the enlargement, the social security legislation was amended in order to prevent abuse.

During the first year after the enlargement, over 200,000 workers came to the United Kingdom from the new EU countries. There were 50,000 workers coming in every quarter. The largest groups were Polish and Lithuanian workers. According to the British Ministry of Labour, the restrictions applied by Germany and Austria have affected the numbers of workers coming from the new member states. The labour force coming from the new member states has not, however, been considered a problem, and there is no political debate on the issue. The labour force from the new member states has alleviated the problems of finding labour in some sectors (such as the building industry).

⁶ Communication from the Commission to the council, the European parliament, the European economic and social committee and the committee of the regions. Report on the functioning of the transitional arrangements set out in the 2003 accession treaty (period 1 May – 30 April 2006) (8.2.2006).

⁷ Sweden is giving up the permit of residence procedure concerning EU citizens and going over to a registration of permit of residence.

In *Ireland*, the Government's decision to liberate the labour market in connection with the EU enlargement was associated with a decision to tighten the immigration policy for labour coming from outside the EU and EEA area. Similarly to Finland, the migration flows in Ireland only turned towards immigration in the 1990's. Due to a strong economic growth, immigration from the new EU countries and in particular Poland and Lithuania has also been intense.

EU citizens wishing to work in Ireland need an Irish social security number. During the first year of the EU enlargement, 83,000 social security numbers were issued to citizens of the new EU countries. In the beginning of 2006, 2,500 social security numbers have been issued weekly. The newcomers have found their place at the labour market, however, and the immigration has not undermined the opportunities of labour force already at the labour market to find jobs. The need for labour force is great especially in the fields of construction and health care. Thanks to the favourable labour market situation, there has been no strong criticism of the policy selected by the Government, even if such as the housing market in the capital area has overheated, partly also due to the immigration.

3.4.3. EU countries that apply transitional arrangements

Denmark applies a two-year transition period, during which workers coming from the new EU countries are required to have a permit of residence and a work permit. In practice, the Danish model mainly is similar to the Swedish one in that the work and residence permits are mainly issued for monitoring and supervisory purposes. The precondition for receiving residence and work permit is that the foreigner has been offered full-time work on minimum conditions complying with the collective agreement and that the employer is registered by the tax authorities. There is no expediency consideration in terms of labour policy. The transition period does not apply to such as entrepreneurs or posted workers. During the transition period, the social security system contains various kinds of safeguards. The citizens of the new EU states are entitled to seek employment in Denmark for six months.

The amount of workers coming from the new EU countries has not increased significantly in Denmark along with the enlargement. During the first year after the enlargement, 6,000 residence and work permits were issued to labour force from the new EU countries, almost half of which were in agriculture and horticulture. An overwhelming majority of these workers were citizens of Poland and Lithuania. No disturbances due to the enlargement have been observed at the labour market. To some extent, attempts have been made to evade the transitional arrangements by disguising what factually is paid labour as enterprising or provision of services. Similarly to Sweden, there are no generally binding collective agreements in Denmark. Illegal work by and illegal treatment of foreigners was regarded as a problem at the Danish labour market even before the EU enlargement. In general, attitudes towards liberating the labour market have been very positive.

In *Germany*, the citizens of the new EU countries can only work when in possession of an EU work permit granted by the Federal State labour administration. The free movement of services was liberated at the time of enlargement excluding building, interior decoration and the cleaning of buildings and vehicles.

The German Government Programme states that the transitional arrangements will be continued in 2006-2009, too, and an attempt will be made to also continue them for the following two years. The Government Programme also states that the transition periods have protected the German labour market from increased immigration. In addition, the Government Programme expresses Germany's concern for the fact that the enlarged Europe should provide conditions for fair competition in which illegal working and illegal treatment of labour have no place. In order to prevent these phenomena, the German Government has established a so-called task force, made site inspections more efficient and engaged in dialogue with both new and old member states.

In *Austria*, the citizens of the new EU states need an employment agreement issued by the employer and confirmed by the labour market authority. As a precondition to receiving this confirmation, the employers

e.g. need to show that they comply with the working conditions in force in Austria. This precondition partly also concerns employees mobile within the framework of the provision of services.

In April 2005, 44,745 citizens of the new EU countries were legally working in Austria. During the year following the enlargement, the number of workers coming from the new EU countries increased faster (9.3%) than that of other foreign workers (3.2%). Of workers in the tourism industry 40% and of seasonal workers in the harvesting sector 80% were from the new EU countries. According to the Austrian Ministry of Labour, the efforts to concentrate the influx of labour force from the new EU countries to sectors where there was a shortage of labour were successful. Austria has also decided to continue transitional arrangements after 1 May 2006.

France has decided to apply transitional arrangements for five years. This decision was justified by the high unemployment rate and little need for labour force. On the other hand, France has concluded a number of mutual agreements, based on which citizens of the new EU countries can work in the country as trainees and seasonal workers.

In France, the precondition for working for citizens of the new EU countries include a residence permit and a work permit, which shall be applied for by the employer. The permits are issued based on economical expediency consideration and provided that the pay terms and labour legislation are complied with.

The French Ministry of Labour recommends making the transitional arrangements more flexible in those sectors where there is a shortage of labour. These include the construction industry and the hotel and restaurant sector.

After the enlargement, there has been no change in the numbers of workers coming from the new EU states. On the other hand, the number of posted workers has been growing. In the supervision of the working conditions of posted workers, similar problems have occurred as in the other old EU countries.

Italy chose to restrict the mobility of labour force from the new EU countries mainly because both Germany and Austria also decided to introduce a transition period. Italy feels that Germany and Austria to a great extent are in a similar position as regards the mobility of labour. In Italy, work permits are issued to citizens of the new EU countries, provided that the employer makes a commitment to acceptable working conditions. There is no expediency consideration in terms of labour policy, but the work permits are issued within an annual quota. In 2005, this quota was 79,500. The quota was not fulfilled, however, as only 57,000 permits were issued. A majority of these were issued for jobs in agriculture and tourism. Two thirds of workers issued with permits were Polish.

The EU enlargement has not resulted in disturbances at the Italian labour market. What has been a central problem is the increase in the number of employees posted within the framework of provision of services. The problems have been similar to those in other EU countries. Italy has not yet made a decision on whether or not to continue the transitional arrangements.

Belgium, Spain, Greece, Holland, Portugal and Luxembourg also apply transitional arrangements to the movement of labour from the new EU countries. In Spain, this is mainly explained by the fact that France and Italy have also introduced a transition period. The enlargement policy of Portugal is linked to the approach adopted by Spain. Portugal has, however, decided to lift transitional arrangements. Belgium, Spain, Greece and the Netherlands have not yet decided whether or not they will continue the transitional arrangements.

3.4.4. The new EU states

None of the new EU states is applying transitional provisions to the citizens of the new EU states. Based on mutuality, Hungary, Poland and Slovenia restrict the mobility of labour from those old EU countries applying transitional provisions. This is why Finnish citizens also need a work permit in Hungary, Poland

and Slovenia. The permits are, however, issued in a procedure based on community preference. The Czech Republic has announced that the country will monitor the situation and introduce transitional arrangements if necessary.

According to the estimates of the *Estonian* Ministry of Social Affairs, the majority of persons having left Estonia to work in other EU countries have moved to Finland. A majority of those coming to work in Finland are doing so within the framework of provision of services. In 2005, the Estonian social security authority issued 7,700 certificates of posted workers, a majority of whom were working in Finland. In 2004, 1,882 of these certificates were issued (1,120 for Finland), indicating a dramatic growth. In addition to posted workers, Estonians have come to work in Finland within the framework of the Transition Period Act. As regards those coming to work in Finland directly, the Estonian Ministry of Social Affairs uses the Finnish statistics (in 2005, a total of 2003 approvals pursuant to the Transition Period Act).

It seems that Finland mainly attracts labour force from Estonia. The reasons for this are the linguistic and geographical proximity and good connections. Young Estonians have been used to going to work in Finland over short term. Even if Finland still is interesting as a country to work in, young people in Estonia are increasingly interested in other EU countries, too, such as Ireland and the United Kingdom. The number of Estonians in seasonal agricultural and horticultural work is already declining. The pressures of labour mobility from Estonia to Finland are also alleviated by the fact that the economic growth in Estonia (5-6%) is top rate in the EU. Even though the average salary for Estonians remains under 500 euro a month (in Finland, 2,500 euro in 2004), the pay levels are going up, and differences between various sectors and areas are large. The relative difference in salaries and standard of living between Finland and Estonia are rapidly reducing. In the provinces of Tallinn and Harju in particular, salaries have gone up and unemployment has been reduced faster than elsewhere in the country, partly also because of the demand of the Finnish labour market. Due to the demand for labour, the use of labour force coming from Ukraine and Belarus and that of other foreign labour has also increased in Estonia after the EU enlargement.

Significant target countries for Estonian workers have also included the United Kingdom (4,105 registrations, Ireland (2,861 social security numbers) and Sweden (722 permits of residence based on employment). After Finland, Norway is the most important target country for posted Estonian workers. These figures concern the first year after the EU enlargement.

From *Latvia*, people typically immigrated to look for work even before the EU enlargement, mainly to Ireland. According to official estimates, there would be some 20,000 - 40,000 Latvians in Ireland. This corresponds to approx. 5-10% of the working age population in Latvia. A central reason for leaving the country is the low wage levels of Latvia, especially in the public sector. A majority of those leaving the country are young. Also such factors as a wide-spread knowledge of the English language and inexpensive travel between Latvia and Ireland made possible by cut-rate airlines have made it easier to go to Ireland.

"The Irish phenomenon" is one of the most central issues for social debate in Latvia. The political leaders and authorities in Latvia are concerned for the decline in the labour force due to emigration and its impacts. In addition to the emigration, the labour situation in Latvia is made worse by the aging of the population. Latvia has, however, systematically spoken for lifting the transition periods concerning the mobility of labour. Latvian workers have not to a great extent found their way to Finland.

From *Lithuania*, labour force has emigrated to other EU countries after the EU membership, especially to the United Kingdom and Germany. After the EU membership, over 100,000 people have left Lithuania, equalling 3% of the population. Those going to work abroad often are males in the working age. Emigration has increased the shortage of labour in such sectors as construction and retailing and pushed the wage levels up. After the EU enlargement, the position of Lithuania along with the other Baltic countries as providers of cheap labour is changing. The shortage of labour has resulted in an increase of labour force hired from Belarus and Ukraine in particular.

4. Impacts of the Transition Period Act on the labour market

4.1. General developments of the Finnish labour market in recent years

As the international economy revived in 2004, the outlook of the Finnish economy also became more favourable. After a decline that had lasted for a couple of years, employment figures started in the latter half of the year 2004 showing a significant increase. The year following the EU enlargement, new jobs were created at an increasingly fast speed, especially in the construction sector, with part-time employment relationships in trade as well as in social and health services. In early 2005, the number of jobs was 39,000, or 1.6% greater than the year before. In the same year, the employment rate grew to 68% from the 67.2% of the previous year. In 2006, the employment rate will continue to improve, even though more slowly. As the supply of labour gradually starts declining, the unemployment rate is likely to go down to 7.5% from the 8.2% of the year before. Long-term unemployment will remain a great problem. At the same time, the structural bottlenecks of the labour market will be an increasing threat to economic growth and stability.⁸

According to interviews with employers conducted by the Ministry of Labour, the share of businesses that have looked for labour force and met with recruitment problems has remained close to 30% in the 2000's.

4.2. EU member state citizens within the scope of the Transition Period Act living in Finland

Of foreigners permanently living in Finland, the citizens of Estonia (13,978 at the end of 2004) are the second largest national group after Russians (24,626 at the end of 2004). The positive net immigration of Estonians has been some one thousand people since the year 2001. In 2004, a total of 690 Estonian nationals were granted a Finnish citizenship. The numbers of other citizens of EU countries within the scope the Transition Period Act is small, and the figures reflecting permanent immigration and the granting of Finnish citizenships are essentially smaller than those for Estonians.

Table 1. The citizens of new member states permanently living in the country at the end of each year

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|----------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Estonia | 10 839 | 11 662 | 12 428 | 13 397 | 13 978 | 15 426 |
| Poland | 694 | 743 | 768 | 802 | 810 | 910 |
| Hungary | 654 | 708 | 687 | 678 | 634 | 682 |
| Latvia | 227 | 276 | 300 | 338 | 392 | 469 |
| Lithuania | 204 | 245 | 288 | 314 | 351 | 396 |
| Czech Republic | 125 | 145 | 148 | 185 | 187 | 200 |
| Slovakia | 51 | 71 | 82 | 94 | 90 | 130 |
| Slovenia | 10 | 10 | 11 | 17 | 17 | 21 |
| Total | 12,804 | 13,860 | 14,712 | 15,825 | 16,459 | 18,234 |

Source: Statistics Finland, Population Register

It is necessary to note, however, that the Transition Period Act does not apply to permanent immigration nor the right of the citizens of new EU member states living in the country to gainful employment. Neither does the population of foreigners having established itself in the country over long term necessarily have a connection with short-term migration.

⁸ Ministry of Labour, Työpolitiikan strategia, a strategic review, spring 2005 (http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/03_suunnittelu_ja_seuranta/strategiakatsaus_kevat2005.pdf), Ministry of Finance, Economic review, September 2005 (<http://www.vm.fi/tiedostot/pdf/fi/96473.pdf>).

4.3. On the numbers of workers coming to Finland from EU countries within the scope of the Transition Period Act

The number of work permits issued to foreign workers has in total been significantly reduced after the entry into force of the Transition Period Act and the new Aliens Act after 1 May 2004. This phenomenon points at an interconnection between the new Aliens Act and the Transition Period Act.

Table 2. Work permits, employee's permits of residence and approvals for working pursuant to the Transition Period Act 2002 - 2005, ten of the largest nationality groups

| Citizenship | 2002 | Citizenship | 2003 | Citizenship | Jan-April 2004 | Citizenship | May-Dec 2004 | Citizenship | 2005 |
|---------------|---------------|---------------|---------------|---------------|----------------|--------------|--------------|--------------|--------------|
| Estonia | 7,984 | Estonia | 8,987 | Russia | 3,648 | Russia | 1,352 | Russia | 2,668 |
| Russia | 7,623 | Russia | 8,497 | Estonia | 3,163 | Estonia | 1,692 | Estonia | 2,217 |
| Poland | 668 | Poland | 720 | Ukraine | 461 | Ukraine | 90 | China | 342 |
| China | 581 | China | 631 | Poland | 325 | Poland | 130 | Ukraine | 316 |
| Latvia | 483 | India | 604 | Latvia | 238 | China | 173 | Turkey | 287 |
| India | 482 | Latvia | 584 | China | 215 | Latvia | 108 | Bulgaria | 225 |
| Lithuania | 425 | Lithuania | 446 | India | 198 | India | 81 | Poland | 152 |
| United States | 406 | Ukraine | 415 | Lithuania | 177 | Lithuania | 61 | India | 143 |
| Ukraine | 357 | United States | 360 | Thailand | 93 | Bulgaria | 117 | Croatia | 154 |
| Hungary | 339 | Hungary | 331 | United States | 93 | Turkey | 104 | Romania | 109 |
| Others | 2,459 | Others | 2,606 | Others | 917 | Others | 816 | Others | 1,732 |
| Total | 21,807 | Total | 24,181 | Total | 9,528 | Total | 4,724 | Total | 8,345 |



Total in 2004 14,252

Source: Ministry of Labour's work permit application, the Register of Aliens

In 2005, a total of 2,617 approvals for working were issued to citizens of EU countries within the scope of the Transition Period Act. In 2003, or during the last "whole" year preceding the enlargement, a total of 11,307 permits of residence and work permits were issued to citizens of these countries. In the largest groups of new EU countries, the number of annual permit decisions has declined as follows since the enlargement:

| | | | |
|-----------|-------------------|---|------------------------|
| Estonia | approx. 8 – 9,000 | → | approx. 2,200 (– 75 %) |
| Poland | approx. 700 | → | approx. 150 (– 78 %) |
| Latvia | approx. 500 | → | approx. 80 (– 84 %) |
| Lithuania | approx. 400 | → | approx. 40 (– 90 %) |

This reduction in the number of permits issued to citizens of countries within the scope of the Transition Period Act does not seem to be based on the fact that the Transition Period Act would have been used to "stem" a flood of applications, in other words that a particularly great number of applications pursuant to the Transition Period Act would have been rejected. In 2005, for example, of 2,617 applications 310 were rejected (11.8%). The share of rejections in all decisions is in the same range as during the years preceding the enlargement. The latest statistics describing the division of rejections according to professional group date back to 2004.

Table 3. The approvals for working pursuant to the Transition Period Act in certain professional groups, May- December 2004

| <i>Professional group</i> | <i>Approvals</i> | <i>Rejections</i> | <i>Total:</i> | <i>Rejections %</i> |
|---|------------------|-------------------|---------------|---------------------|
| Horticultural workers | 270 | 12 | 282 | 4.4 % |
| Agricultural workers | 195 | 2 | 197 | 1.0 % |
| Housing construction workers | 173 | 28 | 201 | 16.2 % |
| Cleaners | 149 | 17 | 166 | 11.4 % |
| Drivers of lorries and articulated vehicles | 112 | | 112 | 0 % |
| Carers of domestic animals | 109 | 2 | 111 | 1.8 % |
| Musicians | 88 | | 88 | 0 % |
| Doctors | 84 | | 84 | 0 % |
| Carpenters | 74 | 13 | 87 | 17.6 % |
| Bricklayers | 51 | 9 | 60 | 17.6 % |
| Bus and car drivers | 45 | 2 | 47 | 4.4 % |
| Other work in housing construction | 35 | 3 | 38 | 8.6 % |
| Insulators | 31 | 3 | 34 | 9.7 % |

Source: Ministry of Labour's work permit application

The 2,124 applications pursuant to the Transition Period Act processed by the Employment Offices in May-December 2004 included, for the part of totally rejected applications, also decisions that differed from the application in a manner that required justification. The division of justifications for these decisions was as follows:

Table 4. The rejections of applications made based on the Transition Period Act for certain professional groups, May- December 2004

| <i>Justification</i> | <i>Number</i> | <i>%</i> |
|---|---------------|----------------|
| Employer/client not fulfilling their obligations | 94 | 21.6 % |
| Suitable labour force available within reasonable time | 53 | 12.2 % |
| Requirements for particular competence or state of health not met | 1 | 0.2 % |
| Other reasons | 104 | 23.9 % |
| Other legal basis | 184 | 42.2 % |
| Total: | 436 | 100.0 % |

Source: Ministry of Labour's work permit application. NB. Several different justifications may be associated with one decision. "other legal basis" = mainly regional and national work permit policies.

According to the preliminary information obtained in the labour force inquiry conducted by the Confederation of the Finnish Industries, some 10,000 foreign employees worked in companies affiliated to the Confederation in November 2005. This figure includes all foreign nationals, not only citizens of the new EU countries. In addition, the figure does not differentiate between those permanently living in the country and other foreigners. The figure obtained in this inquiry is approx. 1% of the staff in the companies' own payroll. According to the Confederation's estimates, there are less than 15,000 foreign workers in the whole private sector – also including companies not affiliated to the Confederation. This share is quite similar to that indicated by the previous labour force inquiry by the Confederation in autumn 2004.⁹

⁹ More than 10% of the Confederation's affiliated companies also employed foreigners in November 2005. During the year 2006, 5% of the companies intend to increase and 1% to decrease the number of foreign workers. The remaining 95% intend to keep the number of foreigners in the current figures.

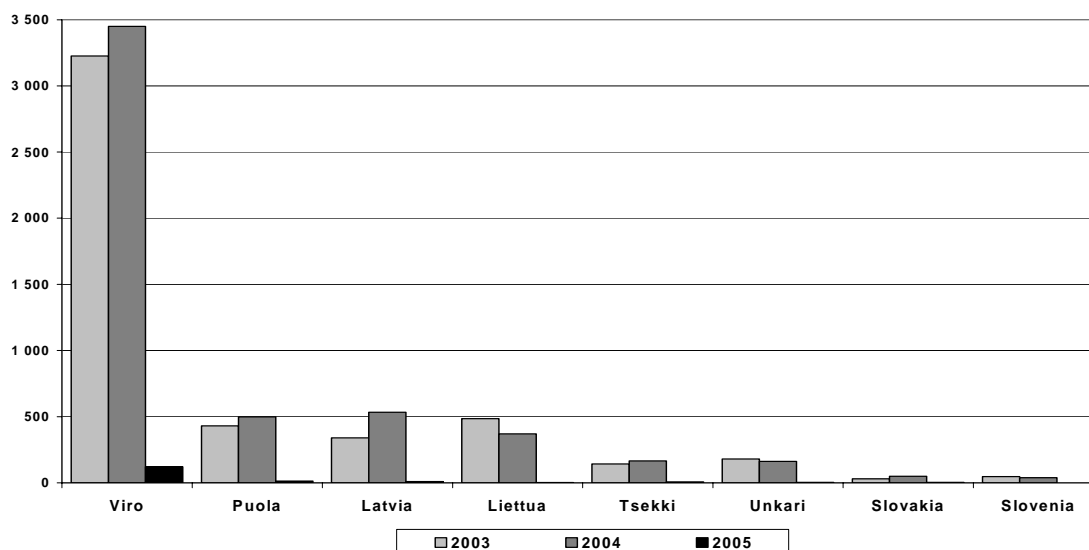
It is possible that by the sheer force of its existence - "the deterrent effect" - the Transition Period Act has had a suppressing influence on the number of application. This could be thought to be based on the fact that before the EU enlargement in spring 2004, the transitional arrangements planned by the "old" member states were reported in the media of the new member states. The reports in the Estonian media on the future transition period in Finland, for example, may have partly given the impression that during the transition period, it is impossible for Estonian labour force to work in Finland.

A more concrete explanatory factor for the reduction in the numbers of permits issued to citizens of the countries within the scope of the Transition Period Act, however, can be found in Sections 79-81 of the Aliens Act. These sections concern the right to work of foreigners without an employee's permit of residence. Pursuant to Section 2.3 of the Transition Period Act, citizens of the countries within the scope of the Transition Period Act have in a similar situation a right to work without the approval of the Employment Office.

Pursuant to Section 81.4 of the Aliens Act for example, a right to gainful employment without a permit of residence belongs to a foreigner who comes to pick or harvest berries, fruit, speciality plants, or root or other vegetables or to work at a fur farm for no longer than three months. Before the enlargement, some 30% of work permits issued to Estonian citizens (2,000-3,000 permits) were issued for the picking of strawberries and other fruit. For Polish citizens, this share was even higher, although the number of work permits issued annually only was a few hundred. Foreigners coming to work at these jobs do not show in the permit statistics. According to information obtained from agricultural organisations, however, the number of Estonian pickers has been clearly decreasing since the enlargement. An increasingly large share of seasonal workers for agriculture and forestry, such as pickers of natural forest berries, come from areas behind the Russian border. This is due not only to the requirement for a work permit, which was lifted on 1 May 2004, but also the more close-knit co-operation relationships between the two sides of the border in obtaining seasonal labour.

According to the Tax Administration statistics on those subject to source tax, there does not seem to be great change before and after the EU enlargement in the total numbers of citizens of the new EU countries coming to work in Finland for less than 6 months (posted and directly employed workers). In the year of the enlargement, 2004, there was a 1.5% increase in the source tax paid by citizens of the new member states in Finland considering all 8 nationalities. For Estonian citizens, the corresponding increase was 4.4%.

Table 5. Workers having paid source tax in Finland by citizenship in 2003-10/2005



Source: Tax Administration. NB. data for 2005 is practically totally missing.

The statistics describing the numbers of workers having paid source tax indicate that no great changes have taken place in the numbers of workers coming from the new EU countries to work for a short period in the employment of an employer located in Finland.

Another central explanatory factor in the reduction of the numbers of permits issued to citizens of countries within the scope of the Transition Period Act is Section 2.5 of this Act. This provision states that the Act shall not be applicable to a person who is posted in Finland for temporary work by an employer located in a new EU state within the framework of free provision of services. Foreigners coming to work at these jobs do not show in the permit statistics, either.

No direct data, however, is available on the numbers of workers posted in Finland by the new EU countries. The use of posted and also foreign posted labour varies from one sector to another. We also need to take in consideration the fact that even in more general terms, a move towards a more flexible use of labour force has been typical of the labour market development in recent years. This development due to changes in business activities has among many other factors included an increase in the use of hired labour and more wide-spread subcontracting especially in other than the key positions in companies as well as in the sectors of specialised work.

The Finnish Centre for Pension's information on posted employee certificates (E 101) issued to employees posted in Finland from the new EU countries seem to indicate an increase in the numbers of workers moving within the scope of provision of services especially after the enlargement. After the enlargement, the number of workers posted in Finland from Estonia in particular seems to have shown a dramatic growth. The number of Polish posted workers also appears to have grown.

Table 6. Certificates of a posted employee from abroad

| | 2002 | 2003 | 2004 | 2005 |
|--------------|-----------|-----------|------------|--------------|
| Estonia | 19 | 87 | 440 | 3,795 |
| Latvia | | 12 | | 15 |
| Lithuania | | | 1 | 9 |
| Poland | | | 60 | 355 |
| Czech Rep. | | | 13 | 18 |
| Hungary | | | | 1 |
| Slovakia | | | | |
| Slovenia | | | | 2 |
| Total | 19 | 99 | 514 | 4,195 |

Source: The Finnish Centre for Pensions. NB the earlier observation concerning the uncertainty factors in the statistics. In the figures for Estonia in 2005, a minimum of 1,000 applications are missing, as the Finnish Centre for Pensions has not yet been able to obtain a population register number for these applicants.

In the labour force inquiry conducted by the Confederation of the Finnish Industries in the turn of the year 2005/2006, the companies were also asked how many foreign workers employed by a foreign subcontracting or hired-labour company were working in the company in November 2005. According to the preliminary results, approx. 2,000 foreigners of this type were working in the affiliated companies of the Confederation in November 2005. As stated above, this figure includes all foreign nationals, not only the citizens of the new EU countries. According to the Confederation's estimates, approx. 3,000 foreign workers employed by a subcontractor or hired-labour company were working in the private sector as a whole.

If we add up the number of certificates for posted workers issued for citizens of countries within the scope of the Transition Period Act (5,000 - 7,000), the number of approvals for working issued to the citizens of these countries (2,176 in 2005) as well as the estimated and slightly reduced number of pickers of strawberries and other fruit (2,000), the sum total is approx. 10,000 people. Taking in consideration the other professional groups working within the scope of the exceptions to the Transition Period Act (such as specialists etc.), we

can estimate that very little quantitative change has taken place in the short-term working of citizens of the countries within the scope of the Transition Period Act.

On the other hand, a shift has taken place in the forms of using labour force from direct employment towards the use of posted workers. Due to changes in business activities, the temporary use of labour force outside the company has been on the increase in the last few years in more general terms. As the demand for and supply of posted workers has increased during the period of validity of the Transition Period Act, the move from direct employment towards the use of external labour force has speeded up. The reduction in the share of normal employment relationships has had many types of impacts on the position of workers and the functioning of the labour market in many sectors.

4.4. On the structure of the labour force coming to Finland from EU countries within the scope of the Transition Period Act

4.4.1. Labour force by professional group

As we can see in Table 7, the approvals issued by the Employment Offices to citizens of countries within the scope of the Transition Period Act have mainly concerned various lines of practical work. This information is in line with data obtained in a study conducted by the Estonian Ministry of Social Affairs. Over one half of the Estonians who came to Finland in 2003 engaged in practical level work. By end of November 2005, the largest professional groups having been issued an approval pursuant to the Transition Period Act include horticultural and agricultural workers, cleaners and workers in the housing construction sector. This is linked to the fact that many of the provisions of Sections 79-81 of the Aliens Act on the exemption from the requirement to obtain an employee's permit of residence concern various positions demanding high levels of education or other expert assignments. An exception to this were Estonian doctors and Hungarian musicians.

Table 7. Employment Office decisions issued to citizens of countries within the scope of the Transition Period Act in certain professional groups (approvals and rejections) from beginning of January till end of November 2005.

| | Estonia | Poland | Latvia | Lithuania | Hungary | Slovenia | Slovakia | Czech Rep. | Total | Share |
|---|----------------|---------------|---------------|------------------|----------------|-----------------|-----------------|-------------------|--------------|----------------|
| Agricultural workers | 185 | 13 | 33 | 9 | | | | | 240 | 10.1 % |
| Cleaners | 188 | 4 | 8 | 1 | 1 | 1 | | 1 | 204 | 8.6 % |
| Horticultural workers | 125 | 29 | 14 | 14 | | | 1 | | 183 | 7.7 % |
| Housing construction workers | 147 | 3 | 8 | 9 | | | | | 167 | 7.0 % |
| Carers of domestic animals | 64 | 2 | 3 | | | | 1 | | 70 | 2.9 % |
| Drivers of lorries and articulated vehicles | 65 | | | 1 | | | | | 66 | 2.8 % |
| Carpenters | 46 | 14 | | | | | | | 60 | 2.5 % |
| Doctors | 52 | 4 | | | | | | | 56 | 2.4 % |
| Musicians | 10 | | | | 33 | 6 | 1 | | 50 | 2.1 % |
| Welders and gas cutting workers | 42 | 4 | | 1 | | | | | 47 | 2.0 % |
| Others: | 1 079 | 69 | 24 | 22 | 20 | 5 | 4 | 9 | 1,232 | 51.9 % |
| Total: | 2 003 | 142 | 90 | 57 | 54 | 12 | 7 | 10 | 2,375 | 100.0 % |

Source: the Register of Aliens

The professional group distribution of decisions pursuant to the Transition Period Act slightly differs from the statistics of the working life information centre maintained by the Central Organization of Finnish Trade Unions in Tallinn, which reflects the interest of the clientele in working in Finland in various professional categories. The share of those interested in work in different fields at the SAK's information centre concentrated to six of the most popular fields clearly more than indicated by the share of these fields in decisions pursuant to the Transition Period Act. This indicates that the statistics describing decisions pursuant to the Transition Period Act do not fully reflect the professional group structure of the mobility of labour force from the new member states.

Table 8. The callers at SAK's Tallinn information centre by professional group 1.5.2004-31.12.2005

| Professional group | Share |
|--------------------------|--------------|
| Construction | 21 % |
| Services | 16 % |
| Metal industry | 13 % |
| Transport | 11 % |
| Agriculture and forestry | 8 % |
| Health care | 7 % |
| Others: | 24 % |
| Total: | 100 % |

Source: SAK. By 31 December 2005, there had been some 10,000 callers or contacts.

Health care professionals. In 2003, not one work permit was approved for citizens of the new member states for working as a dentist or a nurse. For working as a doctor, 10 work permits were approved, of which 5 for Estonian citizens, 2 for Lithuanian citizens and one each for a Hungarian and Polish citizen. After the EU enlargement, the mobility of doctors, dentists and nurses from the new EU countries to Finland increased significantly.

Table 9. Professionals of certain areas of health care coming from the new EU countries 1 May 2004-31 December 2005

| Country | Doctors | Dentists | Nurses | Total: |
|----------------|------------|-----------|-----------|------------|
| Estonia | 359 | 27 | 63 | 449 |
| Poland | 18 | 2 | 0 | 20 |
| Hungary | 6 | 6 | 1 | 13 |
| Latvia | 4 | 2 | 0 | 6 |
| Lithuania | 5 | 1 | 0 | 6 |
| Slovenia | 1 | 0 | 0 | 1 |
| Czech Republic | 0 | 1 | 0 | 1 |
| Total: | 393 | 39 | 64 | 496 |

Source: The National Authority for Medicolegal Affairs.

The doctors, dentists and nurses coming from the new EU countries since the enlargement are not particularly visible in the statistics describing decisions pursuant to the Transition Period Act. The mobility has consequently taken place almost entirely outside the scope of application of the Transition Period Act. The exceptions concerning the mobility of experts and provision of services are likely to have been the most significant.

Horticultural workers. The share of horticultural workers, which before the enlargement was the largest professional group (26.2% of work permits approved in 2003), has become significantly reduced after the enlargement (7.7% of approvals issued between the beginning of January and end of November). A central explanation for this change is the fact that in Section 81.1.4 of the Aliens Act, which entered into force on 1 May 2004, seasonal work in horticulture that is no more than three months in duration was exempted from the requirement to obtain a residence permit. Citizens of the new member states do not require the approval of the Employment Office in this type of jobs.

According to a study commissioned by the Estonian Ministry of Social Affairs, before the EU enlargement Estonians mainly came to work in Finland in the agricultural sector. The second most popular were the construction and transport sectors. As estimated above, the number of citizens of the new member states - in particular Estonian and Polish citizens - has slightly dwindled in seasonal agricultural and horticultural work after the enlargement. The provision of services, such as hired labour, has not gained a big foothold in horticulture, and even after the enlargement direct employment has prevailed.

Housing construction workers. Before the EU enlargement, various professional categories in the housing construction sector represented a total of 10-15% share of all work permits approved for citizens of the countries having acceded in the EU on 1 May 2004. In individuals, this involved more than 2,000 workers in the housing construction sector. After the enlargement, the share of professional categories in the housing construction sector has been reduced to approx. 10% of annual approvals for working, and in individuals to a few hundred people (Table 4). This decline cannot for the major part be explained by Sections 79-81 of the Aliens Act. The contribution of foreign workers and subcontractors at the construction sites in Finland has increased dramatically over the long term.¹⁰ This presumably involves quite a significant shift from direct employment towards the use of posted workers. In course of the supervision exerted by the occupational safety and health authorities, it has been observed that there are citizens of the new EU countries working at the building sites not only as posted workers but also entrepreneurs (as sole traders).

The Confederation of Finnish Construction Industries RT conducted a telephone inquiry in the turn of the year 2004/2005 and 2005/2006 concerning the labour force structure at 235 of the most significant building sites in Southern Finland. The results of this inquiry indicate that during the year, the number of foreign workers has slightly increased. What has increased the most is the number of foreign hired-labour workers and foreigners employed by subcontractors. According to the inquiry, the overall numbers of foreign workers in the construction industry remain low.

Table 10. Labour force at 235 of the major building sites in Southern Finland

| | Of which Finnish | | | | Of which foreigners | | | | Total: | |
|---------------------------|------------------|---------------|--------------|---------------|---------------------|--------------|------------|--------------|--------------|--------------|
| | 2005 | | 2006 | | 2005 | | 2006 | | 2005 | 2006 |
| Own employees | 2,011 | 97.8 % | 3,334 | 98.3 % | 45 | 2.2 % | 57 | 1.7 % | 2,056 | 3,391 |
| Hired-labour employees | 336 | 88.4 % | 674 | 81.6 % | 44 | 1.6 % | 152 | 18.7 % | 380 | 826 |
| Subcontractors' employees | 4,045 | 90.1 % | 5,802 | 88.1 % | 446 | 9.9 % | 786 | 11.9 % | 4,491 | 4,491 |
| Total | 6,392 | 92.3 % | 9,810 | 90.8 % | 535 | 7.7 % | 995 | 9.2 % | 6,927 | 6,588 |

Source: Telephone inquiry by the Confederation of Finnish Construction Industries RT in the turn of the year 2004/2005 and 2005/2006

The Confederation of Finnish Construction Industries has evaluated the results of the inquiry conducted in the turn of the year 2004/2005. The Confederation considers them as indicative for the part of organised construction companies. Taking smaller companies and detached housing and renovation sites into account, the number of foreign workers in Southern Finland is slightly higher than that estimated based on the inquiry.

4.4.2. Labour force by the area

The approvals issued by the Employment Offices pursuant to the Transition Period Act are quite strongly concentrated in Uusimaa and the Turku region. From the beginning of January - end of November 2005, nearly two approvals out of three were issued by Employment Offices located in the area of the Employment and Economic Development Centres of Uusimaa and Southwest Finland.

¹⁰ Lith (2005), p. 15.

Table 11. Decisions issued by Employment Offices to citizens of the states within the scope of the Transition Period Act by the area (approvals and rejections) from the beginning of January till end of November 2005.

| <i>Employment and Economic Development Centre</i> | <i>Total</i> | <i>Share</i> |
|---|--------------|-----------------|
| Uusimaa | 1 011 | 42.3 % |
| Varsinais-Suomi | 408 | 17.1 % |
| Häme | 160 | 6.7 % |
| Pirkanmaa | 149 | 6.2 % |
| Kaakkois-Suomi | 135 | 5.7 % |
| Satakunta | 123 | 5.2 % |
| Etelä-Savo | 84 | 3.5 % |
| Pohjanmaa | 79 | 3.3 % |
| Etelä-Pohjanmaa | 54 | 2.3 % |
| Pohjois-Savo | 51 | 2.1 % |
| Keski-Suomi | 38 | 1.6 % |
| Pohjois-Pohjanmaa | 30 | 1.3 % |
| Pohjois-Karjala | 29 | 1.2 % |
| Kainuu | 15 | 0.6 % |
| Not known | 12 | 0.5 % |
| Lapland | 11 | 0.5 % |
| Total | 2,389 | 100.00 % |

Source: the Register of Aliens

This data is in line with the study commissioned by the Estonian Ministry of Social Affairs. According to this study, those Estonians who thought that going to work in Finland was a possibility, 71.5% felt that the proximity of Finland was important. The proximity was even considered more important than the higher salary (47.7%). In the Estonian point of view, Southern Finland is the closest.

4.5. On the impacts of labour force coming to Finland from EU countries within the scope of the Transition Period Act on the labour market situation

4.5.1. Impacts on the numbers of unemployed job-seekers and vacancies

In areas and sectors where mobility within the scope of the Transition Period Act has concentrated, no dramatic changes can be found in the numbers of unemployed job-seekers before and after the enlargement. In nearly all areas and sectors, the numbers of unemployed job-seekers have gone down.

Table 12. The numbers of unemployed by the Employment and Economic Development Centre at the end of each year

| <i>Uusimaa</i> | AGRICULTURE, GAME HUSBANDRY, SERVICES | HOUSING CONSTRUCTION | EARTH CONSTRUCTION AND HYDRAULIC ENGINEERING | ACCOMMODATION AND CATERING | LAND TRANSPORTS, PIPELINE TRANSPORTS | REAL ESTATE SERVICES |
|----------------|---------------------------------------|----------------------|--|----------------------------|--------------------------------------|----------------------|
| 2002 | 144 | 1195 | 173 | 776 | 308 | 395 |
| 2003 | 145 | 1036 | 133 | 750 | 308 | 401 |
| 2004 | 157 | 943 | 123 | 745 | 261 | 371 |
| 2005 | 160 | 837 | 119 | 750 | 217 | 356 |

Varsinais-Suomi

| | | | | | | |
|------|-----|-----|----|-----|-----|-----|
| 2002 | 182 | 285 | 57 | 260 | 102 | 89 |
| 2003 | 190 | 351 | 66 | 272 | 103 | 98 |
| 2004 | 153 | 320 | 75 | 303 | 109 | 108 |
| 2005 | 126 | 246 | 56 | 224 | 88 | 91 |

Häme

| | | | | | | |
|------|-----|-----|----|-----|-----|-----|
| 2002 | 178 | 579 | 95 | 311 | 146 | 143 |
| 2003 | 152 | 541 | 80 | 320 | 154 | 158 |
| 2004 | 144 | 496 | 87 | 271 | 135 | 135 |
| 2005 | 129 | 466 | 93 | 274 | 129 | 123 |

Pirkanmaa

| | | | | | | |
|------|-----|-----|-----|-----|-----|-----|
| 2002 | 202 | 424 | 125 | 335 | 141 | 131 |
| 2003 | 173 | 420 | 110 | 344 | 112 | 138 |
| 2004 | 167 | 370 | 104 | 336 | 120 | 132 |
| 2005 | 173 | 311 | 92 | 353 | 112 | 130 |

Source: Ministry of Labour, labour market situation review (TK5)

Excluding seasonal work in agriculture and forestry, it is likely that great numbers of workers in sectors shown in Table 8 also are mobile within the framework of provision of services. Nevertheless, the number of unemployed has not increased in the areas of these four Employment and Economic Development Centres. We should however take in consideration the fact that in certain professional groups - such as professional categories in the housing construction sector - there is "stagnation" resulting from long-term unemployment. This phenomenon should not, however, have an impact on the numbers of vacancies. Table 13 shows that neither has the number of vacancies gone down after the enlargement.

Table 13. Number of vacancies in certain sectors by the Employment and Economic Development Centre at the end of each year

| <i>Uusimaa</i> | AGRICULTURE, GAME HUSBANDRY, SERVICES | HOUSING CONSTRUC- TION | EARTH CONSTRUC- TION AND HYDRAULIC ENGINEERING | ACCOMMODA- TION AND CATERING | LAND TRANSPORTS, PIPELINE TRANSPORTS | REAL ESTATE SERVICES |
|----------------|--|------------------------------|--|------------------------------------|---|-------------------------|
| 2002 | 2 | 164 | 16 | 257 | 69 | 595 |
| 2003 | 6 | 233 | 40 | 516 | 75 | 370 |
| 2004 | 9 | 383 | 24 | 444 | 140 | 373 |
| 2005 | 9 | 380 | 29 | 714 | 142 | 345 |

Varsinais-Suomi

| | | | | | | |
|------|----|----|----|----|----|----|
| 2002 | 12 | 38 | 11 | 38 | 12 | 25 |
| 2003 | 15 | 26 | 2 | 29 | 10 | 19 |
| 2004 | 15 | 59 | 15 | 31 | 10 | 36 |
| 2005 | 8 | 68 | 14 | 49 | 14 | 41 |

Häme

| | | | | | | |
|------|----|----|----|----|----|----|
| 2002 | 14 | 23 | 6 | 37 | 5 | 60 |
| 2003 | 3 | 36 | 3 | 54 | 12 | 24 |
| 2004 | 1 | 20 | 16 | 30 | 18 | 33 |
| 2005 | 0 | 54 | 6 | 51 | 17 | 28 |

Pirkanmaa

| | | | | | | |
|------|----|----|----|----|----|----|
| 2002 | 9 | 26 | 16 | 19 | 7 | 30 |
| 2003 | 8 | 38 | 4 | 37 | 17 | 41 |
| 2004 | 4 | 41 | 21 | 36 | 22 | 29 |
| 2005 | 10 | 53 | 13 | 32 | 20 | 54 |

Source: Ministry of Labour, labour market situation review (TK5)

It seems that the mobility of workers from the new EU countries within the framework of the Transition Period Act or outside it has not had a significant effect on the numbers of unemployed job-seekers or vacancies, at least in the areas of those Employment and Economic Development Centres and sectors that can be estimated as having been the main targets for mobility.

4.5.2. Other effects on the functioning of the labour market

The guiding effect of the Transition Period Act on the use of foreign subcontracting work appears to be the factor with the most significant impact on the functioning of the labour market. The construction industry conjuncture working group under the Ministry of Finance stated in its interim report that as a result of the Transition Period Act, it is simpler to buy services from the new EU countries than to take their workers on in an employment relationship. Operating models have been created or are being created at the production market of the sector which could have long-term side effects extremely negative for fair competition.¹¹

In course of the supervision exerted by the Occupational Safety and Health Inspectorates, it has been observed that supervising the working conditions of employees posted from other EU countries is problematic. What causes problems is e.g. verifying the authenticity of the working conditions, unclear responsibilities and the fact that the client companies often do not make sure that the employee is within the scope of social security in the posting country (form E 101). Trying to find information on these matters

¹¹ <http://www.vm.fi/tiedostot/pdf/fi/95345.pdf>

often is unfruitful. In addition, the supervision of the right to work of citizens in the new EU countries has been hampered by the many exceptions in the Transition Period Act.

According to the PUT unit of the Central Criminal Police it seems that the use of employees posted from the new EU countries has often been associated with neglecting to comply with minimum working conditions and payments of untaxed wages. A great part of this type of grey economy is concentrated to subcontracting at building sites and the restaurant sector, but it also occurs in other industries such as the transport, cleaning and shipyard sector. On the other hand, the unit has performed large-scale inspection strikes, in which no significant deficiencies in permit and working condition matters were uncovered.

The existence of the Transition Period Act has made supervision by the police easier. During the period of validity of the Transition Period Act, the police has been able to investigate whether an employee or employer coming from a new member state has been guilty of a violation made punishable in the Aliens Act or a crime against an alien made punishable in the Penal Code. Without the Transition Period Act, the police could only initiate an investigation without a request for administrative aid in a suspicion concerning a crime not contained in the Transition Period Act.

The supply-oriented move towards the use of posted labour force speeded up by the Transition Period Act also has its economic impacts. Based on tax agreements, posted workers do not pay tax in Finland during the first six months of their employment. There are no efficient means for supervising the length of residence in the country of an employee posted in Finland from an EU country. They usually are liable to pay tax in their home countries.

5. Bills and other proposals associated with the application and impacts of the Transition Period Act

5.1. Supervision of posted employees' working conditions

When passing the Transition Period Act, the Parliament expected the Government to urgently prepare propositions concerning measures to make the supervision of posted employees' working conditions more efficient and to bring proposals to this effect up for debate at the Parliament during the autumn session 2004 (EV 45/2004).

The Ministry of Labour assigned this task to the working group on compliance with statutory conditions of employment relationships and promotion of fair competition between companies (Ulteva 2), which was established in April 2004. The activities of this Working Group are directed by the Ministry of Labour. The members of the working group represent various ministries and labour market organisations.

The Ulteva 2 Working Group prepared amendments to the Posted Workers Act (1146/1999) and the Occupational Safety and Health Act (738/2002). The Posted Workers Act places posted hired-labour workers in particular in equal position as regards the determination of minimum pay with hired-labour workers employed by companies operating in Finland. For employer companies posting workers in Finland, a duty was prescribed to select a representative with an authorisation to receive and prepare documents on behalf of the employer company. It was prescribed as the duty of the employer company or their representative to maintain on the posted worker and his/her working conditions information accessible to the occupational safety and health authorities and to give the staff representative information on the working conditions of the posted worker. In addition, the employer or their representative in Finland shall have records of the working hours and pay concerning the posted worker. Compliance with the regulations is enforced subject to a penalty. The amendment entered into force on 1 January 2006.

In the Occupational Safety and Health Act was added the duty of the constructor directing or supervising a shared building site to ensure that those working at the site have, while moving around the site, visible an ID with a photograph also indicating their employer. Compliance with this duty of care is enforced subject to a penalty. The amendment entered into force on 1 February 2006.

The Ulteva 2 working group is continuing the preparation work assigned to it.

5.2. *Immigration policy programme*

The Working Group's proposal for the Government's Immigration policy programme will be debated in the Council of State in early 2006. This programme does not as such concern mobility within the EU's common market. Many of the proposed measures, however, such as developing the integration system, promoting ethnic equality and supporting the development of a diverse society, also concern the EU citizens. The main emphasis in the immigration policy programme is on promoting work-driven immigration. The objective of this and other measures is to help to meet the population political challenges to be expected in particular after the year 2010.

The function and time span of the Government's immigration policy programme is clearly different from that of the Transition Period Act. The Government's immigration policy programme is in line with the measures to promote the immigration of work force mentioned in the Commission's Communication on the management of economical immigration. The immigration policy programme, however, contains proposals that go further than the Communication.

5.3. *The EU accession of Bulgaria and Rumania*

5.3.1. *Government's proposal on the adoption of the Treaty on the Accession of Bulgaria and Romania in the European Union*

The Government submitted its proposal on adopting the Accession Treaty of Bulgaria and Romania in the European Union and the Act implementing those provisions of this treaty that are within the scope of legislation, and on repealing the Acts implementing the association treaties concluded with these countries (HE 218/2005) to the Parliament on 22 December 2005. In this proposal, the Government suggests that the Parliament adopt the Treaty between the member states of the European Union and Bulgaria and Romania concerning the accession of Bulgaria and Romania to the European Union. This Treaty was signed in Luxembourg in April 2005. An essential part of the Treaty is the accession protocol containing the terms and conditions of accession and adjustments in the treaties that the Union is based as well as the accession document with its annexes.

The Accession Treaties will enter into force in the beginning of January 2007, provided that all contracting parties in the treaties will have placed their ratification documents in the keeping of the Italian Government by the end of December 2006. The contents of the Accession Treaty are similar to the accession treaty described in Chapter 2.2. Finland did not reserve a possibility to restrict the mobility of workers within the framework of provision of services from Bulgaria and Romania to Finland.

The Government proposal (HE 218/2005) states that the Government has not yet decided if it will propose to the Parliament that Finland introduce transition periods concerning the free mobility of workers with Bulgaria and Romania. In case the Government decides to propose to the Parliament the introduction of a transition period, the legislative proposals will be contained in a separate bill. In case the Government decides not to propose the introduction of a transition period for Bulgaria and Romania, the Government's opinion on this matter will be put to the Parliament in connection with the report on the impacts of the Transition Period Act.

5.3.2. Key figures for Bulgaria and Romania

*Bulgaria*¹²

- The population is highly educated (over 15% have a post-graduate degree) and skilled in foreign languages
- The pay levels are low but are likely to increase substantially after the EU membership
- In 2005, the average gross salary for three out of four workers was 320 BGN (163.65 EUR)
- Despite the faster economic growth, the number of unemployed remains high in Bulgaria, even if it has clearly diminished in recent years. In the second quarter of 2005, the unemployment rate only was 10% of the labour force, whereas as recently as in 2000, this rate was a record-breaking 18.7%. The declining unemployment is welcome news for the government, as the improvement of the employment situation has been one of the most central objectives of the government programme. New jobs have partly been created by means of employment programmes supported by the government, but the greatest number have been created in the private sector. The unemployment rate will also remain fairly high in the next few years, as the privatisation of state-owned companies inevitably means layoffs.
- There are great regional variations in the unemployment figures. In the capital Sofia the unemployment rate in 2004 only was approx. 4%, but in many areas, e.g. in the northern and eastern parts of the country, this rate was close to 20%. Such as tax benefits are granted to companies creating new jobs in the worst black spots for unemployment.
- So far, the labour costs have remained low in Bulgaria even in a regional comparison. The average salary in the third quarter of 2005 was only 320 leva, which equals around 164 euro. The start-off salary for a trained engineer, for example, is around 200 euro a month.
- After the EU accession, the labour costs are likely to go up significantly from their current level, but they will still be lower than the average for the area. In certain sectors, the lack of skilled labour force will for its part result in increased wage levels but, on the other hand, reduce the interest of the recently graduated in looking for work abroad.

*Romania*¹³

- The number of unemployed kept increasing in Romania for the whole second half of the 1990's but has started slowing down slightly in the beginning of the current decade. During 2004, the number of unemployed was brought down to slightly less than 7% of the labour force on an average. The number of unemployed will not essentially go down in the next few years, as large state-owned companies still remain to be privatised, and structural reforms have not been made. There are great regional variations in the unemployment problems. In the capital Bucharest, the number of unemployed is less than the average, whereas in certain areas in northeast Romania, the unemployment rate can be as high as 16% of the workforce.
- The pay level in Romania is one of the lowest in Europe. The educational standard and technical skills of the workforce are on a good average level. Multinational companies have good experiences of Romanian workers, who do their jobs just as well as western workers for a salary that is essentially smaller. The salaries of well-educated and competent managers, however, have increased slightly in the last few years. In September 2005, the average gross salary was 965 RON (264.44 EUR) and net wage 736 RON (201.70 EUR). For the employer, the labour costs will be significantly higher, however, because of various taxes and social contributions. The wage levels are the highest in Bucharest and the lowest in the northeastern and southeastern parts of the country.

¹² Source: Finpro country report, Bulgaria, December 2005, <http://www.finpro.fi/fi-FI/Market+Information/Country+Information/Europe/Bulgaria/Bulgaria/Maaraportti+pdf.htm>

¹³ Source: Finpro country report, Bulgaria, December 2005, <http://www.finpro.fi/fi-FI/Market+Information/Country+Information/Europe/Bulgaria/Bulgaria/Maaraportti+pdf.htm>

5.3.3. Labour mobility from Bulgaria and Romania to Finland

Even though the total population of Bulgaria and Romania is nearly 30 million and the unfinished privatisation of state companies will also keep the unemployment figures high in the future, no great mobility of labour force is to be expected from these countries to Finland. The reason for this is that traditionally, migration from Bulgaria and Romania has been directed to Central Europe, not Finland. In the Finnish perspective, Bulgaria and Romania are far away. The numbers of workers in demand at the Finnish labour market are fairly low at the labour markets of Bulgaria and Romania.

In 2005, a total of 555 Bulgarian and 55 Romanian asylum seekers came to Finland. The example of Slovakia indicates, however, that with the EU membership, the numbers of asylum seekers will go down. In 2005, only 7 Slovakian citizens sought asylum in Finland, while this figure for 2002 was 421. The asylum application by the citizen of an EU country is usually decided in an accelerated procedure. No asylums were granted to citizens of the new member states.

5.4. Other initiatives

The Parliament adopted the Act Amending the Aliens Act (HE 78/2005. This Act adds in the Aliens Act provisions aiming at promoting the arrival of foreign students to Finland and finding work here. The Act also contains a few technical amendments to the Aliens Act. This Act entered into force on 1 February 2006. While the Transition Period Act is in force, this Act also expands the right of citizens in the new EU countries to gainful employment in that a person having passed an examination in Finland has the right to work in this country.

In the Bill on Amending the Aliens Act (198/2005), the Government proposes amendments required by the implementation of the so-called reunification of families directive. This Directive aims at harmonising the national legislation in member states concerning the entry and residence in the country applicable to the family members of citizens of third countries. This amendment would not affect the application of the Transition Period Act, as pursuant to Section 2.4 of this Act, all family members of citizens in the new EU countries have a right to gainful employment in Finland notwithstanding the Transition Period Act.

The Ministry of the Interior is preparing the transposition of the Directive concerning the status of third-country nationals who are long-term residents in the country (2003/109/EU). The implementation of this Directive is linked to the Transition Period Act e.g. through a third-country national's right to work valid in another EU country. More than 250,000 Russian citizens and persons without a nationality are living in Estonia, the greatest part of whom can be regarded as having been long-term residents in the country. It will not be possible, however, to adhere with the deadline for its transposition (23 January 2006). It is likely that the amendments to the Aliens Act required by the Directive can enter into force in May-June 2006 at the earliest.

The Ministry of the Interior is also preparing the implementation of the Directive on the right of the citizens of the union and their family members to move and reside freely within the territory of the member states (2003/38/EU). The objective of this Directive is to collect and update all the various existing community regulations concerning workers, persons engaged in professional activities, students and persons outside the labour market. The aim is to simplify and make more efficient the right of Union citizens to freely move and reside in the territory of other member states. This Directive shall be transposed by 30 April 2006.

6. Conclusions on the Impacts of the Transition Period Act and the Free Mobility of Labour and Services

(1) The mobility of the citizens of the new EU states in the EU area has been less active than expected. The mobility has increased on a larger scale in Ireland and the United Kingdom. The increased offer of labour force has mainly been in response to a demand for labour. In particular those old EU countries that have not

applied transition period regulations have found labour force that they needed in the new EU countries. The numbers of workers coming from the new EU countries to Sweden have been low, despite the fact that access to the labour market has not been restricted. Workers from the new EU countries have also moved to those old EU countries that have applied transitional arrangements. In the Commission's view, labour force from the new EU countries has had a positive effect on the labour markets of the old EU countries.

(2) The advantage of the Transition Period Act has been that it has sent a message to the domestic labour market on an attempt to implement the enlargement in a controlled manner and the priority of the labour force already at the labour market when competing for vacancies. The Transition Period Act has to some extent caused debate in Finland on the structure of the labour market and the role of foreign workers at the labour market. In the new member states, the transitional provisions of Finland and the other old EU countries have been seen as discriminatory to the citizens of the new member states and as evidence of a "two-tier" labour market.

(3) No significant change has been discernible in Finland after the EU enlargement in the numbers of workers coming from the new EU countries. Due to its narrow scope of application, the significance of the Transition Period Act in restricting the entry of workers from the new member states has been minor. Along with an increased supply of posted workers, the drift from direct employment towards the use of external labour force has speeded up especially in the construction industry. This development has given rise to problems, such as the difficulty of supervising the working conditions in subcontracting and hired-labour situations, the uncertain position of workers and loss of tax revenue. Another disadvantage due to the increased use of posted workers is that in practice, the greatest part of labour mobility has become inaccessible for statistical monitoring.

(4) It seems that Finland mainly attracts labour force from Estonia. For young people in Estonia in particular, it has been common to go and work in Finland over short term. During the period of validity of the Transition Period Act, however, the mobility from Estonia and other new EU countries does not appear to have been reflected in the numbers of job-seekers or vacancies. It can thus be estimated that also in Finland, mobility has taken place on the terms of the labour market.

(5) Repealing the Transition Period Act would not be likely to have a significant effect on the offer of labour force from the new EU countries. This is due to the fact that even while the Transition Period Act is valid, the mobility of labour force has been fairly free. As mobility has been free within the framework of provision of services, part of the pressures for mobility have already been released. Repealing the Transition Period Act would be likely to at least to some extent reduce the demand and supply of posted workers from the new EU countries, as ordering services from abroad would no longer be the only "free" channel for obtaining labour force from the new EU countries. The increase in direct employment would result in better possibilities than today of supervising the working conditions of workers coming from the new member states and otherwise improving the position of foreign workers at the Finnish labour market. An increase in direct employment would also be apt to increase the tax revenue in Finland.

(6) The estimates concerning the future lines of development of the Finnish labour market indicate that the availability of labour force will in the next few years be in decline in many sectors and areas. This trend also applies to other old EU countries. As the availability of labour force is declining, attempts to restrict the immigration of EU citizens cannot be considered appropriate.

(7) Giving up the Transition Period Act would not as such influence the statistical monitoring of labour force coming from the new EU countries. The statistics on the mobility of EU citizens should in any case be developed. One possibility is to require the citizens of the new EU countries to be registered in ways allowed by the accession treaties. The prerequisites for compiling statistics would also be improved by making the registration of the permits of residence of all EU citizens more efficient. These changes would also improve the prerequisites for supervising working conditions. The authorities and social partners should by various means encourage the EU citizens to become registered even before the deadline of three months is up.

(8) As required by the Parliament, the Government has prepared proposals for measures to make the supervision of the posted employees' working conditions more efficient. The amendments to the Posted Workers Act and the Occupational Safety and Health Act prepared by the Ulteva 2 Working Group under the leadership of the Ministry of Labour have entered into force. According to its mandate, the Working Group will continue its preparative work in order to make the supervision of working conditions more efficient and to prevent unfair competition due to neglecting the employer's duties. It would also be important to estimate to what extent extra resources will be needed in order to supervise the working conditions.

(9) The treaty on the EU accession of Bulgaria and Romania on 1 January 2007 is similar in structure as the accession of 2004. Finland will not be able to restrict the free mobility of workers within the framework of the provision of services. Even though the total population of Bulgaria and Romania is nearly 30 million and the unfinished privatisation of state companies will also keep the unemployment figures high in the future, no great mobility of labour force is expected from these countries to Finland. The numbers of workers in demand at the Finnish labour market are fairly low at the labour markets of Bulgaria and Romania. Traditionally, migration from Bulgaria and Romania has been directed to Central Europe, not Finland. In the Finnish perspective, Bulgaria and Romania also are distant countries with no direct traffic connections.

7. Unanimous opinions

(1) It will not be necessary to extend the period of validity of the Transition Period Act. From 1 May 2006, it will be justified to start applying the regulations of community legislation to citizens of the countries within the scope of the Transition Period Act, including the following measures:

- The registration procedure for all EU citizens will be developed with the aim of improving the statistical analysis of mobility of workers from EU countries. The registration procedure will be developed in connection with the transposition in Finland of the Directive on the right of EU citizens to move and reside in the territory of other member states.
- The possibilities allowed by the accession treaties to register the citizens of the new EU countries will be established and the necessary proposition will be made in the subcommittee on mobility of the Advisory Committee for Labour Policy working under the Ministry of Labour by 31 March 2006. The registration requirement would improve the possibilities of monitoring the mobility of labour and supervising the working conditions.
- The efforts to make the supervision of working conditions more efficient will continue. The extra resources needed for supervising the working conditions in subcontracting and hired-labour situations will be ensured. The aim of the preparative work is to promote compliance with working conditions and to prevent distortions of competition due to neglecting the employer's duties as well as to create for client companies operating in Finland the prerequisites for establishing compliance with the laws and working conditions. The Ulteva 2 working group will submit its propositions on necessary legislative amendments by 10 March 2006, after which the Government will give its Bills on the matter.

(2) At the time of EU enlargement on 1 January 2007, it will not be necessary to restrict the access of Bulgarian and Romanian citizens to the Finnish labour market.