

PIELAMI:

Cooperation on Preventing Illegal Employment of Labour Migrants with a View to Promoting Legal Employment Opportunities

создание сотрудничества по предотвращению
нелегального приема на работу рабочих
мигрантов с перспективой поощрения
возможностей легальной рабочей занятости



Finland
Latvia
North West Russia

Финляндия
Латвия
Северо- Западная Россия

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- assist in meeting the growing operational challenges of migration management;
- advance understanding of migration issues;
- encourage social and economic development through migration;
- uphold the human dignity and well-being of migrants.

These are the broad guidelines, shared by all Member States, which set the framework for IOM's response to migration challenges.

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Foreword

This project report has been produced within the framework of the PIELAMI project ("Building cooperation on preventing illegal employment of labour migrants with a view to promoting legal employment opportunities"), funded by the EC's Argo programme, with co-funding from the Finnish Ministry of Labour and the International Organization for Migration (IOM) Regional Office in Helsinki.

The PIELAMI project was implemented by the IOM office in Helsinki with the following partners:

- Finland: Ministry of Labour
- Latvia: Ministry of Welfare
- North West Russia: Department of Federal State Employment Service, St. Petersburg; Department of Federal State Employment Service, Leningrad Region; Red Cross, St. Petersburg branch

The aim of the project was to build administrative cooperation and encourage the exchange of information and best practices on preventing illegal employment of third country nationals (TCNs),¹ particularly in the service and construction sectors, among authorities, trade unions, and NGOs in Finland, Latvia, and North West Russia. The project also had a special view towards promoting legal employment opportunities for labour migrants.

There were three main activities in the project:

- a) Development of working papers on the scope of illegal employment of third country nationals in Finland, Latvia, and North West Russia;
- b) A seminar in Helsinki on 20-21 November 2006 with representatives from the Baltic Sea states to exchange practical experience and facilitate networking among relevant agencies with a role in preventing illegal employment and increasing legal employment opportunities.
- c) A project report including the material and findings of the project.

This Project Report includes the working papers for each country, details about the project seminar, and recommendations from the project.

Although short in duration and limited in scope, the PIELAMI project has laid the groundwork for further cooperation in this area. Feedback from seminar participants and other counterparts contacted in the course of the project has led IOM to believe there is a need for follow up activities to encourage a wider understanding of measures, roles, and responsibilities regarding illegal employment of TCNs as well as a need for greater administrative cooperation at national and regional levels in this respect. We look forward to working further with partners on the important issues raised during this project.



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and the European Neighbourhood Countries (East), Helsinki

¹ Note that the project targets the illegal employment of 'third country nationals' (non-EEA citizens) in Finland and Latvia and foreign nationals in the Russian Federation.

I. PIELAMI Project Seminar

The PIELAMI project seminar took place in Helsinki on 20-21 November 2006 and was attended by approximately forty participants from Finland, North West Russia, Latvia, Estonia, Lithuania, Sweden, Denmark, and Germany. The participants represented different organizations, among them government agencies and ministries, universities and research institutes, and non-governmental organizations.

The seminar was designed to satisfy three key objectives.

- Firstly, the International Organization for Migration delivered summaries of the working papers developed in the project regarding illegal employment of third country nationals in Finland, Latvia, and North West Russia.
- Secondly, participants were updated on the latest international developments and initiatives in the field of illegal employment and labour migration by experts from the International Labour Organization, the International Organization for Migration, and the European Commission, respectively.
- Thirdly, the seminar offered participants the opportunity to exchange ideas and discuss good practices in two working group sessions. The working groups discussed activities that can be undertaken in order to combat illegal employment and to promote legal labour migration, with one group (working group I) concentrating on countries of origin, while the other focused on countries of destination (working group II).

As regards necessary measures in the countries of origin, participants in working group I proposed to improve the information on available employment opportunities abroad for potential labour migrants as there is currently a lot of inaccurate information in circulation, causing many people to migrate on false promises. The licensing and supervision of privately operated labour recruitment offices recently introduced in Latvia was mentioned as one concrete example of how to improve labour migrants' awareness of conditions in destination countries.

The need to offer more and better targeted information to labour migrants was also recognized in working group II. Furthermore, participants proposed the strengthening of control mechanisms, such as ID-cards for construction workers, increased monitoring, and on-site inspections. There was, however, wide agreement in the working group that sanctions and restrictions should be primarily targeted at employers, not employees. With regard to cooperation at the national level, participants agreed that cooperation must be multi-agency because of the complexity of the problem of illegal employment. Regarding possibilities for international cooperation in the fight against illegal employment and the promotion of legal employment opportunities, several participants expressed the wish for an expedited information exchange among countries, as current cooperation is often hampered, for example, by national concerns over data protection.

While the different countries represented had, in many cases, widely different experiences and problems related to illegal employment of third country nationals, based on their evaluation and feedback, the seminar was useful for gathering new ideas to prevent and combat illegal migration and illegal work and for meeting responsible authorities from other countries. Participants suggested that follow up is important.

Agenda of the PIELAMI project seminar

Helsinki, 20-21 November 2006 (Snellmaninkatu 5, Helsinki)

20 November

- 13.00 – 13.30 Registration
- 13.30 – 13.45 Opening of seminar: Mr. Eduardo Charpentier, IOM Helsinki and Ms. Mervi Virtanen, Finnish Ministry of Labour
- 13.45 – 14.45 Introductory remarks from representatives from Latvia, Russian Federation, and Finland
- 14.45 – 15.15 Presentation of the three PIELAMI working papers for Latvia, Russian Federation, and Finland: Lucy Laitinen, IOM Helsinki
- 15.15 – 15.35 Ms. Beate Andrees, International Labour Organization: “Protecting fundamental labour rights for irregular migrant workers in Europe”
- 15.35 – 15.55 Coffee break
- 15.55 – 16.15 Mr. Ryszard Cholewinski, IOM Geneva: “Opening up more legal channels for labour migration as part of a comprehensive approach to preventing or reducing irregular migration”
- 16.15 – 16.30 Ms. Stefania Pasquetti, DG Justice, Freedom and Security, European Commission: “EU policy on labour migration”
- 16.30 – 17.00 Discussion
- 17.00 – 18.15 Light dinner

21 November

- 09.00 – 09.15 Welcome, Mr Eduardo Charpentier, IOM Helsinki
- 09.15 – 10.30 **Workshop I** (moderated by Red Cross St Petersburg, with interpretation in Russian): “Activities that can be undertaken in countries of origin to combat illegal employment and to promote legal labour migration”
- Workshop II** (moderated by Latvian Ministry for Social Welfare): “Activities that can be undertaken in countries of destination to combat illegal employment and to promote legal labour migration”
- 10.30 – 11.00 Coffee break
- 11.00 – 11.50 Reporting on workshops; open discussion
- 11.50 – 12.00 Closing of seminar
- 12.00 – 13.00 Lunch

II. проект PIELAMI

1 ВВЕДЕНИЕ К ОТЧЕТУ О ПРОЕКТЕ PIELAMI “ВЫСТРАИВАНИЕ СОТРУДНИЧЕСТВА ПО ПРЕДОТВРАЩЕНИЮ НАРУШЕНИЙ ЗАКОНА И ПОДДЕРЖКЕ ЛЕГАЛЬНЫХ ВОЗМОЖНОСТЕЙ В ИСПОЛЬЗОВАНИИ ТРУДА РАБОТНИКОВ-МИГРАНТОВ”

Данный отчет был выполнен в рамках проекта PIELAMI (“Выстраивание сотрудничества по предотвращению нарушений закона и поддержке легальных возможностей в использовании труда работников-мигрантов”) (далее - проект), финансируемого программой ЕС Арго совместно с Министерством Труда Финляндии и Международной Организацией по Миграции (МОМ) Хельсинки.

Проект был осуществлен отделением МОМ в Хельсинки совместно со следующими партнерами:

- Финляндия - Министерство Труда
- Латвия - Министерство Социального Обеспечения
- Северно-Западный регион России:
 - Управление федеральной государственной службы занятости населения по Санкт-Петербургу
 - Управление федеральной государственной службы занятости населения по Ленинградской области
- Международная организация «Красный Крест», Санкт-Петербург

Данный проект направлен на выстраивание административного сотрудничества и развитие обмена информацией и успешными практическими наработками между правительственными организациями, профсоюзами, неправительственными организациями и другими заинтересованными партнерами из Финляндии, Латвии и Северо-Западного региона России по вопросам, связанным с предотвращением использования нелегального труда мигрантов из третьих стран (граждан третьих стран - для ЕС)¹ в сфере услуг и строительства. Кроме того, целью проекта является развитие и поддержка легальных возможностей по использованию труда мигрантов.

Тремя основными видами деятельности проекта являлись:

- a) Подготовка рабочих материалов по вопросам нелегального использования труда мигрантов в Финляндии, Латвии и Северо-Западном регионе России;
- b) Проведение в Хельсинки 20-21 ноября 2006 года семинара с участием представителей стран Балтии по обмену практическими наработками и установке сотрудничества между соответствующими организациями в сфере предупреждения использования нелегального труда мигрантов и развитие легитимных форм их занятости.
- c) Заключительный отчет, состоящий из рабочих материалов проекта, а также выводов и наработок.

Заключительный отчет включает рабочие материалы по каждой стране, детальную информацию о семинаре, а также выводы и рекомендации.

Несмотря на ограничения во времени и масштабе проведения, проект заложил основу для дальнейшего сотрудничества в данной области. Информация, полученная от участников

¹ Проект направлен на изучение нелегальной трудовой занятости мигрантов из третьих стран (не являющихся гражданами ЕС) в Финляндии и Латвии и иностранцев в Российской Федерации.

семинара и других сторон в рамках проекта, позволила МОМ сделать вывод о существовании необходимости продолжения данного начинания для того, чтобы способствовать более глубокому пониманию мер, ролей и обязанностей в отношении использования нелегального труда мигрантов, так же как и необходимости в улучшении административного сотрудничества на государственном и региональном уровнях.

1.1.1 Семинар проекта

Семинар проводился в Хельсинки 20-21 ноября 2006г. Его участниками стали около 40 представителей из Финляндии, Северо-Западного региона России, Латвии, Эстонии, Литвы, Швеции и Германии. Участники представляли различные организации, в том числе правительственные организации и министерства, университеты и исследовательские институты, а также неправительственные организации.

Семинар был направлен на достижение трех основных целей.

- Во-первых, Международная Организация по Миграции представила резюме рабочих материалов, разработанных в ходе проекта, по вопросам нелегального использования труда мигрантов в Финляндии, Латвии и Северо-Западном регионе России.
- Во-вторых, экспертами из Международной Организации Труда, Международной Организации по Миграции, и Европейской комиссии участникам была представлена информация о новейших международных разработках и инициативах в области нелегальной занятости и трудовой миграции.
- В-третьих, участникам семинара была предоставлена возможность обменяться идеями и предложениями, а также обсудить успешные практические наработки в ходе заседания двух рабочих групп. Рабочие группы обсудили меры, которые могут быть предприняты для борьбы с нелегальной занятостью и для развития легальной трудовой миграции. Одна из групп (рабочая группа I) сконцентрировалась на изучении стран-источников, в то время как вторая группа работала над странами назначения (рабочая группа II).

В отношении необходимых мер в странах-источниках, участники рабочей группы I предложили улучшить предоставление информации о возможностях трудоустройства за рубежом для потенциальных трудовых мигрантов, так как в настоящее время отмечается обилие неточной информации, что приводит к тому, что многие люди эмигрируют, основываясь на ложных обещаниях. Лицензирование и надзор за частными организациями по найму персонала, недавно введенные в Латвии, были отмечены как один из конкретных примеров улучшения осведомленности трудовых мигрантов об условиях в странах назначения.

Необходимость в предоставлении большего объема информации, предназначенной трудовым мигрантам, была также отмечена и в рабочей группе II. Более того, ее участники предложили механизмы усиления контроля, такие как введение удостоверений личности (ID-cards) для рабочих в сфере строительства, усиление контроля и инспекции мест проведения строительства. Однако, участники рабочей группы пришли к выводу, что санкции и наказания должны быть в основном направлены на работодателей, а не работников. Что касается сотрудничества на международном уровне, то участники согласились, что такое сотрудничество должно быть основано на работе нескольких организаций из-за сложности проблемы нелегального трудоустройства. В отношении возможностей международного сотрудничества в борьбе с нелегальной занятостью и развитием легитимных возможностей трудоустройства, некоторые участники отметили необходимость в быстром и беспрепятственном информационном обмене между странами, так как в настоящее время сотрудничество часто осложняется, например, из-за защиты данных некоторыми государственными организациями.

Несмотря на то, что страны-участницы во многих случаях представляли различный спектр проблем в отношении нелегальной занятости мигрантов из третьих стран, основываясь на собственных расчетах и данных, семинар оказался полезным с точки зрения приобретения новых идей по профилактике и борьбе с нелегальной миграцией и трудовой деятельностью, а также возможности встретиться с соответствующими правительственными организациями из других стран. Участники высказали мнение о важности продолжения данного начинания.

2 КРАТКОЕ СОДЕРЖАНИЕ РАБОЧИХ МАТЕРИАЛОВ ПО НЕЛЕГАЛЬНОЙ ТРУДОВОЙ ЗАНЯТОСТИ В ФИНЛЯНДИИ

Целью данных рабочих материалов является представление обзора нелегальной трудовой занятости мигрантов из третьих стран в сфере строительства и услуг. Вслед за общим обзором легальной и нелегальной иммиграции в Финляндию, акцент делается на масштабе и особенностях нелегальной трудовой занятости мигрантов из третьих стран (граждан третьих стран - для ЕС) в Финляндии, затем следует описание существующих профилактических мер, а также пробелов и слабых сторон. Затем дается обзор мер защиты трудовых мигрантов, взгляд на сотрудничество в этой области как в Финляндии, так и зарубежом, подход Европейского Союза к трудовой миграции, и описание мер по развитию и поддержке трудовой миграции в Финляндии. В связи с нехваткой существующей исследовательской литературы и публикаций по проблемам нелегальной трудовой занятости и нелегитимных действий по отношению к трудовым мигрантам из третьих стран в Финляндии, для того чтобы собрать информацию для данного доклада, авторы в основном опирались на ограниченное количество интервью с экспертами в данной области.

В докладе проводится разграничение на легальных мигрантов, которые прибыли в Финляндию на законных основаниях и имеют право на работу, но чьи условия трудовой занятости нарушают трудовое или какое-либо другое законодательство; нелегальных мигрантов, которые прибыли в Финляндию, не имея на то законных оснований, и работающих нелегально (незаконные мигранты); и на мигрантов, которые изначально прибыли в Финляндию на законных основаниях, но у которых в настоящее время не имеется соответствующего статуса (например, в результате просрочки визы) и работающих нелегально. Исследования показывают, что наибольшую группу трудовых мигрантов, вовлеченных в неофициальный рынок труда Финляндии, составляют легальные мигранты, условия трудовой занятости которых нарушают трудовое, налоговое или какое-либо другое законодательство. Примерно 3000-4000 трудовых мигрантов как из стран Европейской экономической зоны, так и из третьих стран, предположительно относятся к этой категории. В отношении трудовых мигрантов, нелегально работающих в Финляндии, существует и другая, гораздо менее серьезная проблема.

В основном, нелегальная трудовая деятельность мигрантов из третьих стран в области строительства и услуг в Финляндии является проблемой из-за финансовых преступлений, в частности уклонения от налогов, в секторе неформальной экономики. Одной из характеристик неформальной экономики в Финляндии является существование нелегальной трудовой занятости. Около 3,000-4,000 трудовых мигрантов как из стран европейской экономической зоны, так и третьих стран, предположительно так или иначе вовлечены в сектор неформальной экономики Финляндии наряду с 16,000-17,000 гражданами Финляндии. Что касается нарушений миграционного законодательства, то количество нелегальных мигрантов, незаконно работающих на территории Финляндии, относительно невелико (несколько сотен). Следовательно, практически нет оснований полагать, что существует масштабная миграция в Финляндию с целью нелегального трудоустройства и вовлечения в теневую экономику. Тем не менее, необходимо контролировать этот аспект и принимать меры для сокращения числа нарушений и обеспечения того, чтобы нелегальная занятость трудовых мигрантов не увеличивалась в дальнейшем.

Исследования авторов показали, что наибольшие проблемы, связанные с нелегальной занятостью трудовых мигрантов из третьих стран (граждан третьих стран - для ЕС), наблюдаются в области строительства, кораблестроения, секторе этнического ресторанного

бизнеса, и особенно в области условий труда перемещенных рабочих. Наиболее частыми нарушениями являются нарушения налогового и трудового законодательства, включая налоговые мошенничества, уклонение от социальных выплат, заработную плату ниже уровня, установленного в договоре, несоблюдение норм здравоохранения и безопасности, поддельные счета, переработки, а также другие нарушения.

Основной причиной распространения нелегальной трудовой занятости является прибыль, хотя нехватка рабочей силы также способствует этому и, как предполагается, влияние этого фактора в будущем возрастет. Уклонение от налогов и другие нарушения, характерные для неформального сектора экономики, приводят к значительному увеличению прибылей работодателей. Трудовые мигранты часто соглашались на невыгодные условия для того, чтобы получать зарплату, тогда как для некоторых из них незнание и отсутствие информации о соответствующих условиях труда может привести к их вовлечению в сектор неформальной экономики.

В отношении трудовых мигрантов, в законодательстве существует ряд профилактических и защитных мер. Во многих случаях правительство Финляндии в сотрудничестве с социальными организациями разрабатывает и внедряет эти меры, включая закон о трудовых мигрантах и поправку к нему, а также закон об охране труда и здравоохранении и поправку к нему. Некоторые другие профилактические мероприятия, такие как работа инспекций OSH, отделения государственного бюро расследований PUT, проекта VIRKE, информационных кампаний, а также такие действия профсоюзов, такие как бойкоты, забастовки и т.д., в общем являются эффективными мерами в борьбе с нелегальной занятостью, однако сказывается нехватка ресурсов. Нехватка ресурсов приводит к тому, что усилия прикладываются только к расследованию серьезных преступлений. Кроме того, авторы выявили слабые места и пробелы в сотрудничестве по данной проблеме, вызванные отсутствием должной координации среди различных заинтересованных сторон, различиями в их интересах и целях, а также законодательными ограничениями на распространение информации, например, информации о налогах.

В то время как санкции и профилактические меры направлены в основном на работодателей, а работники не считаются преступниками как таковыми, они часто рассматриваются как добровольные участники в секторе неформальной экономики. Авторы выявили, что усилия соответствующих властей и организаций практически не направляются на правовые аспекты и защиту в отношении трудовых мигрантов, вовлеченных в неформальный рынок труда. В основном, целью расследований и мероприятий являются работодатели. Авторам неизвестны организации, специализирующиеся на предоставлении поддержки трудовым мигрантам на неформальном рынке труда.

До сегодняшнего дня, трудовая миграция в Финляндию была довольно ограничена. В настоящее время в Финляндии работают около 30,000 трудовых мигрантов. В ответ на демографические проблемы и предсказуемую нехватку трудовых ресурсов, в этом году правительство Финляндии приняло программу по иммиграционной политике, которая включает в себя ряд мер по поддержке и развитию трудовой миграции, в основном из стран Евросоюза, но также и третьих стран. Пока неясно, насколько успешной будет реализация этой схемы и мер, направленных на поддержку занятости трудовых мигрантов в Финляндии, но очевидно, что это важный первый шаг к действенной политике в области трудовой миграции.

3 КРАТКОЕ СОДЕРЖАНИЕ РАБОЧИХ МАТЕРИАЛОВ ПО НЕЛЕГАЛЬНОЙ ТРУДОВОЙ ЗАНЯТОСТИ В ЛАТВИИ

После вступления в Европейский Союз, уровень жизни в Латвии возрастет и разница между доходами населения и ценами сократится, что приведет к медленному сокращению оттока населения. Страна может также стать более привлекательной для иммиграции. Миграционные модели уже меняются. Страны Центральной и Восточной Европы – Польша, Венгрия, Чешская Республика и Словения – уже начали превращаться из стран эмиграции в страны эмиграции, транзита и иммиграции. То же самое произойдет и с Латвией, т.к.

географическое расположение, родственные связи и сотрудничество станут решающими факторами в привлечении иммиграции в Балтийские страны. Согласно исследованиям, Латвия по большей части не готова к такому изменению.

В настоящее время, в Латвии нет большого количества иммигрантов. Из-за старения населения и низкого уровня рождаемости, в ближайшем будущем Латвии придется рассчитывать на иммигрантов в поддержании экономического роста. С другой стороны, существуют факторы, определяющие критическое отношение к иммиграции – в основном, это социальная интеграция и безопасность. Напряжение между “традиционными” европейцами и иммигрантами из-за культурных различий, побудило правительства к развитию “культурной интеграции”, а не многокультурной стратегии. Странам Евросоюза, включая Латвию, придется иметь дело с этим аспектом в отношении своих граждан, если они намерены поддерживать иммиграцию, чтобы сохранить в своих странах экономическую стабильность. Ситуация в Латвии может оказаться более сложной, так как уже сейчас правительство испытывает проблемы с внедрением социальной интеграционной программы для русскоязычного населения.

Согласно официальным данным, нелегальная занятость представителей третьих стран в Латвии не является значительной проблемой с политических позиций. По сравнению с другими странами ЕС, количество иммигрантов в Латвии невелико. С другой стороны, это может объясняться ограничениями в иммиграционной политике, определенной государственным законодательством для защиты национального рынка труда. Кроме того, система социальной защиты в Латвии не является привлекательной для граждан третьих стран. Согласно официальной информации и данным Латвийского Союза Работодателей, уровень нелегальной трудовой занятости граждан из третьих стран очень низкий. Тем не менее, уровень скрытой занятости и неформальной экономики достаточно высокий. Исследования показывают, что скрытая трудовая занятость в основном тревожит население Латвии.

Масштаб нелегальной трудовой занятости в стране на данное время довольно заметный. В течение последних двух лет, масштаб нелегальной экономики составлял в среднем 18 процентов от валового внутреннего продукта. Так как широкомасштабность данной проблемы оказывает негативное влияние не только на развитие государства в целом, но и на систему социальной защиты и безопасности, борьба с этой проблемой требует активного участия правительственных организаций, местных представительств власти, социальных партнеров и неправительственных организаций, так же как и самих работников.

Наиболее проблемными экономическими секторами Латвии являются лесное хозяйство, строительство и сфера услуг (включая торговлю, косметические услуги, сферу общественного транспорта). Самый высокий уровень незарегистрированного труда отмечается в регионах с высоким уровнем безработицы, а также в Риге. Есть несколько причин такого положения: сложные требования для начала предпринимательской деятельности и ограниченный доступ к финансовым ресурсам (бюрократические препятствия); сложное и негибкое законодательство не соответствует современным нуждам и реалиям рынка труда; высокие затраты на персонал и страховые выплаты; недостаточно высокий престиж некоторых работ.

Одной из трудностей для правительственных учреждений является доказывание того, что трудовые договоры подписываются в компаниях, так как по большей части договоры “составляются” в течение двадцати четырех часов перед проверкой. Более того, на рабочем месте зачастую нет ни трудовых договоров, ни отметок о рабочем времени. Кроме того, часто наблюдаются ситуации, когда как работодатели, так и сами работники предоставляют противоречивую и “ложную” информацию о рабочем времени и оплате, в связи с чем не представляется возможным доказать, какие выплаты были на самом деле произведены и подсчитать неуплаченные налоги и сборы. В случаях, когда работодатели избегают или намеренно не допускают инспекторов на территорию компании, представители государственной трудовой комиссии не имеют возможности подготовить административный

акт без присутствия работодателя, оштрафовать работодателя или работников. В латвийском законодательстве “нелегальная работа” и “нелегальная занятость” не определены в действующих законах. Важно разработать новый закон для борьбы с нелегальной и незарегистрированной трудовой занятостью, включая разработку их определений.

Государственное законодательство не является в достаточной мере эффективным для того, чтобы ограничить скрытую трудовую занятость. Нехватка административных ресурсов также является значительным препятствием для проведения эффективной политики в отношении трудовой занятости. Таким образом, существующие проблемы на рынке труда Латвии в будущем могут вызвать обострение проблемы нелегальной трудовой занятости представителей третьих стран.

4 НЕЛЕГАЛЬНАЯ ЗАНЯТОСТЬ ИНОСТРАННЫХ ГРАЖДАН В СЕВЕРО-ЗАПАДНОЙ РОССИИ

РАБОЧИЙ ДОКЛАД (сокращенный вариант, перевод с английского)

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4.1 ВВЕДЕНИЕ

Масштабная незаконная миграция и нелегальная занятость иностранных граждан является печальной реальностью современной России. Количество нелегально работающих в Российской Федерации трудовых мигрантов² оценивается в 7-8 миллионов человек, в то время как общая численность российской рабочей силы составляет 68 миллионов, а число зарегистрированных трудовых мигрантов в 2005 г. составило 702,500 человек.

Настоящий доклад сфокусирован на Северо-западном регионе России, точнее, шести административно-территориальных единицах, граничащих с Европейским Союзом:

- Санкт-Петербург
- Ленинградская область
- Калининградская область
- Псковская область
- Мурманская область
- Республика Карелия

Используемый в докладе термин Северо-запад России (СЗР) включает только указанные шесть субъектов.

СЗР является притягательным для мигрантов регионом России. Растет число официально привлекаемых на работу в СЗР мигрантов – с 28,8 тыс. чел. в 2000 г. до 45,4 тыс. в 2005 г. Кроме того, численность нелегально работающих мигрантов составляет, по оценкам, от 100 до 400 тыс. чел. Географическое положение СЗР на границе с ЕС во многом определяет специфику его миграционной ситуации. Именно здесь концентрируются незаконные транзитные мигранты из азиатских стран, которые пытаются проникнуть на территорию ЕС. Они «застревают» в России на месяцы и даже годы, чтобы заработать деньги для дальнейшего продвижения на Запад.

В докладе проводится разграничение между мигрантами из бывших союзных республик и стран старого зарубежья, поскольку их въезд, пребывание и трудоустройство по-разному регулируется российским миграционным законодательством. При этом основное внимание уделено мигрантам из стран СНГ. Именно в них Россия видит основной ресурс пополнения трудовых ресурсов России.

Присутствие миллионов незаконных мигрантов в России заставляет российское правительство рассматривать их как вызов национальной безопасности страны. Рост криминальной активности некоторых мигрантских сообществ, раздувание проблемы

² Тема настоящего доклада сфокусирована на нелегальной занятости иностранных граждан. Поэтому в докладе не рассматриваются вопросы внутренней миграции и нелегальной занятости российских граждан, ограничиваясь *международной* миграцией. Таким образом, термин *трудовые мигранты*, употребляемый в тексте этого доклада, относится исключительно к международным мигрантам.

средствами массовой информации на фоне общемировой тенденции увязывания проблем незаконной миграции с международным терроризмом – все это создало негативный образ мигранта в России и подогрело настроения нетерпимости в обществе. Недавние драматические события в г.Кондопоге и Санкт-Петербурге, основанные на этнической неприязни, явились крайними проявлениями ксенофобии.

В докладе подробно рассмотрены происходящие в настоящее время изменения в миграционном законодательстве, радикально меняющие механизм привлечения иностранной рабочей силы из стран СНГ с безвизовым порядком въезда в Россию и открывающие таким образом более широкие возможности их легального трудоустройства в России.

4.2 ИММИГРАЦИЯ

4.2.1 Основные тенденции

Как и повсюду в мире, основной движущей силой миграционных потоков на пост-советском пространстве являются различия в уровнях жизни и экономических возможностях между странами. Данные таблицы 1, составленной на основании национальных и международных источников, несмотря на некоторые различия, с одинаковой силой демонстрируют наличие мощных экономических стимулов для миграции населения из более бедных стран СНГ в Россию (а в самые последние годы и в Казахстан), которые более успешно продвигаются по пути реформ.

Таблица 1. Различия в показателях уровня жизни в странах СНГ

Страны СНГ	ВВП на душу населения, \$US*	Средняя заработная плата, \$ US**	Уровень бедности (Доля населения, живущего ниже черты бедности) %**	Доля населения, живущего на менее чем 2 \$US в день, %***
Армения	1234.0	98.4	...	49
Азербайджан	2585.9	78.7	68	9
Беларусь	3316.2	161.8	22	2
Грузия	1765.8	58.5	11	16
Казахстан	4386.1	207.3	35	25
Кыргызстан	507.7	51.7	40	25
Молдова	917.4	89.5	23	64
Россия	6330.8	237.0	31	8
Таджикистан	411.5	21.5	...	43
Туркменистан	3888.6	44
Украина	2020.6	110.8	32	46
Узбекистан	498.6	35.8 ^{а)}	...	72

Источники: * IMF. World Economic Outlook Database, April 2006

** Население и уровень жизни в странах СНГ. Статистический справочник. М., Межгосударственный статистический комитет СНГ, 2005

*** UN. Population Reference Bureau. World Population Data Sheet. 2005

а) Данные за 1995 год

Миграционный поток в Россию сложен по своей структуре. В самом общем виде его можно классифицировать на два основных потока: (1) мигранты из бывших союзных республик, которые приезжают в Россию для временной работы или на постоянное место жительства, пользуясь преимуществами безвизового въезда, географической близостью, удобной транспортной инфраструктурой, историческими и культурными связями между странами, а также знанием русского языка, и (2) мигранты из других стран, главным образом из Китая, Турции, Вьетнама, Афганистана, Ирака, Сомали. Второй поток также состоит, по меньшей мере, из двух групп: «экономические» мигранты, которые приезжают в Россию в поисках работы или для мелкого предпринимательства, и транзитные мигранты, чьей конечной целью является добраться до ЕС или других более развитых стран. Для этой последней группы особый интерес представляют неопределенность российского законодательства, регулирующего пребывание иностранных граждан, сохранение полупрозрачных границ на

пост-советском пространстве и масштабный теневой сектор российской экономики, который дает им возможность заработка.

Все эти потоки включают как легальных, так и нелегальных мигрантов. *Основной чертой миграционной ситуации в современной России является масштабная незаконная миграция из бывших союзных республик с целью нелегального трудоустройства.*

В то же время экономические и демографические интересы России требуют дополнительных рабочих рук. Не исключено, что успех экономических реформ в стране окажется в непосредственной зависимости от того, удастся ли организовать управляемый приток населения извне для того, чтобы компенсировать уже сейчас ощущающийся дефицит рабочей силы. Так, в Северо-западном регионе России неблагоприятные демографические тенденции проявляются в возрастающем превышении показателей смертности над рождаемостью, что приводит к ежегодному сокращению населения региона более чем на 100 тыс. чел.; начавшемся с 2006 г. абсолютном сокращении населения в трудоспособных возрастах, которое после 2010 г. будет составлять не менее 70 тыс. ежегодно; в старении населения и соответствующем возрастании коэффициента демографической нагрузки³. Все это ставит вопрос о целесообразности притока иммигрантов. Однако иммиграция на постоянное место жительства в Россию наталкивается на ряд препятствий, основными из которых выступают просчеты в иммиграционном законодательстве, жесткая политика в отношении предоставления гражданства и неразвитость рынка жилья. В результате иммиграционный приток в СЗР сократился в период между 1994 г. и 2005 г. более чем в 10 раз: с более 130 тыс. чел. до 11.336 чел. В Мурманской области, например, ситуация осложняется стабильно отрицательным миграционным балансом, начиная с конца 1980-х гг. (- 4.645 чел. в 2005 г.).

К середине 2000-х гг. российская миграционная политика очевидно меняет свой вектор – от жестко-ограничительной к более гибкой, расширяющей правовое пространство для легальной миграции и устраняющей бюрократические преграды для мигрантов из стран СНГ. Преференции для временных и постоянных мигрантов из бывших союзных республик были намечены еще в поправках к Федеральному Закону «О гражданстве» 2002 г. Эта тенденция была продолжена и закреплена в недавно принятых Федеральных Законах «О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации» и «О внесении изменений в Федеральный Закон «О правовом положении иностранных граждан в Российской Федерации» (оба утверждены 18.07.2006 и вступят в силу 15.01.2007), а также в утвержденной Указом Президента РФ Государственной Программе по оказанию содействия добровольному переселению в Российскую федерацию соотечественников, проживающих за рубежом, на 2006-2012 гг., в разработке новой Концепции государственной миграционной политики РФ и Концепции проведения легализации незаконных трудовых мигрантов из государств СНГ с безвизовым порядком въезда в РФ, которая легла в основу проведенного в конце 2005 г. в 10 регионах России (включая Санкт-Петербург и Ленинградскую область) пилотного проекта легализации мигрантов.

Эти правовые инициативы нацелены в основном на: (1) стимулирование иммиграционного притока в Россию путем увеличения ее «миграционной привлекательности» для бывших советских граждан, проживающих ныне в странах СНГ; (2) совершенствование системы управления миграцией; (3) упорядочение мигрантского рынка труда и сокращение сектора нелегальной занятости мигрантов; (4) обеспечение социальных и юридических прав мигрантов, искоренение рабских практик, унижения и дискриминации.

Для СЗР эти цели особенно актуальны. Как уже говорилось, демографические показатели в регионе имеют негативные тенденции, в то время как экономической рост постепенно набирает силу и требует дополнительных рабочих рук. Так, Калининградская область

³ Коэффициент демографической нагрузки представляет собой соотношение между населением нетрудоспособных и трудоспособных возрастов.

проявляет большой интерес к *Государственной Программе по оказанию содействия добровольному переселению в Российскую федерацию соотечественников, проживающих за рубежом*, осуществление которой началось в 2006 г. Область заявила о готовности принять 450 тыс. переселенцев в течение 10 лет. Это самый высокий показатель по России. Правительство Калининградской области разработало детальную *Программу переселения*, в которой определены потребности области в иммигрантах определенных профессий и квалификации. Программа тесно взаимосвязана с крупными инвестиционными проектами, осуществление которых намечено на ближайшие годы. Важным условием успешной интеграции иммигрантов является обеспечение их жильем. Это стимулирует строительный бум в области, который, в свою очередь, приводит к дополнительному спросу на труд мигрантов.

4.2.2 Трудовая миграция

Трудовая миграция является наиболее многочисленным и динамичным миграционным потоком в СЗР. Согласно официальным данным, в шести исследуемых областях в 2005 г. были зарегистрированы 45.391 иностранных работников (таблица 2). Это немногим больше 1% от общей численности занятых в Калининградской и Ленинградской областях, менее 1% в Санкт-Петербурге и Республике Карелия, а в Мурманской и Псковской областях составляет ничтожно малую величину в 0,03%. Однако для того, чтобы получить более реальную картину, следует учесть, что (1) трудовые мигранты неравномерно распределены по отраслям производства и (2) несоразмерно большее число мигрантов трудятся нелегально. Таблица 3 показывает, что иностранные работники концентрируются преимущественно в строительстве и секторе услуг (в Санкт-Петербурге на эти две сферы приходится 74% зарегистрированных трудовых мигрантов, в Мурманской области – 60%, в Калининградской и Ленинградской областях – 50%). Другой сектор концентрации мигрантов – обрабатывающая промышленность. В Республике Карелия деревообработка и другие обрабатывающие отрасли привлекают 57% от общего числа иностранных работников, в агломерации Санкт-Петербург – Ленинградская область, где находятся многочисленные крупные промышленные предприятия, – 28%.

Таблица 2: СЗР: Занятость и безработица по субъектам РФ, 2005

	Санкт-Петербург	Ленинградская область	Калининградская область	Мурманская область	Псковская область	Республика Карелия
Численность занятых	2514716	832139	488662	477441	347210	346389
Уровень занятости, %	67.8	63.1	64.3	66.6	60.5	61.8
Численность безработных	55000	66000	34000	46000	25000	33000
Уровень безработицы (по стандарту МОТ)	2.2	7.4	6.6	8.8	6.6	8.8
Численность иностранных работников	23477	9871	6583	1559	1158	2743
Удельный вес иностранных работников в численности занятых	0.93	1.19	1.36	0.33	0.33	0.79

Источник: Данные ФМС России

Нелегальная занятость будет подробно рассмотрена ниже. Здесь важно указать, что оценивая действительное воздействие мигрантов на региональный рынок труда в СЗР, важно понимать, что до 90% трудовой миграции в Россию происходит в незаконной форме, что приводит к снижению уровня заработной платы в ряде отраслей и развращает российских предпринимателей доступностью массы относительно дешевого и бесправного труда.

Таблица 3: СЗР: Распределение иностранных работников по видам экономической деятельности, 2005

	Санкт-Петербург	Ленинградская область	Калининградская область	Мурманская область	Псковская область	Республика Карелия
Всего	23477	9871	6583	1559	1158	2743
В том числе:						
Строительство	13003	4086	2653	322	127	820
Обработывающие производства	2570	2352	1061	258	162	1570
Сельское хозяйство	238	589	41	33	42	11
Транспорт и связь	936	228	2296	25	131	124
Оптовая и розничная торговля, ремонт автотранспорта, бытовых изделий и пр.	4198	469	433	622	299	174
Другие виды экономической деятельности	2532	2147	99	299	397	44

Источник: Данные ФМС России

Безработица в СЗР составляет от 2,2% в Санкт-Петербурге до 8,8% в Мурманской области и Карелии. Безработица носит структурный характер, т.е. является результатом несбалансированности спроса и предложения на рынке труда. Так, количество безработных в Санкт-Петербурге оценивается в 55 тыс. чел., в то время как 296.200 вакансий оставались незаполненными в 2005 г. В Калининградской области 40% зарегистрированных безработных – это люди с высшим образованием. Став принимающей страной, Россия во все большей степени испытывает раздвоение рынка труда, когда непрестижные, опасные, низко оплачиваемые виды работ отвергаются местным населением. Так, Управление ФГСЗН по Псковской области отмечает высокий неудовлетворяемый спрос на рабочих, грузчиков, продавцов товаров, каменщиков, штукатуров, электриков, токарей, в то время как предложение экономистов, юристов, бухгалтеров, менеджеров превышает спрос в 2-3 раза. Такая ситуация типична и для других субъектов СЗР.

Не говоря уже о строительном секторе и сфере услуг с присущим им высоким спросом на низко-квалифицированный труд, нельзя не отметить растущую потребность в квалифицированных рабочих крупных предприятий, таких как Ижорский трубный завод, Кировский завод, Адмиралтейские верфи в Санкт-Петербурге, завод «Янтарь», судостроительный и судоремонтный заводы в Калининградской области и т.д. Речь идет о вакансиях электрогазосварщиков, монтажников, слесарей-сборщиков, судостроителей, водителей транспорта и др. Профессиональные училища не справляются с подготовкой местных кадров квалифицированных рабочих. Так, в Калининградской области в 2004 г. количество вакансий по специальности электрогазосварщик превышало выпуск специалистов данной профессии в 8 раз, по специальности каменщик – в 5,6 раза, водитель автомобиля – в 7 раз, штукатур – в 7,5 раза, повар – в 7,3 раз. Через государственную систему переобучения службы занятости ежегодно проходят около 3 тысяч человек, но работодатели, для того чтобы заполнить вакансии, все чаще прибегают к найму дешевой иностранной рабочей силы. Другой пример дает Мурманская область, где на рыбоперерабатывающих предприятиях предпочитают нанимать китайских рабочих для производства рыбного филе, т.к. они гораздо качественнее, чем местные рабочие, выполняют эту работу при минимальных отходах. В то же время уровень безработицы среди местных работников рыбоперерабатывающей отрасли в Мурманской области является самым высоким по региону.

Как следует из таблицы 4, большая часть трудовых мигрантов прибывает в СЗР из стран СНГ (67%), что вполне естественно. На работников из Украины приходится 29%, из Таджикистана – 10%, из Узбекистана – 11%, Молдовы – 5%. Уникален пример Калининградской области, где число работников извне СНГ превышает количество тех, кто

приехал из государств СНГ, почти вдвое; при этом 76% трудовых мигрантов не из стран СНГ представлены работниками пост-советских прибалтийских государств, главным образом, Литвы. Они заняты преимущественно в транспортных отраслях, наряду с украинскими водителями. Мигранты из Украины работают также в строительстве и на судоремонтных заводах. Турецкие рабочие представлены в подавляющем большинстве контрактными рабочими турецких строительных фирм, осуществляющих строительные проекты в СЗР, главным образом в Санкт-Петербурге и прилегающей к нему Ленинградской области. В Карелии трудовые мигранты из Финляндии и Украины заняты в лесозаготовительной и деревообрабатывающей промышленности, в то время как мигрантов из центрально-азиатских республик нанимают для подсобных работ в строительстве и торговле.

Таблица 4: СЗР: Распределение иностранных работников по странам происхождения, 2005

	Санкт-Петербург	Ленинградская область	Калининградская область	Мурманская область	Псковская область	Республика Карелия
Всего	23477	9871	6583	1559	1158	2743
Из стран СНГ:	14972	8831	2332	1242	834	2369
- Азербайджан	648	236	139	333	99	32
- Армения	959	627	92	33	74	110
- Грузия	353	16	1	7	4	16
- Казахстан	97	54	48	18	14	4
- Кыргызстан	378	116	34	144	32	112
- Молдова	1549	646	42	92	55	47
- Таджикистан	3455	588	36	53	30	47
- Туркменистан	41	65	0	0	4	0
- Узбекистан	2941	848	729	215	177	105
- Украина	4551	5635	1211	347	345	1896
Из других стран:	8505	1040	4251	317	324	374
- Прибалтика	358	113	3264	11	306	25
- Польша	160	16	237	1	3	0
- Финляндия	503	83	0	14	0	255
- Китай	1789	0	232	34	0	0
- Вьетнам	553	74	1	1	1	78
- Турция	3767	529	280	167	5	2
- прочие	1375	225	237	89	9	14

Источник: Данные ФМС России

4.2.3 Незаконная миграция

Оценки количества незаконных мигрантов, находящихся на территории СЗР, сильно разнятся. Оценки, предлагаемые государственными чиновниками, обычно превосходят данные ученых. ФМС исходит из установившегося соотношения численности зарегистрированных и незарегистрированных мигрантов в России 1:10. Соответственно, в СЗР, где общее число зарегистрированных трудовых мигрантов составляет 45 тыс. чел., предполагается, что незаконных мигрантов может быть до 400 тыс. в летний сезон. Ученые настаивают на меньшей цифре в 100-120 тыс. чел.

Наиболее многочисленный отряд незаконных мигрантов – это трудовые мигранты из стран нового зарубежья, которые прибывают в поисках работы и заработка. Поскольку легальные возможности найти работу сужены малоэффективной системой оформления разрешений на привлечение иностранной рабочей силы, а миграционный потенциал в основных странах исхода высок, люди приезжают и оказываются в секторе нелегальной занятости. Безвизовый порядок въезда в РФ для граждан государств СНГ, кроме Грузии и Туркменистана, дает право на пребывание в стране в течение 90 дней при условии наличия миграционной карты и своевременной регистрации по месту пребывания в течение 3 дней. Отсутствие регистрации является административным правонарушением. «Нелегалами» такие мигранты обычно становятся, когда трудоустраиваются, не имея на то разрешения, или превышают разрешенный срок пребывания в России.

Другая категория незаконных мигрантов – это транзитные мигранты из стран Азии и даже Африки, которые используют достаточно протяженный, но относительно дешевый и безопасный маршрут через Россию на Запад. Российский маршрут часто используется международными криминальными сетями, специализирующимися на торговле людьми, так что транзитные мигранты чаще всего продвигаются через российскую территорию с помощью посредников, которые обеспечивают их необходимыми контактами, проводниками, если необходимо – поддельными паспортами, документами, приглашениями, визами и т.д.

Географическое положение России между Европой и Азией и общая граница с ЕС, а также относительно прозрачные границы между пост-советскими государствами и наличие у некоторых из них соглашений о безвизовом въезде с третьими странами, являются весомыми аргументами в пользу «российского транзита». Транзитные мигранты, как правило, используют транзитные, гостевые или учебные визы, а также пользуются недостаточно эффективным контролем над пребыванием иностранных граждан в РФ, высоким уровнем коррупции, масштабным теневым рынком труда, наличием многочисленных этнических сетей мигрантов, которые в свое время приезжали в СССР и Россию (как политические беженцы, лица, ищущие убежища, или студенты вузов) и остались здесь.

СЗР – это конечный пункт в России для мигрантов, выбирающих так называемый «северный коридор». Он сформировался еще в 1990-е годы, когда существовал относительно либеральный режим пересечения границы между Россией и бывшими социалистическими странами Центральной Европы, в частности, Польшей. Границы постепенно все плотнее закрывались, но мигранты продолжали двигаться «по инерции». Все большая их часть, столкнувшись с трудностями пересечения границ ЕС, вынуждена была оставаться в приграничных областях России.

Так называемая «асимметрия границ» России – когда восточные рубежи остаются плохо оборудованными и слабо защищенными в отличие от западных границ, которые фактически представляют собой укрепленный форпост Европейской крепости, и российские пограничники чаще всего пресекают попытки нелегального выезда через западные границы РФ, – зачастую прерывает движение транзитных мигрантов и вынуждает их оставаться в России, хотя их целью продолжает оставаться переезд в более благополучные в экономическом и социальном отношении страны. Не желая того, они продолжают оставаться в России и при этом не стремятся интегрироваться в российское общество. Не будет преувеличением сказать, что *подавляющее большинство* незаконных мигрантов из стран старого зарубежья, находящихся в России, – это по сути транзитные мигранты, целью которых является выехать из России на Запад. По этой причине российское миграционное законодательство проводит все более четкое разграничение между мигрантами из стран бывшего СССР, которые стремятся в Россию на работу или на постоянное место жительства, и мигрантами из других стран мира, которые рассматривают территорию России лишь как промежуточный пункт их маршрута.

Помимо мигрантов из старого зарубежья, некоторые граждане СНГ также используют Россию как перевалочный пункт на их пути на Запад. Здесь, в отличие от своих родных стран, они имеют возможность заработать деньги, которые необходимы им для подготовки и организации своего «броска» в Европу, а кроме того, они приобретают определенную психологическую адаптацию к незаконному статусу в условиях, которые относительно благоприятны, если иметь в виду отсутствие языкового барьера, близость трудовых и иных традиций и т.д.). Впрочем, довольно затруднительно идентифицировать их как транзитных мигрантов и выделить – даже теоретически – из общей массы незаконных трудовых мигрантов из СНГ, пребывающих в России. Тем не менее, эксперты предполагают, что растущее число мигрантов из Узбекистана в Калининградской и Ленинградской областях может свидетельствовать о том, что часть из них участвует в пошаговой миграции, имея своей целью страны ЕС.

4.3 НЕЛЕГАЛЬНАЯ ЗАНЯТОСТЬ ИНОСТРАННЫХ ГРАЖДАН

4.3.1 Оценки и характеристики

Тот факт, что масштабная нелегальная занятость иностранцев в России является во многом результатом забюрократизированных процедур регистрации мигрантов и получения разрешений на работу, признается уже даже сотрудниками миграционных служб и руководством Министерства внутренних дел..

Чрезмерно усложненная процедура оформления регистрации фактически стимулирует взяточничество, распространение фальшивых документов о регистрации или вынуждает мигрантов оставаться в России незаконно. В последнем случае мигранту остается наниматься на работу только нелегально, т.к. отсутствие регистрации исключает для него возможность легального найма.

Получение разрешения на работу – это еще одна «ловушка» для мигрантов и работодателей. Для прохождения установленных законом двух ступеней получения разрешений работодатель должен представить в общей сложности более 30 документов, в том числе нотариально заверенных, и потратить на это не один месяц. В итоге, найм мигрантов, например, для сезонных сельскохозяйственных работ, теряет смысл. Широко распространившаяся сеть посреднических организаций, специализирующихся на оформлении разрешений, многократно удорожает процедуру. Так что не удивительно, что многие работодатели предпочитают нелегальные схемы найма, тем более что до последнего времени штрафы за нарушения трудового законодательства были незначительны. По данным ФМС, в 2004 г. более 93 тыс. работодателей в России прибегали к нелегальному найму иностранных работников.

Нелегальное трудоустройство в той или иной степени практикуется во всех отраслях российской экономики. Однако, поскольку незаконная миграция – это прежде всего удел неквалифицированных и низко квалифицированных работников, которые находят работу в трудоемких отраслях, нелегальная занятость наиболее распространена в строительстве, сельском хозяйстве, рыночной торговле, уборке мусора, ремонте дорог и других муниципальных службах. Формы нелегальной занятости, названные экспертами для СЗР, можно классифицировать следующим образом:

- *Нелегальная занятость иностранных граждан наряду с зарегистрированными трудовыми мигрантами в трудоемких отраслях* (строительство, оптовая и розничная торговля, сфера услуг, обрабатывающая промышленность). Даже среди наиболее организованной и прозрачной группы трудовых мигрантов в России – турецких строительных рабочих, которых турецкие фирмы нанимают в Турции и привозят в Россию для осуществления определенного проекта на строго фиксированный период времени, – даже среди них есть нелегальные работники, которые как бы «растворяются» среди работающих официально.
- *Нелегальная занятость иностранных граждан в неформальном (но легальном) секторе экономики.* Неформальная экономика представлена в основном экономикой частных домохозяйств, основанных на семейной кооперации, а также мелкими предприятиями, которые используют наемный труд наряду с неоплачиваемым трудом членов семьи. Типичными примерами являются семейные производства, занятость на мелких фермах и в рыночной торговле.
- *Нелегальная занятость иностранных граждан в серой (полулегальной) экономике,* т.е. в сфере домашнего труда и различных предприятиях мелкого бизнеса, которые внешне являются легальными, но в то же время широко применяют нарушения закона (в уплате налогов, бухгалтерии, найме работников и т.д.). В серой экономике широкое распространение имеют эксплуататорские практики (работа сверх положенного времени, невыплаченные зарплаты, изъятие паспорта, физическое насилие, сексуальное насилие, долговая кабала и т.д.). В то же время нелегальные работники часто «держатся» за своих работодателей, т.к.

боятся потерять работу. Со своей стороны, работодатели часто теневым образом обеспечивают работнику минимальный уровень бытовых удобств и безопасности: предоставляет жилье, обеспечивает в случае необходимости медицинскую помощь, спасает от милиции (известны случаи «выкупа» задержанного работника работодателем).

- *Нелегальная занятость иностранных граждан в «черной» (криминальной) экономике.* «Черная» экономика представляет собой нелегальный сектор производства и услуг (наркотики, проституция, производство контрафактной и пиратской продукции, подпольные цеха по производству текстиля, обуви, одежды и т.д.).

Во многих случаях работодатели умышленно прибегают к нелегальному найму иностранных работников, извлекая прибыль из их бесправного положения, сверх-эксплуатации, заниженной заработной платы, отсутствия формальных обязательств по отношению к мигрантам, необоснованных увольнений и т.д. Иногда сама природа бизнеса исключает легальные, оформленные трудовые отношения. Так, подпольные цеха, производящие контрафактную продукцию, едва ли когда-либо будут нанимать работников с соблюдением всех норм законодательства.

Есть и другие случаи, когда предприниматели предпочитают нанимать рабочих нелегально, т.к. они вынуждены к этому чрезмерно усложненными официальными процедурами получения разрешений на привлечение иностранной рабочей силы. Исследование нелегальной миграции в России, проведенное МОМ в 2002 г. и охватывавшее ряд крупных городов, включая Санкт-Петербург, показало, что более 80% незаконных мигрантов предпочли бы легальную работу и соответствующую социальную защиту даже при том, что им придется получать меньше из-за уплаты налогов. Даже принимая во внимание, что участвовать в опросе согласились лишь наиболее «лояльные» из незаконных мигрантов и что их ответы не всегда были искренни, тем не менее, столь высокий процент однозначно демонстрирует огромный резерв легализации сферы нелегальной занятости. По вполне понятным причинам работодатели не были охвачены опросом, однако эксперты, представленные городскими и региональными чиновниками, руководителями частных агентств занятости, лидерами этнических землячеств и учеными, занимающимися изучением миграции, указали, что, по крайней мере, каждый третий работодатель готов «выйти из тени», если условия регулирования малого бизнеса будут более благоприятны⁴.

Нелегальная занятость иностранных граждан, как правило, сопряжена с нарушением прав и свобод человека. «Современное рабство» – это жесткие слова, но именно они во многих случаях отражают практику нелегальной занятости. Международные сети торговцев людьми продают в рабство не только женщин и подростков для секс-индустрии (что наиболее типично во многих странах), но также тысячи мужчин и женщин для трудовой эксплуатации. Оказавшись объектом торговцев людьми – будь то добровольно или обманом – мигранты оказываются в бесправном положении, становясь объектом купли-продажи. Не их труд (что нормально), а их свобода становится товаром, что совершенно недопустимо.

Таким образом, противодействие незаконной миграции и нелегальной занятости лежит прежде всего в экономической плоскости и может быть реализовано путем рационального регулирования рынка труда и вытеснения подпольных производств и «черного» сектора экономики, в то время как борьба с торговлей людьми должна прежде всего осуществляться комплексом карательных мер против ее организаторов.

4.3.2 Противодействие

К началу 2000-х гг. российское правительство всерьез озаботилось масштабом незаконной миграции и нелегальной занятости иностранных граждан в России. Именно поэтому

⁴ Проблема незаконной миграции в России: реалии и поиск решений (результаты социологического обследования). М., Гендальф, 2004

функции управления миграционными процессами перешли в 2002 г. в ведение Министерства внутренних дел. Силовое ведомство предприняло активные шаги по пресечению незаконной миграции, естественно, присущими ему силовыми методами: ужесточением миграционного законодательства, укреплением системы иммиграционного контроля, рейдами в места возможного нахождения нелегалов, задержаниями, депортациями и т.д.

Однако скоро стало ясно, что такая модель управления миграцией неэффективна. Будучи изолированной от экономических инструментов миграционной политики, а также дискредитированная взяточничеством среди официальных лиц, она давала противоположный эффект: толкала мигрантов в теневой сектор, привела к росту нелегальной занятости, препятствовала формированию национального рынка труда, оставляла миллионы людей, находящихся в России, без правовой защиты, провоцировала коррупцию и рост преступности среди мигрантов. И что наиболее важно, ее результаты не отвечали национальным экономическим и демографическим интересам России, которые определялись нехваткой трудовых ресурсов в целом ряде отраслей.

К середине 2000-х гг. прагматический подход, исходящий из необходимости отрегулировать рынок труда и обеспечить экономику трудовыми ресурсами на законной основе, привел к коренному пересмотру модели управления миграционными процессами в области противодействия незаконной миграции путем расширения возможностей легального трудоустройства мигрантов из стран СНГ, с которыми Россия имеет соглашения о безвизовом въезде. Упомянутые выше Федеральные законы, которые вступят в силу 15.01.2007, устанавливают новый, уведомительный порядок регистрации мигрантов по месту пребывания, предусматривают более простой и четкий порядок получения временного вида на жительство и максимально упрощают процедуру получения разрешения на работу в России (причем новые правила не привязывают мигранта к определенному работодателю, но дают ему возможность свободного поиска работы в пределах того региона, где выдано разрешение на работу).

Эти инновации можно рассматривать как несомненный прорыв в превращении потоков незаконной миграции в Россию в законные, регистрируемые, легитимные. Устранив ненужные административные преграды и расширив каналы легального трудоустройства мигрантов, Россия выбрала наиболее эффективный путь противодействия незаконной миграции. Страна нуждается в мигрантах. Прежние правила приводили к тому, что мигранты приезжали и трудились нелегально. Новыми правилами Россия предлагает им: приезжайте законно, работайте легально, платите налоги, уважайте российские законы, а Россия в ответ защитит вас теми же законами и вашим трудовым контрактом.

Организационно управление трудовой миграцией регулируется «Положением о привлечении и использовании иностранной рабочей силы в РФ» (утверждено Указом Президента 16.03.1993, новая редакция от 05.10.2002). В соответствии с этим Положением формулируется местное законодательство в российских регионах, которые в особенной степени испытывают дефицит трудовых ресурсов. Так, в Калининградской области действует региональный закон «О порядке и условиях привлечения и использования в Калининградской области иностранной рабочей силы» (08.10.1998). После того, как с 2003 г. в соответствии с российским законодательством были введена система квот на привлечение иностранной рабочей силы, в регионах созданы межведомственные комиссии, на которые возложено определение потребности региона в трудовых мигрантах. В состав комиссий входят представители региональной исполнительной власти, наряду с представителями областных федераций профсоюзов и областных ассоциаций промышленников и предпринимателей (работодателей). Квоты применяются только к мигрантам из тех стран, которые имеют визовой режим въезда в Россию, в то время как граждане стран СНГ, имеющих безвизовый порядок въезда в Россию, могут быть наняты на работу в России в соответствии с двусторонними соглашениями.

Либерализация миграционного законодательства происходит одновременно с ужесточением санкций против недобросовестных работодателей и мигрантов, которые нарушают трудовой и налоговый кодексы, а также миграционные нормы. Одновременно с вступлением новых законов в силу 15.01.2005, увеличиваются штрафы на нелегальный найм иностранных работников – до 300 тыс. руб. за каждого нанятого с нарушением правил (т.е. без разрешения на работу, без заключения контракта) мигранта.

С 2004 г. в российский Уголовный Кодекс включены несколько статей, криминализирующих организацию незаконной миграции (ст. 322.1), торговлю людьми (ст. 127.1), использование рабского труда (ст. 127.2). Так, использование рабского труда наказывается лишением свободы на срок от 5 до 15 лет.

Наиболее часто применяемые санкции против нелегальных мигрантов – штрафы и высылка с территории России. Мигранты могут быть депортированы по решению суда, отметка о депортации ставится в паспорт мигранта, и он лишается права въезда в Россию в течение 5 лет. В преддверии вступления в силу нового законодательства количество задержаний мигрантов заметно возросло. Тем самым мигрантам дают понять, что российское государство и общество не намерены больше мириться с незаконной миграцией и нелегальной занятостью иностранных граждан.

4.3.3 Сотрудничество заинтересованных структур

В управлении миграционными процессами в России, противодействии незаконной миграции и нелегальной занятости участвуют многочисленные федеральные и региональные структуры (ФМС, ФГСЗН, МИД, Федеральная пограничная служба, Федеральная служба по налогам и сборам, их региональные управления, специализированные комитеты местных правительств, государственные трудовые инспекции), а также ассоциации работодателей, профсоюзы и НПО. В самые последние годы к миграционной теме испытывает интерес бизнес (частные агентства занятости, объединенные в Ассоциацию «Трудовая миграция»; учредители Российской миграционной трудовой биржи (РМТБ), одно из пяти отделений которой располагается в Санкт-Петербурге и ориентировано в своей деятельности на СЗР). Во взаимодействии правительственных и неправительственных организаций, коммерческих и некоммерческих структур кроется ключ к упорядочению ситуации в области международной трудовой миграции в России и рынка труда мигрантов.

СЗР уже сейчас демонстрирует примеры эффективного сотрудничества государственных и негосударственных структур. Как уже указывалось, в работе межведомственных комиссий по определению квот на привлечение иностранной рабочей силы принимают участие представители областных федераций профсоюзов и областных ассоциаций промышленников и предпринимателей. В Калининградской области, например, учитывая структуру привлекаемых в область иностранных работников, участником Комиссии является областной профсоюз работников строительной отрасли (Строительный союз).

В целях защиты своих прав и интересов трудовые мигранты, работающие в России, предпринимают попытки «самоорганизации». Уже два года действует Общероссийский профсоюз сотрудников предприятий и организаций, использующих иностранную рабочую силу (устоявшееся неофициальное название – МИГРОС, сокращение от «Мигранты в России»). Аналогичное, но не зависимое от МИГРОСа объединение возникло в Республике Карелия – Межрегиональный профсоюз мигрантов и наемных работников. Мигрантские объединения ставят цель защиты прав мигрантов и обеспечения их юридической поддержкой. Они проводят информационные кампании для мигрантов, предоставляют консультационные услуги, разрабатывают программы, ориентированные на повышение толерантности общества в отношении иностранцев. Исключительно важным для них является поддержка со стороны государственных структур. Так, Межрегиональный профсоюз мигрантов заключил соглашение с Законодательным собранием Ленинградской области, определяющее их взаимодействие в разработке и осуществлении законодательных инициатив, обсуждении вопросов, связанных с пребыванием и трудоустройством мигрантов. Появление организаций, объединяющих легальных мигрантов,

может служить хорошим примером для нелегально работающих в России иностранцев и выступить дополнительным аргументом для них в пользу легализации своего статуса.

Важную роль в формировании отношения общества к мигрантам играют СМИ. На них во многом лежит ответственность за нынешнее разрастание ксенофобии и национальной нетерпимости. В то же время это огромный потенциал воспитания толерантности и взаимоуважения. Богатым источником информации для мигрантов является Интернет. Недавно организованный всероссийский портал с символическим доменом www.nelegalov.net разъясняет российское миграционное законодательство, обращает внимание на проблемы, связанные с незаконной миграцией и нелегальной занятостью, предупреждает об опасностях контактов с торговцами людьми. Аналогичный информационный сайт организован в Санкт-Петербурге юридической фирмой ФОРУМ www.spbforum.ru. Он снабжает мигрантов юридическими консультациями, нужными контактными телефонами и т.д. Обследования незаконных мигрантов показывают, что они испытывают крайний «информационный голод», который, собственно, зачастую и толкает их к нелегальным механизмам трудоустройства. Более 70% мигрантов заявляют о своей готовности платить за информацию и помощь в легализации и трудоустройстве. Несомненно, здесь есть большой неиспользованный резерв борьбы с нелегальной занятостью.

4.3.4 Региональное и международное сотрудничество

Геополитическое положение СЗР вдоль границы с ЕС диктует целесообразность регионального сотрудничества в соседними странами ЕС. Это в особенной мере относится к Калининградской области, которая является российским эксклавом, окруженным территорией Евросоюза. И Россия, и ЕС заинтересованы в пресечении незаконных пересечений границы. Несмотря на существование так называемого феномена «асимметричных границ», Россия готова принять на себя ответственность за тех мигрантов, которым удастся проскользнуть с ее территории в Европу: уже два года действует Соглашение о реадмиссии между РФ и Литвой. В ноябре 2006 г. ожидается подписание соглашения о реадмиссии между РФ и ЕС. Эти соглашения несомненно являются важным инструментом, направленным на упрощение режима пересечения границы между Россией и соседними европейскими странами. Однако они же могут поставить в затруднительное положение Калининградскую область: согласно практике реадмиссии незаконные мигранты возвращаются стране, откуда они прибыли, *самым коротким маршрутом*, так что Калининградскую область может захлестнуть волна «возвращенных» мигрантов.

Оправдавшем себя методом сокращения потенциала незаконной миграции в странах исхода является инвестирование в трудоемкие отрасли экономики этих стран. Этот метод использовался в процессе расширения ЕС на восток; в настоящее время Россия применяет перенос трудоемких предприятий (например, обувной и текстильной промышленности) в Северный Китай с тем, чтобы использовать более дешевую местную рабочую силу и снизить давление китайской миграции. Таким же образом инвестиции ЕС в экономику России и стран СНГ могли бы обернуться не только взаимовыгодным экономическим сотрудничеством, но послужить также инструментом сокращения миграционного потенциала. В СЗР региональные проекты сотрудничества в области трудовой миграции дают хороший пример того, как взаимодействие между соседними странами может служить для обоюдной выгоды (см. раздел 5).

Стремление противодействовать незаконной миграции и нелегальной занятости мигрантов лежит в основе регионального сотрудничества в рамках СНГ и ЕврАзЭС. Следует указать на *Соглашение стран СНГ о сотрудничестве в области трудовой миграции и социальной защиты трудовых мигрантов* (15.04.1994), а также двусторонние соглашения по трудовой миграции России с Украиной (1993), Молдовой (1993), Беларусью (1993), Кыргызстаном (1996) и Таджикистаном (2005). Совместные усилия против незаконной миграции регулируются *Соглашением СНГ о борьбе с незаконной миграцией* (06.03.1998), которое дополняется рядом межведомственных соглашений. В январе 2000 г. лидерами стран СНГ подписано

Соглашение о создании общей базы данных по незаконным мигрантам и обмену информацией. Однако, в последние годы масштаб и структура незаконной миграции изменились, требуя новых подходов в этом вопросе. *Концепция сотрудничества стран СНГ в области борьбы с незаконной миграцией*, подписанная 16.09.2004, предусматривает развитие и поощрение законных форм трудовой миграции и возможностей легальной занятости мигрантов как альтернативы незаконной миграции, сверх-эксплуатации и торговли людьми. Приняв новое законодательство, Россия делает шаг навстречу пожеланиям своих партнеров по СНГ. Успех новой политики России во многом будет зависеть от того, как расценят страны происхождения мигрантов эти инициативы и как они будут настраивать своих граждан воспользоваться легальными каналами трудоустройства в России.

Россия имеет также двусторонние соглашения о трудовой миграции с государствами старого зарубежья, которые являются основными поставщиками рабочей силы на российский рынок. Трудовая миграция с Китаем регулируется соглашениями 1992 и 2000 г. В настоящее время готовится к подписанию новое соглашение с Китаем о сотрудничестве в противодействии незаконной миграции и нелегальной занятости китайских граждан на территории России. Вьетнам является традиционным партнером России в области трудоустройства своих граждан еще во времен Советского Союза. Вьетнамские рабочие традиционно работают на российских ткацких и текстильных предприятиях. Однако незаконные мигранты из Вьетнама также присутствуют в России, работая на рынках и в секторе услуг. В СЗР это чаще всего транзитные мигранты, стремящиеся попасть в Польшу и далее – в другие страны ЕС.

Однако, несмотря на все вышеперечисленные усилия, международная миграция в России остается трудно управляемой сферой. Причина заключается в очевидной неразвитости *официальной миграционной инфраструктуры*, под которой понимается комплекс государственных и частных институтов, работающих на официальной основе и обеспечивающих легитимность, информированность, безопасность миграции – государственные и частные агентства по трудоустройству, информационно-консультационные центры, специализированные юридические службы, а также службы доверия, горячие линии и т.д. Если страна нуждается в мигрантах – а Россия в них нуждается – и стремится к тому, чтобы они работали в ней легально, она должна обеспечить их знаниями о миграционном законодательстве, трудовом и налоговом кодексах, предоставить им информацию об имеющихся вакансиях, о возможностях профессиональной переподготовки, а также обеспечить защиту их прав и интересов в России. Для этого и необходима миграционная инфраструктура.

Когда официальная миграционная инфраструктура неразвита, мигранты обращаются за информацией и помощью к неформальным источникам и в результате попадают в руки торговцев людьми и непорядочных работодателей и оказываются в рабской зависимости.

Таким образом, *Соглашение стран СНГ о сотрудничестве в области трудовой миграции и социальной защиты трудовых мигрантов* демонстрирует низкую эффективность во многом потому, что его реализация возложена исключительно на государственные организации, деятельность которых координируется Управлением внешней трудовой миграции ФМС. Отстранение от участия в его реализации частных агентств занятости и явная недооценка роли региональных управлений ФМС и ФГСЗН тормозят нормализацию процессов трудового импорта. Кроме того, соглашение подписано в 1994 г. и требует пересмотра.

4.4 ЗАЩИТА ПРАВ ТРУДОВЫХ МИГРАНТОВ

Иностранные граждане, легально работающие в России, защищены российским законодательством и трудовым контрактом. Условия контракта, подписываемого работодателем и работником, предусматривают обязательства работодателей в отношении оплаты труда работника, пенсионных отчислений, профессионального обучения, медицинского страхования и, в случае конфликтов, права мигранта отстаивать свои

интересы в суде. ЕСН, выплачиваемый нанимателем в соответствии со ст. 24 Налогового кодекса РФ, включает в себя отчисления на все виды социальных льгот и выплат и соответственно обеспечивает доступ иностранного работника к этим льготам.

Мигранты, которые имеют постоянный или временный вид на жительство в России, но работают на условиях не трудового контракта, а гражданско-правового договора, и платят налоги в соответствии с законодательством, имеют равные права с работающими по трудовому у контракту в смысле доступа к медицинской помощи, страхованию жизни и получению образования.

Нелегально работающие мигранты не могут быть защищены российским законодательством в полной мере, поскольку по сути они находятся вне закона. Они могут быть задержаны и высланы из страны по решению суда за нарушение условий пребывания и трудоустройства. В то же время даже незаконные мигранты не могут быть лишены своих основных прав. Существующие соглашения – *Соглашение об оказании медицинской помощи гражданам государств-участников СНГ* 27.03.1997, *Соглашение о взаимном предоставлении гражданам Республики Беларусь, Республики Казахстан, Кыргызской Республики и Российской Федерации равных прав в получении скорой и неотложной медицинской помощи* 24.11.1998, к которому 21.07.1999 присоединился Таджикистан, – гарантируют право мигрантам этих стран на скорую и неотложную помощь при внезапных острых состояниях и заболеваниях, угрожающих жизни, несчастных случаях, отравлениях, травмах, родах и неотложных состояниях в период беременности, которая предоставляется беспрепятственно во всех лечебных учреждениях независимо от наличия медицинского страхового полиса. Возмещение затрат за оказание экстренной медицинской помощи осуществляется из бюджета государства временного пребывания.

Еще один важный шаг в признании прав мигрантов вне зависимости от их статуса был сделан недавно специальным директивным письмом руководителя Федеральной службы по надзору в сфере образования и науки «*О праве детей на образование в РФ*» № 01-678/07-01 от 24.07.2006, где четко указывается директорам начальных и средних школ принимать детей на обучение без предъявления документов, подтверждающих их гражданство и наличие регистрации в России. Прежняя неопределенность в этом вопросе создавала условия для взяточничества и произвола; теперь же высказана четкая позиция понимания того, что мигранты – это реальность современной России, с которой нужно считаться.

Большую роль в изменении вектора российской миграционной политики в сторону либерализации и гуманизма сыграли международные консультации России с другими странами и международными организациями, такими как Международная организация по миграции, Международная организация труда, Европейский Союз, Организация по безопасности и сотрудничеству в Европе, Совет Европы и др. Так, в течение 2000-х гг. происходили постоянные консультации между Департаментом по миграции Совета Европы, Федеральной миграционной службой и Министерством иностранных дел РФ по вопросам прав человека в контексте миграционных тенденций в России. Ряд международных конференций были направлены на формирование единого подхода к пониманию проблемы прав человека, принципов Стратегии управления миграцией Совета Европы и Европейской Конвенции о правовом статусе трудящихся-мигрантов. Несмотря на то, что Россия пока не присоединилась к Европейской Конвенции, тем не менее, проходившие дискуссии несомненно сказались на общем изменении взгляда российских властей на вопросы управления миграцией и способствовали происходящему ныне сдвигу миграционного законодательства в сторону либерализации.

На региональном уровне консультации между приграничными странами по наиболее острым вопросам, относящимся к международной миграции, и разработка совместных проектов, учитывающих конкретную ситуацию в этих регионах, может служить важным инструментом формирования «регионального разреза» российской миграционной политики. Для России с ее централизованной формой управления это может быть важным ресурсом в достижении большей гибкости управления миграционными процессами.

Одновременно Россия развивает сотрудничество с основными странами происхождения мигрантов в рамках СНГ, как на многостороннем, так на двустороннем уровнях. Недостаточная защищенность трудовых мигрантов, подавляющее большинство которых находятся вне правового поля, стимулировала разработку Конвенции стран-участниц СНГ о правовом статусе трудящихся-мигрантов, которая нацелена на повышение ответственности принимающих стран, работодателей и самих мигрантов за развитие «цивилизованных» форм занятости, исключение сверх-эксплуатации и обеспечение безопасности и защиты прав трудящихся. Конвенция может быть принята Советом глав государств СНГ в самом начале 2007 г., после того, как вступит в силу новое российское миграционное законодательство.

4.5 РАЗВИТИЕ ВОЗМОЖНОСТЕЙ ЛЕГАЛЬНОЙ ЗАНЯТОСТИ

Сущность происходящих в настоящее время изменений в миграционной политике России заключается в расширении инструментов управления миграцией за счет экономических мер стимулирования законной миграции и легального трудоустройства мигрантов из государств СНГ. Эти изменения явились результатом настойчивых усилий научного сообщества и НПО доказать миграционным властям России, что наиболее эффективным средством борьбы с незаконной миграцией, особенно в условиях России, является расширение каналов легального трудоустройства, с одной стороны, и жесткая политика в отношении теневого сектора экономики, с другой.

Важный шаг в этом направлении был сделан введением системы региональных квот на привлечение иностранной рабочей силы в 2003 г. Ежегодные квоты для каждого российского региона, заинтересованного в импорте рабочей силы, определяются ФМС и ФГСЗН на основе заявок регионов и утверждаются Указом Правительства РФ. Квоты распространяются на работников только из тех стран, с которыми Россия имеет визовый режим въезда, т.е. Грузия, Туркменистан и все государства вне СНГ.

В таблице 5 представлены квоты на привлечение иностранной рабочей силы в СЗР на 2005 и 2006 гг. Характерно невыполнение квот 2005 г. по всем указанным субъектам. Это результат того, что механизм определения потребности в иностранных работниках не до конца отработан, нелегальная занятость мигрантов искажает картину, а также имеет место недооценка потенциала местного трудового потенциала и внутренней миграции. В настоящее время квотирование притока иностранной рабочей силы является основным инструментом регулирования возможностей легального трудоустройства мигрантов из стран вне СНГ.

Таблица 5: СЗР: Квоты на привлечение рабочей силы из стран с визовым режимом въезда в Россию, 2005, 2006

	Утвержденная квота на 2005, чел.	Количество иностранных работников из стран с визовым режимом въезда 2005, чел.	Выполнение квоты 2005 г. (%)	Утвержденная квота на 2006, чел.
Санкт-Петербург	7000	5337	76.2	10000
Ленинградская область	1160	362	31.2	1300
Калининградская область	3000	2365	78.8	3500
Мурманская область	300	228	76.0	365
Псковская область	260	157	60.4	300
Республика Карелия	276	210	76.1	200

Источник: Данные ФМС России

Специфика региона СЗР проявляется в его приграничном положении с ЕС. Концентрация незаконных мигрантов в субъектах СЗР, масштабный теневой сектор экономики, где мигранты находят нелегальную работу, не могут быть безразличны для соседних Финляндии, Эстонии, Латвии, Литвы и Польши. Вполне резонно, что соседние страны и

регионы принимают особые правила регулирования передвижений своих жителей через границу.

Межрегиональное Соглашение между Восточной Финляндией и Республикой Карелия, определяющее *Еврорегион Карелия*, было подписано в 2000 г. и одобрено Министерствами иностранных дел России и Финляндии. В рамках этого соглашения реализуется Программа «*Наша общая граница 2001-2006*». В результате осуществления Программы инвестиции Финляндии в экономику Республики Карелия возросли в 10 раз. 42 финские компании и организации ведут бизнес в российской Карелии. Более 50 тыс. рабочих заняты на предприятиях с участием финского капитала. Эксперты сообщают, что заработная плата на этих предприятиях на 12% выше, чем в среднем по Республике.

Другой межрегиональный проект «*Передвижение рабочей силы между Финляндией и Россией*» реализуется в рамках программы Интеррег – ША. Проект направлен на создание благоприятных предпосылок для организованного передвижения рабочей силы между Юго-Восточной Финляндией и СЗР. Одним из главных направлений деятельности является отработка практического механизма взаимодействия государственных служб занятости на рынке труда. С финской стороны проект охватывает территорию Юго-Восточной Финляндии, с российской – Санкт-Петербург и Ленинградскую область.

Другим направлением международного сотрудничества в целях расширения возможностей легальной занятости мигрантов является взаимодействие в рамках СНГ. Страны-участницы СНГ очевидно заинтересованы в развитии единого рынка труда СНГ, который мог бы стать важным инструментом развития национальных экономик и региона в целом. Сами мигранты давно уже «голосуют ногами» за создание единого рынка труда СНГ. Однако доминирование незаконной миграции и нелегальной занятости выступают тормозом «нормального» взаимодействия между странами в формировании механизмов общего трудового рынка. Принятая в сентябре 2004 г. *Концепция сотрудничества стран СНГ в области борьбы с незаконной миграцией* нацелена в конечном счете на создание прозрачного и управляемого единого рынка труда, основанного на демографической взаимодополняемости стран. Достижение этой цели во многом зависит от позиции России как основной принимающей страны. Происходящее в настоящее время изменение российской миграционной политики в отношении трудовых мигрантов из государств СНГ демонстрирует интерес России к поощрению легальных форм их трудоустройства как альтернативы доминирующим сейчас неформальным отношениям на мигрантском рынке труда.

Российский бизнес и НПО принимают участие в совместной деятельности СНГ в продвижении возможностей легального трудоустройства. По инициативе Международной Ассоциации «Трудовая миграция» и Фонда «Новая Евразия» и при поддержке ФМС и Министерств труда Таджикистана, Кыргызстана и Узбекистана происходит формирование так называемых «*миграционных мостов*» между российскими регионами, испытывающими нехватку рабочей силы, и странами происхождения мигрантов. Миграционные мосты предназначены для облегчения процесса импорта/экспорта трудовых ресурсов путем профессионального подбора персонала, обеспечения помощи в легализации мигрантов, организации их профессионального обучения в соответствии с потребностями российских предприятий и т.д.

4.6 ВЫВОДЫ И РЕКОМЕНДАЦИИ

Многочисленная незаконная миграция и нелегальная занятость иностранных граждан в России во многом является результатом слишком жесткого законодательства и забюрократизированной правоприменительной практики. Вследствие этого мигранты зачастую вынуждены прибегать к услугам теневых посредников, включая торговцев людьми, и оказываются в теневом секторе экономики с его эксплуататорскими практиками. Коррупция среди чиновников, ответственных за управление миграционными процессами и контроль над ними, привела к полной утрате представления о том, сколько мигрантов

трудятся в России. Оценки неприлично расходятся от 4 до 15 миллионов, чаще всего не имея при этом под собой никаких обоснований.

Нелегальная занятость иностранных граждан – это сложное многоуровневое явление. Некоторые мигранты умышленно ищут работу в теневом секторе, в то время как другие вынуждены наниматься на нелегальных условиях из-за того, что процедуры получения разрешений чересчур усложнены и времеемки. Среди работодателей также наряду с криминальными подпольными производителями есть и такие, кто прибегает к нелегальным формам найма для того, чтобы сэкономить время и деньги. В любом случае нелегальная занятость ведет к сокращению поступлений от налогов, поощряет коррупцию и деформирует национальный рынок труда. Однако, понимание дифференцированной природы нелегального труда является ключом к эффективной борьбе с ним.

Наиболее тревожным вопросом для России является тот факт, что масштабный приток дешевых, непритязательных и готовых на любую работу мигрантов действует развращающе на российских работодателей. Возможность сэкономить на издержках труда является соблазном для «молодого» российского бизнеса, часто отличающегося беспринципностью, низкой правовой культурой и отсутствием традиций респектабельности.

Все это должно приниматься во внимание при разработке стратегии борьбы с нелегальной занятостью мигрантов. Посредством нового миграционного законодательства российское правительство получает хороший инструмент сокращения теневого сектора рынка труда и восполнения нехватки трудовых ресурсов в российских регионах. Практическое воплощение новой миграционной политики во многом зависит от государственной воли местных органов власти. Поскольку нелегальная занятость является той сферой, где смыкаются *экономические* и *криминальные* аспекты, борьба с ней должна происходить, по крайней мере, по двум основным направлениям:

На экономическом направлении основная роль принадлежит региональным управлениям ФГСЗН с их широкой сетью суб-региональных центров занятости. Именно они имеют наиболее четкое представление о балансе спроса и предложения на местных рынках труда и именно они могут наиболее эффективно управлять потоками трудовой миграции в пределах субъектов федерации во взаимодействии с работодателями, профсоюзами и институтами гражданского общества. Российская Миграционная биржа труда, Санкт-Петербургское отделение которой сосредоточено на СЗР, является другим вариантом расширения возможностей легального трудоустройства для мигрантов из стран СНГ. Необходимо изучить и обозначить формы возможного сотрудничества между этой коммерческой структурой и государственными службами занятости. Помимо этого, возрастающая роль в управлении трудовой миграцией посредством усиления налогового контроля над налогоплательщиками, как работодателями, так и мигрантами, отводится региональным управлениям Федеральной службы по налогам и сборам

На криминальном направлении выявление незаконных мигрантов, а также работодателей, практикующих нелегальный найм иностранных работников, возложено на региональные управления Федеральной миграционной службы наряду с региональными управлениями внутренних дел. Новое законодательство предоставляет и мигрантам, и работодателям более широкие возможности легального трудоустройства, так что их нелегальность не может теперь объясняться вынужденным уходом с легального поля из-за фактической невыполнимости процедур получения разрешений, и наказания за нарушение закона серьезно ужесточены. Основными инструментами правоохранительных органов остаются контрольные проверки, штрафы, задержания и депортации, однако, наряду с этим возрастающее значение отводится информационным кампаниям, пропагандирующим новые правила среди мигрантов. Вытеснение криминальных производств и услуг может «автоматически» привести к сокращению масштабов нелегальной занятости. В этом контексте особо важное значение приобретают анти-коррупционные меры.

Расширение возможностей легальной занятости и оптимизация рынка труда требует хорошо развитой информационной структуры и инфраструктуры трудоустройства. В том, что

касается *информационной структуры*, на повестке дня ФМС уже стоит создание системы информационно-консультационных центров (ИКЦ) для мигрантов. Здесь несомненно есть место для международного сотрудничества, к примеру в Балтийском регионе, в области обмена опытом, технического содействия, публикации карманных справочников для мигрантов и т.д. В расширении *инфраструктуры трудоустройства*, помимо уже упоминавшихся государственных служб занятости и Российской миграционной трудовой биржи, большую роль может сыграть развитие системы заемного труда. В настоящее время лизинг персонала занимает незначительное место на российском рынке труда, пожалуй, большее распространение он имеет в его теневом секторе. Однако построенная на принципах 181-й Конвенции МОТ система заемного труда могла бы служить важным инструментом повышения гибкости рынка труда и эффективно вытеснить нелегальное трудоустройство. В этом контексте исключительно ценен для России опыт стран ЕС, которые уже в течение длительного времени практикуют лизинг персонала. Известно, что в Голландии, например, еще лет 20 назад заемный труд был фактически запрещен, а сейчас до 80% персонала работают на этих условиях.

Для того, чтобы работодатели получили стимулы нанимать иностранных работников легально, важно, чтобы они имели свободный доступ к легальному сектору мигрантского рынка труда. В особенной мере это относится к сфере малого бизнеса, где нелегальное трудоустройство имеет наибольшее распространение. Основной причиной нарушения трудового законодательства работодателями в сфере малого бизнеса является недостаточная гибкость оформления трудовых отношений между нанимателем и работником. Трудовой Кодекс РФ предусматривает фактически единую форму срочного трудового договора для предприятий и малого, и крупного бизнеса. Однако, для мелких ферм, предприятий рыночной торговли или сферы домашнего труда такая жесткая модель оформления трудовых отношений часто оказывается неприемлемой. Разработка более гибких схем для малого бизнеса может способствовать легализации рынка труда в России.

5 МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ПО МИГРАЦИИ (МОМ)

Основанная в 1951 году, МОМ является основной неправительственной организацией в области миграции. Членами данной организации являются 116 стран. В рамках организации действуют более 1400 проектов, некоторые из них в области трудовой миграции, в более чем 280 представительствах в более 100 стран. Проекты осуществляются 5,000 служащими МОМ во всем мире посредством рабочего бюджета в более чем миллиард долларов ежегодно. Деятельность МОМ направлена на развитие гуманной и организованной миграции, устраивающей все заинтересованные стороны. Развитие обеспечивается предоставлением услуг и консультаций правительствам и мигрантов, а также поддержкой международного сотрудничества по вопросам миграции. МОМ работает в следующих четырех направлениях управления миграцией: миграция и развитие, поддержка миграции, регулирование миграции и вынужденная миграция. Эти параллельные направления включают развитие международного миграционного законодательства, обсуждение и руководство миграционной стратегией, защиту прав мигрантов, здоровья и оценку рода миграции. Трудовая миграция является важнейшей составляющей деятельности.

Основной целью МОМ в области трудовой миграции является содействие развитию программ, которые, как по-отдельности, так и все вместе, могут помочь заинтересованным государствам, мигрантам и организациям:

- обеспечивая эффективную защиту и поддержку трудовым мигрантам и их семьям;
- стимулируя экономическое и социальное развитие; и
- развивая легальные формы мобильности и занятости иностранных работников, являющихся альтернативой нерегулярной миграции.

Располагаясь как в странах эмиграции, так и иммиграции, МОМ занимает выгодное положение для того, чтобы объединить все заинтересованные стороны и привести в действие механизмы трудовой миграции, удовлетворяющие различным интересам.

Программы МОМ в области трудовой миграции включают:

- наращивание потенциала в управлении;
- предотъездную подготовку мигрантов, повышение осведомленности и обеспечение информацией;
- помощь в подготовке трудовой деятельности и внедрение программ трудовой миграции;
- увеличение влияния программ и разработок на трудовую миграцию;
- содействие в осуществлении диалога между государствами и поддержке сотрудничества.

Программы осуществляются в партнерстве с различными государственными и международными организациями.

Наращивание потенциала в управлении трудовой миграцией

Растет количество развивающихся стран и стран с переходной экономикой, стремящихся перенять политику, законодательство и структуры для развития и поддержки трудовой занятости за рубежом части собственной рабочей силы и вызвать перевод денежных средств, обеспечивая тем временем защиту своим эмигрантам. Некоторые страны со средним объемом дохода также являются странами назначения и они ищут способы наилучшего управления притоками трудовой силы. МОМ помогает усилить управление трудовой миграцией в таких странах.

Предотъездная подготовка и ориентация трудовых мигрантов и информация

Многие мигранты сталкиваются с трудностями в принимающих странах из-за недостаточной подготовки перед отъездом. МОМ предлагает предотъездную подготовку, цель которой предоставить мигрантам информацию об условиях жизни и рабочей среды, а также помочь в организации изучения языка, что способствует интеграции мигрантов в стране назначения. МОМ также ставит своей целью углубление осведомленности мигрантов о риске и действительности трудовой миграции, и облегчение доступа к информации о миграционном и трудовом законодательстве.

Содействие развитию двусторонних трудовых программ

Все больше стран, которым необходима иностранная рабочая сила, вступают в двусторонние трудовые соглашения со странами-партнерами и начинают развивать специальные программы по трудовой миграции. Эти программы построены так, чтобы направлять миграционные трудовые потоки и сокращать нерегулярную миграцию путем предоставления легальных возможностей. МОМ поддерживает усилия правительства в этом направлении и предоставляет широкий спектр услуг странам-источникам и принимающим странам, а также отдельным мигрантам.

Миграция и развитие: финансовые потоки

Наиболее тесная связь между миграцией и развитием осуществляется посредством денежных переводов – переводов тех денежных средств, которые мигранты посылают домой. Так как переводы денежных средств являются частными, то целью МОМ в этой области является помощь в развитии практик и механизмов, которые:

- улучшают качество услуг перевода денег для мигрантов;
- способствуют развитию влияния финансовых потоков.

Учитывая отсутствие достоверной информации о подобных финансовых потоках, третьей областью интересов МОМ является:

стратегически-ориентированные исследования

Региональный диалог

МОМ развивает международный региональный диалог по миграции, в том числе и трудовой миграции, в партнерстве с другими международными и региональными организациями, также как и с другими заинтересованными партнерами, с целью обмена информацией, наиболее успешными разработками по таким вопросам, как защита и предоставление услуг незащищенным трудовым мигрантам, оптимизация преимуществ организованной или легальной трудовой миграции, наращивание потенциала и дальнейшее развитие диалога между заинтересованными странами. Правительственная комиссия по трудоустройству за рубежом для Стран Азии (п. VIII.8) представляет собой пример деятельности, предпринимаемой МОМ.

6 РЕКОМЕНДАЦИИ, ВЫРАБОТАННЫЕ В ХОДЕ ПРОВЕДЕНИЯ ПРОЕКТА

В данном разделе представлено ограниченное количество общих рекомендаций. Рекомендации для отдельных стран представлены в рабочих материалах для Финляндии, Латвии и Северо-Западного региона России.

Сотрудничество по профилактике нелегальной занятости трудовых мигрантов

- Сотрудничество на государственном, региональном и международных уровнях должно вовлечь широкий круг правительственных организаций, профсоюзов, ассоциаций работодателей, и других заинтересованных организаций для того, чтобы в полной мере отразить сложность данной проблемы. Кроме того, оно должно быть формализовано и стандартизировано на функциональном уровне, что поможет избежать ситуации, при которой сотрудничество осуществляется на основе личных контактов.
- Страны должны сотрудничать в области обмена информацией, предоставления технической поддержки, предприятия совместных усилий, например предоставлении информации мигрантам.
- Должны быть предприняты попытки сократить законодательные и функциональные ограничения, мешающие обмену информацией между правительственными организациями на государственном, региональном и международных уровнях.
- Сотрудничество на международном уровне может быть облегчено созданием координирующей организации.

Профилактические меры против нелегальной занятости трудовых мигрантов

- Должно быть расширено предоставление информации и социально-ориентированных программ для мигрантов и потенциальных трудовых мигрантов. Информация о возможностях трудоустройства, условиях труда, других важных деталях, относящихся к трудовой миграции, должны предоставляться в странах-источниках через партнерские организации или консульства и посольства. Дополнительные средства для расширения социально-ориентированных программ включают в себя развитие информационных центров для мигрантов, распространение информационных материалов на нескольких языках через различные средства массовой информации и т.д.
- Процесс найма трудовых мигрантов должен быть прозрачным и свободным настолько, насколько это возможно от бюрократических проволочек как для работодателя, так и для работника. Страны должны создавать больше легальных возможностей для трудовых мигрантов, чтобы получить доступ к рынкам труда зарубежом.
- Что касается санкций, имеющих в законодательствах соответствующих стран, то должны быть предприняты попытки применить к нарушителям наиболее суровые из имеющихся санкций, обычно носящих финансовый характер. Это может послужить средством предупреждения и предотвращения нелегальной занятости трудовых мигрантов.
- Профилактические меры должны быть направлены на сокращение неформального/теневое рынка труда в целом, а не только на отдельные практики нелегальной занятости трудовых мигрантов, например, антикоррупционные меры, проверки рабочих мест и т.п.
- Необходимо продумать лицензирование и осуществление контроля за частными организациями по найму персонала.

- Необходимо продумать регистрацию и осуществление контроля за иностранными компаниями, функционирующими за рубежом, осуществляющими найм трудовых мигрантов.
- Должны быть усилены механизмы надзора, например, инспектирование на месте, введение удостоверений личности для рабочих в области строительства.
- Санкции против нелегальной занятости должны быть направлены в основном на работодателей, а не работников.

Защита трудовых мигрантов

- Страны должны применить права, предоставляемые своим гражданам, к трудовым мигрантам, например, установить минимальный уровень оплаты труда, возможность обращения к правосудию, обеспечить доступность системы здравоохранения и т.д.
- Предусмотреть хорошо-сбалансированное законодательство, в котором сделан акцент на соблюдении прав человека в области нелегальной трудовой занятости.
- Больше внимание должно быть уделено защите прав трудовых мигрантов, например путем предоставления соответствующей информации, услуг и поддержки, что с одной стороны поощрит поиски легальных возможностей трудоустройства, а с другой стороны - сообщения о случаях плохого обращения.
- Больше усилий должно предприниматься к проверке контрактов трудовых мигрантов на предмет соответствия определенным стандартам трудоустройства.
- Страны должны подписать и ратифицировать соглашения, направленные на защиту трудовых мигрантов: Соглашение о Трудовой Миграции, 1949 (испр.) (No. 97); Соглашение о Трудовой Миграции (Дополнительные положения), 1975 (No. 143), (а также сопроводительные рекомендации); и Международное Соглашение по защите Прав Всех Трудовых Мигрантов и членов их семей (Соглашение ООН о трудовых мигрантах, ICRMW), 1990.
- Должны быть предприняты меры по борьбе с нетерпимостью, дискриминацией и ксенофобией, для того чтобы облегчить интеграцию трудовых мигрантов в принимающее общество.

Развитие легальной занятости для трудовых мигрантов

- Страны должны предпринимать действия для выявления соотношения спроса и предложения на рынке труда, для того чтобы эффективно управлять потоками трудовой миграции в сотрудничестве с работодателями, профсоюзами и общественными организациями.

III. Illegal Employment of Third Country Nationals in Finland

Christine Adam and Lucy Laitinen

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1 EXECUTIVE SUMMARY

The illegal employment of migrant workers is an emotive issue that provides serious challenges to decision-makers, authorities, and the many other actors involved. The issue is multi-layered and encompasses a wide range of elements related, *inter alia*, to migration, labour, human rights, criminality, sovereignty, unemployment, international relations, and development. Effectively monitoring and preventing illegal employment practices regarding migrant workers involves the negotiation of the complex interlinkages of these issues through an integrated approach that emphasizes the importance of cooperation.

This working paper sets out to provide an overview of illegal employment practices with regard to third country nationals in the construction and service industries. After providing an overview of regular and irregular immigration to Finland it looks specifically at the scale and characteristics of illegal employment of third country nationals (TCNs) in Finland followed by a description of the preventive measures currently in place as well as gaps and weaknesses. The paper then provides an overview of protection issues in relation to migrant workers, a view on cooperation on the topic both in Finland and abroad, the EU approach to labour migration, and measures to promote labour migration in Finland. Due to the lack of existing research literature and publications on the issue of illegal employment and illegal practices related to the employment of third country nationals in Finland, the authors largely relied on a limited amount of interviews with experts on the topic within Finland to gather information for the working paper.

The paper makes a distinction between regular migrants who have entered Finland legally and who have the right to work but whose employment terms and conditions violate employment or other relevant legislation; irregular migrants who have entered Finland illegally and are now working illegally (unauthorized migrants); and migrants who initially entered Finland legally but who now have an irregular status (for example as a result of overstaying) and are working illegally. The findings show that the biggest group of migrant workers involved in the informal labour market in Finland is made up of regular migrants whose employment terms and conditions violate employment, tax, or other relevant legislation. An estimated 3000-4000 migrant workers from both the EEA area and third countries are thought to belong to this category. There is a much smaller problem related to unauthorized migrants working illegally in Finland.

Preventive measures are well integrated into legislation and efforts are being made to implement them, although in some cases they are hampered by a lack of resources and a lack of cooperation due to the wide range of actors in the field, each with their own particular interest or concern, as well as restrictions on sharing of information. Protection measures for migrant workers are also provided for in legislation and there are some limited services available for migrant workers but in general the authors have found that there is little focus on this issue currently.

Increasing recognition of potential future labour shortages due, among other causes, to demographic aging led the Finnish Government to adopt, in autumn 2006, the Migration Policy Programme, which includes guidelines to facilitate labour migration to Finland. Up until now, labour migration to Finland has been rather limited. Each year there are approximately 30,000 labour migrants who work in Finland and it remains to be seen how effective the new policy programme will be as a tool for promoting labour migration.

2 INTRODUCTION

This working paper provides a general overview of illegal employment of third country nationals in Finland. A brief overview of immigration to Finland provides context before a discussion of illegal employment, including its characteristics, the extent of the problem, preventive measures, and obstacles to prevention. The paper then provides an overview of current efforts regarding the protection of migrant workers followed by a description of current and future plans for the promotion of labour migration to Finland. There is a section describing cooperation among Finnish authorities on all these issues, both within Finland and abroad. Finally, the paper provides a brief description of relevant initiatives at the EU level regarding labour migration and illegal employment before presenting some conclusions.

Due to the lack of existing research literature and publications on the issue of illegal employment and illegal practices related to the employment of third country nationals in Finland, the authors largely relied on interviews with experts on the topic within Finland to gather information for the working paper. This also enabled the collection of first hand, relevant information. The authors recognize that their list of interviewees is only limited and there is scope to examine this issue at a deeper level in the Finnish context.

3 IMMIGRATION

3.1 Overview

Until recently, Finland was a country of net emigration. Indeed, during the last 120 years, more than a million Finns moved abroad, a large percentage of those for economic/labour reasons.¹ The population of Finland is still considered more ethnically homogenous than the populations of most other European countries. Before the 1990s, apart from the presence of 'old' ethnic minorities in Finland (including Jews, Tartars, and Roma) there was only a small foreign population in Finland.² The major reasons for immigration to Finland were studying, temporary work, and marriage to a Finn.³ Until the end of the 1980s, around 85 percent of the immigrants coming to Finland were return migrants, mostly from Sweden, a situation which changed in the 1990s from which time the majority of migrants have been of foreign origin.⁴ Since 1990 immigration has rapidly increased. At the end of 2004, 108,300 foreign citizens lived in Finland on a permanent basis, making up approximately two per cent of the entire population.⁵ 2004 statistics show that the majority of immigrants came from the Russian Federation, Estonia, Sweden, Somalia, Iraq, and Serbia- Montenegro.⁶

The growth in immigration to Finland coincided with economic depression in the 1990s. National unemployment rose from 3.5 per cent in 1990 to 17 per cent in 1995.⁷ Among the immigrant population unemployment was over 50 per cent and among certain minorities over 80 per cent.⁸ At the end of 2004 the estimated unemployment rate of immigrants had decreased to approximately 28 per cent, although it should be noted that this statistic includes all newcomers.⁹ The overall unemployment

¹ Sirpa Taskinen, "From a country of emigration to a country of immigration. Case study Finland," in Johannes Pfliegerl, Sylvia Trnka (eds.), *Migration and the Family in the European Union*, Austrian Institute for Family Studies, 2005.

² Olavi Koivukangas, "European Immigration and Integration: Finland," National Europe Centre Paper No. 63, Paper presented to conference entitled "The Challenges of Immigration and Integration in the European Union and Australia," 18-20 February 2003, University of Sydney.

³ *ibid.*

⁴ *ibid.*

⁵ OECD SOPEMI. *Trends in International Migration - Finland*. OECD. Paris, 2005 (prepared by Katja Vilkkama, Sinikka Keskinen, and Olli Sorainen, Finnish Ministry of Labour), p 2.

⁶ Statistics Finland, "The Major Groups of Foreign Citizens in Finland", 31.12.2004
http://www.migrationinstitute.fi/db/stat/img/ef_06.jpg

⁷ Olavi Koivukangas, "European Immigration and Integration: Finland," National Europe Centre Paper No. 63

⁸ *ibid.*

⁹ OECD SOPEMI Finland 2005, p 2.

rate in Finland in 2004 was 8.8 per cent by comparison.¹⁰ The unemployment rate for foreigners is particularly high for immigrants who are refugees.¹¹ According to Heikkilä and Peltonen, “the major impediments to recruitment are unemployment, lack of language skills and the low estimation of foreign work experience by Finnish employers.”¹² Furthermore, immigrants are more likely to get jobs that require little or no training.¹³ Most immigrants live in Southern Finland, especially the metropolitan area of Helsinki and the majority of immigrants are of working age.

3.2 Regular immigration

3.2.1 Humanitarian immigration

In 1973 Finland accepted its first refugees from outside of the region when one hundred refugees came from Chile, followed by the acceptance of Vietnamese refugees in 1979. An annual refugee quota was established with UNHCR in 1986, initially set at 500 but now aiming at 1000 refugees per year (usually reaching around 750). Between 1973 and 2004, 25,114 refugees moved to Finland.¹⁴ The biggest refugee groups have been Somalis, citizens of the former Yugoslavia, and Vietnamese. In addition to quota refugees, Finland receives other refugees, including asylum seekers who have been granted asylum or a residence permit based on the need for protection or on the basis of other humanitarian reasons, their family members, and family members of quota refugees.

Generally, the Finnish Government approves a low number of asylum applications. However, residence permits have frequently been granted in cases where there is an obvious and immediate need of protection. The Aliens Act 51§¹⁵ states: “Aliens residing in Finland are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country.” A temporary residence permit can be awarded for a maximum of two years but does not allow individuals the right to work during the year or live in any municipality. In practice, those issued with temporary residence permits stay at reception centres. In 2004 3,861 asylum seekers sought asylum in Finland.¹⁶ Of those, 29 applicants received asylum while 771 were granted residence permits for need of protection or for “other reasons”.¹⁷ Almost 60 per cent of the asylum seekers were Dublin cases who had sought asylum already in some other EU country.¹⁸ In 2005 the number of asylum seekers was 3,574, the majority of which came from Bulgaria, Serbia and Montenegro, Somalia, Iraq, Afghanistan, and the Russian Federation.¹⁹ From January until August 2006 the number of asylum applications was 1,745.²⁰ Of this number the majority came from Bulgaria (353), Serbia and Montenegro (177), Iraq (169), and the Russian Federation (115).²¹

3.2.2 Return migration of ethnic Finns

Almost 40 per cent of ethnic Finns migrating to Finland originated from Sweden in the period 1995-2004.²² 26,328 Finns returned from Sweden in the period 1994-2004.²³

¹⁰ Statistics Finland: http://www.stat.fi/tup/suoluk/suoluk_tyolama_en.html

¹¹ Finnish Ministry of Labour, *Preparing for the Labour Market Change Caused by the Baby Boom Generation: Final Report of the Project*, Labour Market Administration, Helsinki, 2003.

¹² Elli Heikkilä & Selene Peltonen, *Immigrants and integration in Finland*, Institute of Migration, Turku, Finland, 2.10.2002

¹³ *ibid*

¹⁴ Figure from the Statistical Yearbook of Finland 2005 (Statistics Finland) quoted on the e-Finland website: <http://e.finland.fi/netcomm/news/showarticle.asp?intNWSAID=44383>

¹⁵ Finnish, Aliens Act (301/2004; amendments up to 653/2004 included)

¹⁶ Statistics from the Directorate of Immigration website: <http://www.uvi.fi/netcomm/content.asp?article=2113>.

¹⁷ *ibid*.

¹⁸ OECD SOPEMI Finland 2005, p 14.

¹⁹ Statistics provided to IOM by the Directorate for Immigration by email 2 November 2006.

²⁰ *ibid*.

²¹ *ibid*.

²² OECD SOPEMI Finland 2005, p 11.

²³ *ibid*, p 12.

The other large group of returnees has been Ingrian Finns. In April 1990, Finnish President Mauno Koivisto declared that all ethnic Finns living within the former Soviet Union (known as Ingrians) could be considered return migrants to Finland. From 1990 to 2004 approximately 27,000 - 30,000 returnees and their family members moved to Finland from the former Soviet Union.²⁴ Since 2003 the level of return migration has slowed down. The main reason is considered to be the language requirement introduced in 2003 that means Ingrians must have a reasonable knowledge of Finnish or Swedish language in order to get status in Finland. At the beginning of November 2005 there were 15,000 Ingrians in the Russian Federation and Estonia who had signed up for the remigration procedure and were waiting for their residence permit application to be processed.²⁵

3.2.3 Labour immigration

There is currently a yearly total of approximately 30,000 labour migrants who work in Finland at some point during the year. Half come from within the EU, mainly Estonia, while the remainder are TCNs. Of this number, only 20 per cent are regulated by labour market tests.²⁶ For a discussion on current measures and legislation regarding labour migration, see section 6. With regard to TCNs, the largest group admitted as labour migrants were Russians (almost half), followed by Chinese, Bulgarians, Turks, Ukrainians, and Indians.²⁷ Most permits were given for work in gardening and agriculture.²⁸

Labour migration figures were affected by the two-year transitional period implemented after the enlargement of the EU in May 2004. Finland did not see any real changes in the volume of labour migrants from the new EU countries. Direct employment has been insignificant but it is estimated that the numbers of posted workers²⁹ have clearly increased, mostly from Estonia.³⁰ According to the Ministry of Labour, this resulted in problems with supervising working conditions and instability for workers and difficulties in monitoring because the majority of workers are not registered as living or working in Finland (see more on posted workers in section 4).³¹ The Government decided to lift the transitional period in May 2006, hoping that ending the transition period would increase direct employment instead of the use of posted workers.

3.2.4 Other

Most immigrants (65-70 per cent) have moved to Finland on the basis of family reasons, including marriage to a Finnish spouse.³² Over 2,500 marriages are contracted every year in which one partner is a foreigner and the other is a Finnish citizen permanently residing in Finland.³³

3.3 Irregular immigration

Irregular migration is defined as movement that takes place outside the regulatory norms of the sending, transit, and receiving countries.³⁴ Obviously, due to its hidden nature and the fact that the status of a migrant may change with time, it is difficult to accurately estimate the scale of irregular immigration. According to the National Bureau of Investigation's (NBI) statistics the number of irregular mi-

²⁴ UVI press release, 7 December 2004:

<http://www.uvi.fi/netcomm/content.asp?path=8,2470,2483,2485&article=2472&index=&page=1>

²⁵ OECD SOPEMI Finland 2005, p 12.

²⁶ Statistics given to IOM at interview with Olli Sorainen, Ministry of Labour, 8 November 2006.

²⁷ OECD SOPEMI Finland 2005, p 17.

²⁸ *ibid*

²⁹ A "posted worker" means a worker who, for a limited period, carries out his/her work in the territory of a Member State other than the State in which he/she normally works. For a more detailed definition see the Posted Workers Act (1146/1999, including amendment 1198/2005), section 1.

³⁰ "The Governments' 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 Different Sectors," Presented to the Parliament 8 March 2006.

³¹ *ibid*.

³² OECD SOPEMI Finland 2005, p 2.

³³ *ibid*, p 23.

³⁴ IOM, *World Migration 2005*, Geneva, 2005.

grants entering Finland in the last three years is as follows (noting that not all irregular migrants are apprehended):

- 2004 - 3067
- 2005 - 2843
- 2006 (until the end of September) - 1249³⁵

The NBI does not believe that irregular migration to Finland is increasing. Regarding the number of illegal immigrants residing in Finland, the NBI estimates that there are some 3,000 – 5,000 annually, a figure it believes to be rather stable.³⁶ It is worth noting that the purposes for residing illegally differ and also the periods (for example, visa overstayers compared to long term irregular migrants residing in Finland). Although many officials and researchers have highlighted Finland's role only as a transit country for irregular migration, based on the statistics mentioned above, the NBI believes that Finland is a transit country but also a destination country for irregular migrants. According to the NBI, irregular migrants transit Finland in order to reach the other Nordic countries, Central and Western Europe, and North America. The most common country of destination for irregular migrants transiting Finland is the United Kingdom.³⁷ Irregular migrants entering Finland are from, among other countries, Bulgaria, Somalia, Iraq, Serbia, the Russian Federation, China, India, Nigeria, and Bosnia & Herzegovina. For those illegally residing in Finland, they are drawn for a wide range of reasons, including employment, family reasons, international conflict, criminality, and hope of a better life. Among foreign nationals residing illegally in Finland, the NBI mentions nationals from the Russian Federation, Somalia, and Turkey among others.

Officials stated during interviews that the main motive for irregular migrants to transit Finland is access to the Schengen area for the purpose of work. According to authorities such as the Border Guard, the trend in recent years in Europe has been for irregular migration to be "dressed" as regular migration.³⁸ For example, a person enters Finland on a tourist visa with the expressed purpose of visiting friends while in reality they intend to overstay or change their status in order to work in Europe.

According to the Border Guard, Chinese and Russians are by far the biggest group of irregular migrants transiting Finland and an increasing number of irregular Indian migrants are expected now that Finnair has opened a route between New Delhi and Helsinki.³⁹ The Border Guard notes that the opening of an air route between China and Finland has already changed the nature of irregular migration as it relates to Finland. The number of Chinese transit passengers went up to 130,000 in 2005 (4.2 per cent out of a total of 3.1 million) and in 201 cases (1.54 per cent of Chinese passengers) the Border Guard identified "something wrong". Most Chinese transit passengers are heading to other destinations in Europe such as Spain, the United Kingdom, and France, with fewer traveling to North America on this route. Both European law enforcement authorities and Chinese overstayers intercepted by Finnish authorities when exiting Europe have confirmed that the countries of destination for irregular Chinese migrants are mostly Spain, then Central Europe, and lastly the Nordic countries. The United Kingdom has not been highlighted by Chinese overstayers, largely because it is outside the Schengen area and irregular migrants would have been intercepted when exiting UK airports. In 2002 Finnish authorities intercepted seven long-term Chinese overstayers attempting to exit the Schengen area in order to return home while in 2005 this figure rose to 122.⁴⁰

On 30 October 2006 Finnair opened a new route between Helsinki and New Delhi. Anticipating that there would be attempts by irregular migrants to transit Finland using this route, the Border Guard, the Ministry of Foreign Affairs, and Finnair sent representatives to train Finnair ground crew at the airport in New Delhi. Immediately after the training, 26 attempted illegal boardings were stopped by

³⁵ NBI Statistics provided to IOM by Jouko Ikonen, 15 November 2006.

³⁶ *ibid.*

³⁷ Information provided in email from Major Ilkka Herranen, Finnish Border Guard, 21 November 2006.

³⁸ IOM Interview with Major Ilkka Herranen, Finnish Border Guard, 7 November 2006.

³⁹ *ibid.*

⁴⁰ *ibid.*

Finnair ground crew in cooperation with the more experienced ground crew of Austrian Airlines.⁴¹ Of this number, for example, ten Indian nationals were attempting to travel on fraudulent visas to Minsk via Helsinki for “sight-seeing” while three Indian nationals were attempting to travel on fraudulent visas to Paris for a “tae kwon doe tournament”. This has confirmed the Border Guard’s concerns about a possible increase of irregular migration through Finland based on this new route.⁴²

4 ILLEGAL EMPLOYMENT OF THIRD COUNTRY NATIONALS

4.1 Overview

When looking into this issue it became clear that there was a need to define more clearly what is meant by illegal employment of third country nationals. For the purposes of this paper we identified three relevant “categories”:

- a) Regular migrants who have entered Finland legally and who have the right to work but whose employment terms and conditions violate employment or other relevant legislation;
- b) Irregular migrants who have entered Finland illegally and are now working illegally (unauthorized migrants);
- c) Migrants who initially entered Finland legally but who now have an irregular status (for example as a result of overstaying) and are working illegally.

Based on these categories it is clear that illegal employment of TCNs does not always involve the violation of migration laws but more broadly involves violations of employment or tax laws, although often there is a combination of violations. Indeed, information provided by NBI indicates that with regards to Finland, the primary problem of illegal employment of TCNs lies with violation of tax and employment laws on the part of the employer, and subsequently the employee, rather than the violation of migration laws.

The NBI defines **black labourers** as those who have a right to work but do not pay tax or are violating other laws related to their employment (category a) and **illegal labourers** as those who do not have permission to work in Finland at all (category b). They estimate that around 20,000 employees a year, of both Finnish and foreign origin, are involved in the informal labour market. Out of this number they estimate that there may be 3,000-4,000 migrant workers, including labourers from other EU countries. In terms of illegal labour, the NBI estimates that there are only a “few hundred” working in Finland.⁴³

Regarding the extent of the problem of illegal employment of TCNs in Finland, most sources agree that the problem was worse before the latest enlargement of the EU in 2004. Before this time there were significant problems with particular regard to Estonian workers. Presently most migrant workers are working lawfully in Finland. So far OSH inspections have shown that about ten per cent of the migrant workers inspected have not had the right to work in Finland or are in some ways violating employment and tax related legislation.⁴⁴ For the Uusimaa (Southern Finland) region Most problems with migrant workers involve EU nationals, particularly Estonians but increasingly other nationalities such as Poles. This relates in particular to the characteristics of the posted worker system. According to the Construction Worker’s Union, around 95 per cent of migrant workers (both from the EU and third countries) work in Finland as posted workers.

Authorities estimate that the entire known informal economy in Finland is EUR 5 billion a year, or 4-6 per cent of GNP. This figure includes stock exchange and foreign exchange fraud. The National

⁴¹ Figures provided in email from Major Ilkka Herranen, Finnish Border Guard, 21 November 2006.

⁴² IOM Interview with Major Ilkka Herranen, Finnish Border Guard, 7 November 2006.

⁴³ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

⁴⁴ Interview with the Ministry of Social Affairs and Health, 2 November 2006. Note that for the Uusimaa/Southern Finland region this figure is one per cent. (Information provided by the Uusimaa OSH Inspectorate by email 18.12.06).

Bureau of Investigation, however, estimates that 90 per cent of criminality is hidden, indicating that the informal economy represents an enormous percentage in relation to GNP.⁴⁵ Officials from the “VIRKE Project for the development of inter-authority cooperation” believe that economic crime and problems related to the informal economy are largely a problem with Finnish nationals and that the informal economy in the EU is a growing problem.⁴⁶ According to the VIRKE project’s economic crime report, it is “a known fact that the majority [of migrant workers] does not pay tax to the Finnish tax authorities or to their domestic tax authorities.”⁴⁷ Companies are able to take advantage of the current tax rules that allow foreign companies to function without a permanent establishment in Finland, without registration for advance payments of corporate income tax, and without the necessity to withhold taxes on the wages of employees when the employees only stay for six months in Finland.⁴⁸ There are no authorities with systematic information on these companies including the length of stay of individual workers.⁴⁹ There is also a serious number of cases of Finnish nationals systematically using Estonian-based corporate entities as a means to cover up activities in Finland to hide the signs and traces of economic crime.⁵⁰

4.1.1 Nature of illegal employment of TCNs in Finland

The aim of the PIELAMI project was to particularly focus on illegal employment in the construction and service sectors. Information gathered during this research project showed that these sectors were indeed the most prone to illegal employment practices, along with the ship building sector, for both the general population and migrants. Sources concurred that most informal foreign labour was concentrated in the construction sector, while the largest proportion of illegal foreign labour was concentrated in the restaurant business, and more specifically in the ethnic restaurant business.

Other sectors of concern noted were berry picking, the cleaning sector (one of the few sectors not requiring Finnish language skills), transport, the metal industry, and domestic work. Some of these sectors have not been adequately researched due to lack of resources or focus. The regional OSH Inspectorates have each selected one or more sectors to particularly focus on in 2006, with specific regard to foreign labour. For example, the Eastern Finland OSH Inspectorate is looking specifically at foreign labour in the agricultural sector while the Vaasa OSH Inspectorate is looking at gardening and fur farming.⁵¹ Findings from these sectors will be reported in the Department of Occupational Safety and Health’s report on foreign labour in January 2007.

Because of limited resources, most attention is placed on large operations or problems involving many migrant workers, meaning that lesser crimes or crimes involving a lower number of employees largely go uninvestigated, for example in private households or small companies. The Finnish Directorate of Immigration (UVI) for instance noted that abuses in the domestic work sector are a problem in other countries and may become a problem in Finland now that domestic workers, such as nannies, can be hired from abroad.⁵² However, when domestic workers apply for permit extensions this presents an opportunity for employment conditions to be checked. UVI noted that there were abuses in the former au pair scheme, which did not provide social protection to au pairs. However, it is now difficult to enter Finland as an au pair due to a recent tightening of restrictions.⁵³

Regarding other general characteristics of illegal employment practices related to TCNs, NBI has noted a strong involvement of organized crime (for example biker gangs), both in Finland and abroad.⁵⁴ According to those interviewed, geographically there is a bigger problem in the Uusimaa (Southern Finland) region but this is clearly related to the fact that there is a higher number of for-

⁴⁵ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

⁴⁶ Interview with the Virke Project, 9 November 2006.

⁴⁷ Markku Hirvonen, Project Manager “The slowly changing face of economic crime” in the Virke Project’s Report on Economic Crime, Spring 2006, p 21.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ Markku Hirvonen, “The slowly changing face of economic crime”, p 21.

⁵¹ Interview with the Ministry of Social Affairs and Health, 2 November 2006.

⁵² Interview with the Directorate of Immigration (UVI), 7 November 2006.

⁵³ *ibid.*

⁵⁴ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

eigners, and indeed a larger general population, in this region. However, serious cases have been reported outside of this region also. The Finnish companies that are committing illegalities related to employment are founded in accordance with Finnish law but according to the NBI are “used as tools to commit crimes.”⁵⁵ They vary in size depending on the sector. For example in the construction sector the companies are large, usually involving 50-70 illegally employed migrant workers while in the restaurant sector there are usually only five-six illegally employed migrant workers.⁵⁶ The Ministry of Interior noted that most problems lie with long chains of subcontractors.⁵⁷ For example, building a ship might involve 200 different companies and a vast multitude of contracts and agreements.

Experts have noted that there are almost always Finnish nationals illegally employed at the same place as illegally employed TCNs. There seems to be little specific knowledge regarding employer’s recruitment procedures regarding migrant workers who end up in illegal employment situations, although there was some speculation according to the different industries and among different nationalities. Some experts interviewed by IOM believed that family ties are used for recruitment purposes among Turkish nationals already residing in Finland while other nationalities (Chinese, Russian, Nepalese, and African nationals for example) are recruited on the basis of other types of networks, largely ethnic based, both inside and outside of Finland. However, there appears to be little concrete knowledge on this subject.

Use of the asylum system to access the informal labour market has been raised as an issue of concern by some experts. Some argue that certain individuals are deliberately seeking entry into pre-arranged informal labour employment in Finland through the asylum system (so called “de facto smuggling”). They point to the fact that out of the approximately 3,500 individuals seeking asylum in Finland each year, nearly one third “disappear” from reception centres. Furthermore, some argue that because of processing times (180 days for normal cases, 80 days for fast cases, and 34 days for Dublin cases, nine months for appeal cases⁵⁸) after going through the whole asylum process, even if the decision is negative the individual in question has already been legally able to work in Finland for a year and therefore has a good chance to get a work permit. This is because asylum seekers are able to legally work in Finland after three months. UVI, for example, points to asylum applications from Turkish nationals, which have dropped from 197 two years ago to around 25 a year.⁵⁹ They believe this drop corresponds with increase in the applications of Turkish nationals based on the family reunification and work permit paths.⁶⁰ Despite this change, in the first nine months of 2006 there were 46 negative and 87 positive decisions regarding Turkish applications for work permits.

Others argue that there is no labour market in Finland where low skilled workers can be employed illegally on a large scale, taking into the account that asylum seekers often have a low educational background and lack relevant language skills. This would make it impossible for large scale abuse of the asylum system for the purposes of illegal employment. If pre-arrangement does occur it would surely be on a small scale. Furthermore, the NBI also noted that they had not observed use of the asylum channel or the purposes of illegal employment in their investigations⁶¹ and the Construction Worker’s Union noted that they had not come across a single case of an asylum seeker employed illegally in the construction sector.⁶²

The posted worker system has been the subject of much criticism and in terms of the possibilities it has provided to avoid taxes and perpetrate other illegalities related to the employment of migrant workers. Provisions on the minimum terms of employment of posted workers are laid down in the Act on Posted Workers (see section 4.2.1). The employer has to observe at least the regulations on the terms of employment and working conditions included in the national collective agreement consid-

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ Interview with Ministry of Interior, 26 October 2006.

⁵⁸ Processing times provided by UVI, during interview on 7 November 2006.

⁵⁹ Interview with the Directorate of Immigration (UVI), 7 November 2006.

⁶⁰ *ibid.*

⁶¹ Interview with the Construction Worker’s Union, 10 November 2006.

⁶² Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

ered representative in the branch concerned.⁶³ The Uusimaa (Southern Finland) Occupational Safety and Health (OSH) Inspectorate inspected the terms and conditions of 173 posted workers in 2006, of which 166 were from new EU Member States. The posted workers they interviewed were mainly in the construction and metal industries and some were in the transport industry. From this number, salaries were according to the collective agreements in only 22 per cent of cases, time-keeping was adequate in 40 per cent of cases, and the occupational health agreement, compulsory in Finland, was implemented in only 33 per cent of cases.⁶⁴

Based on information received from different authorities and organizations, the most widespread illegal employment practices (whether violating the rights of the worker or laws related to employment and tax for example), include:

- Tax fraud (including not facilitating the payment of taxes by employees⁶⁵) including non-payment of social security payments;
- Wages that do not accord with the collective agreements;
- No book keeping;
- Concealed income;
- Fake invoicing;
- Long hours (especially in the transport industry);
- No time off;
- Lack of attention to health and safety issues;
- No right to work in Finland.

According to Finnish law, among these offences tax fraud is the most serious offence. So far there has not been a significant number of cases reported with regard to poor living conditions of workers. Most offences are concentrated on the employer's side. NBI noted that among employers and company owners, the "same names keep popping up," including individuals with large debts that are often involved in other crimes like money laundering and drugs where high profits are available.⁶⁶

Up until December 2006 the Uusimaa OSH Inspectorate has inspected around 12,000 employees, 17 per cent of which were foreigners. Of the 1,758 persons directly employed (i.e. not posted), 76 per cent were TCNs and 23 per cent were from new EU Member States.⁶⁷ Their figures differ according to the sector, with restaurants coming out worst, followed by the cleaning and construction sectors.

Many of the experts IOM interviewed felt that illegally employed foreign employees in many cases did not know their rights as compared to employers who were consciously violating regulations for profit. Regarding the motivation on the employer's side for illegally employing migrant workers, profit appears to be the principal motive. In the construction sector alone, millions of euros of profit result from informal labour market practices, meaning that avoidance of taxes and other regulations is highly beneficial in financial terms for employers and companies.⁶⁸ For example, the Construction Worker's Union estimates that the posted/migrant workers receive wages of EUR 5-7 an hour while in Southern Finland Finnish employees receive EUR 14-15 for the same job.⁶⁹ Other motivations for employers that were raised were labour shortages in Finland and lack of easily accessible channels to hire foreign labour, though many argue that currently there are adequate channels to hire foreign labour where needed, though this may not be the case in the future. The SAK representative noted that there is already a tendency in Finland for employees to avoid so called "dirty work," leaving some

⁶³ www.mol.fi

⁶⁴ Interview with the Uusimaa OSH Inspectorate, 9 November 2006.

⁶⁵ Interview with the Construction Worker's Union, 10 November 2006.

⁶⁶ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

⁶⁷ Information provided by email by Uusimaa OSH Inspectorate, 18 December 2006.

⁶⁸ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

⁶⁹ Interview with the Construction Worker's Union, 10 November 2006.

sectors, such as strawberry picking, almost entirely to migrant workers – most often women from the Russian Federation and Estonia.⁷⁰

Regarding the motivation of migrant workers to be involved in illegal employment in Finland, most experts agreed that TCN workers share mutual benefits with employers by not paying taxes and being exposed to illegal employment practices by at least earning more than they would in their home countries. Others pointed out that many TCN workers are involved in illegal employment through lack of knowledge about employment regulations in Finland, or in the worst cases, because they are in some way being coerced into illegal employment, such as in cases of human trafficking. Migrant workers with an irregular migration status are felt to be particularly vulnerable.

Regarding the construction sector more specifically, aside from illegal employment of migrant workers, there are serious problems relating to the sector in general. Statistics show that the portion of the underground economy equals 10-11 per cent of the aggregate value of construction industry output.⁷¹ Pekka Lith's figures also show that concealed taxable income for 2003 alone within the construction industry resulted in lost revenues of EUR 200m, plus a VAT loss of EUR 110m. The estimated employment tax loss is EUR 160m. Tax debts owed by construction companies amounted to EUR 462m, the highest among all industries in Finland.

Also according to Pekka Lith's calculations, the portion of foreign-employee hours at construction sites was 5-8 per cent in 2004, or 10,000 full time workers per year.⁷² Of these, the Construction Workers Union estimates that there are around 2,000-3,000 TCNs.⁷³ They believe that while more than 90 per cent of Finnish employees are following the terms of the collective agreements, almost all migrant workers are in some way violating the agreements.⁷⁴ The Ministry of Labour noted that the newly introduced photo identification for construction workers (Working Security Act) was an indication of the problematic nature of the construction sector.⁷⁵ TCN workers in the construction sector mainly come from the Russian Federation, Ukraine, and Kazakhstan.

The ethnic restaurant sector was also highlighted during IOM's research. The restaurant sector in general is known for accounting offences, tax fraud, illegal labour, unrecorded sales, and fraudulent cash register printouts, making them "cumbersome targets" for tax authorities.⁷⁶ The Tax Administration finished a three-year supervision project in 2005 in which they investigated nearly 1,000 restaurants, ten per cent of which were ethnic. The investigation uncovered EUR 30 million in unpaid taxes and resulted in 100 criminal cases.⁷⁷

In general ten per cent of all restaurant workers are foreign and of those around 90 per cent are TCNs.⁷⁸ Most experts interviewed by IOM believe that the biggest problems lie in Chinese restaurants. Anecdotal evidence suggests that serious abuse of workers, including long hours, low pay, and even slave-like conditions exist in some ethnic restaurants. The sector has its own specific characteristics such as the difficulty of identifying who are employees and who are family members and friends. The Virke project believes there is "a workforce that goes from one ethnic restaurant to another, working under very modest circumstances and conditions."⁷⁹

Statistics provided by the Uusimaa OSH Inspectorate indicate a real difference between the restaurant sector in general and restaurants (often ethnic restaurants) employing migrant workers. In general, the Uusimaa OSH Inspectorate estimates that the salary of employees is according to collective agreements in 82 per cent of cases while the occupational health agreement was observed in 63 per cent

⁷⁰ Interview with SAK, 8 November 2006.

⁷¹ Pekka Lith: Rakentamisen harmaa talous ja ulkomaisen työvoiman merkitys rakennustyömailla (The black economy and proportion of foreign labour on construction sites), Research reports, issue no 09/2005, Helsinki 23 May 2005.

⁷² Pekka Lith, Rakentamisen harmaa talous ja ulkomaisen työvoiman merkitys rakennustyömailla (The black economy and the proportion of foreign labour on construction sites), Research Reports, issue no 09/2005, Helsinki 23 May 2005.

⁷³ Interview with the Construction Worker's Union, 10 November 2006.

⁷⁴ *ibid.*

⁷⁵ Interview with the Ministry of Labour, 8/9 November 2006.

⁷⁶ Markku Hirvonen, Project Manager "The slowly changing face of economic crime", p 28.

⁷⁷ Interview with the Ministry of Labour, 8/9 November 2006.

⁷⁸ Interview with Uusimaa OSH Inspectorate, 9 November 2006.

⁷⁹ Interview with the Virke Project, 9 November 2006.

of cases.⁸⁰ However, they note that the illegal practices of many “summer restaurants” lower the overall statistics. When focusing on migrant workers (57 per cent of out of a total of 223 workers inspected in the restaurant sector, of which 96 per cent were TCNs from Asia, North Africa, and Turkey) salaries were according to the collective agreements in only 20 per cent of cases. Time-keeping records were adequate in only 10 per cent of cases, and the occupational health agreement was implemented in only 30 per cent of cases. To compare, in the construction sector, time-keeping records were adequately kept in 35 per cent of cases, salaries were according to the collective agreement in 65 per cent of cases, and the occupational health agreement was implemented in 75 per cent of cases.⁸¹

In the opinion of UVI, ethnic restaurants are abusing the immigration system by making applications for workers residence permits for foreign employees by saying that they are seeking specialized ethnic food cooks, while in reality the majority of workers coming do not have a background in the food industry. UVI believes, for example, that Chinese cooks often have only minimal cooking education and many are illiterate.⁸² UVI has challenged some decisions of the Employment Office on this basis. However, assessing the labour market grounds of applications for worker’s residence permits remains within the remit of the Employment Offices.

4.2 Preventive measures

4.2.1 Legislation

Work permit system

A work permit system is in place in Finland. The objective of the system is laid down in section 70 of the Aliens Act: “to support the availability of labour in a systematic, prompt and flexible manner, with consideration for the legal protection of employers and the employment and the employment opportunities for labour already in the labour market.” The right to perform gainful employment in Finland is determined according to citizenship:

EU/EEA-countries:

Citizens of the European Union (EU) may work in Finland without a worker’s residence permit. Citizens of Norway, Iceland, Liechtenstein, and Switzerland have the same right. Regarding the employment of citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia, and Slovakia in Finland, the “Transition Period Act”⁸³ was in force until 30 April 2006. The Act was intended to counterbalance the expected negative impact on the Finnish labour market of the EU enlargement on 1 May 2004. As of 1 May 2006, Finland has lifted restrictions regarding access to the labour market for citizens from the new EU countries. However, information on their employment needs to be forwarded to the Employment Office for registration.

EU citizens and citizens of Iceland, Liechtenstein, Norway, and Switzerland must register their residence if their stay in Finland lasts more than three months. The local police handle the registration, except for Nordic citizens, who are registered at a Registry Office with an Inter-Nordic Migration Form.

Countries outside the EEA:

Citizens of other countries than European Economic Area (EEA) are required to have a worker’s residence permit. Migrant workers or their employer/principal are obligated to determine which permits or permit exceptions are required in order to work in Finland. These include:

- worker's residence permit

⁸⁰ Information in this paragraph provided during IOM’s interview with Uusimaa OSH Inspectorate, 9 November 2006.

⁸¹ Interview with Uusimaa OSH Inspectorate, 9 November 2006.

⁸² Interview with the Directorate of Immigration (UVI), 7 November 2006.

⁸³ Full name: “Act on prerequisites governing gainful employment of citizens from Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia (HE 172/2003).”

- residence permit for a self-employed person
- other residence permit, or
- visa or visa exemption⁸⁴

The corresponding regulations can be found in Chapter 5 “Employment” of the Aliens Act. The chapter regulates cooperation between labour market organizations, elements of considerations as regards residence permits for employed and self-employed persons, and employer’s and contractor’s obligations. The requirements for the different types of permits are outlined in sections 75, 76, 79 and 80. Section 81 constitutes the right to employment without residence permit for certain activities for a limited time, e.g. berry pickers are able to come from abroad during the summer months under this provision.

The application for a permit can be made at a Finnish Embassy or at the employment office by the employer or by the employee. The Employment Offices decides whether the requirements for issuing the permit are met (section 83 Aliens Act). The Directorate of Immigration is responsible for issuing the residence permit. The Directorate examines whether the permit is to be refused on the reasons of “danger to public order, security or health or Finland’s international relations” or if there are reasons to believe that the migrant want to “evade the provisions on entry into or residence in the country” (section 36 Aliens Act). The work permit is granted for a sector and not only for a specific employer.

Posted Workers Act and amendments

Due to its geographical situation and fierce business competition, Finland has for many years now seen migrant workers posted from countries, such Estonia and the Russian Federation, to work in Finland. The legal situation of these workers was regulated by the Posted Workers Act (1999). A “posted worker” is a worker who, for a limited period, carries out his/her work in the territory of a state other than the state in which he/she normally works.

Provisions on the minimum terms of employment for posted workers are laid down in the Act on Posted Workers. Certain provisions and regulations of Finnish law have to be applied to the employment contract of workers posted to Finland in so far as they are more favourable for the worker than the provisions otherwise to be applied to the worker. The employer has to observe at least the regulations on the terms of employment and working conditions included in the national universally binding collective agreement considered representative in the branch concerned.⁸⁵ The Act on Posted Workers contains a reference to certain provisions in the Employment Contracts Act, the Working Hours Act and the Annual Holidays Act as well as in the Act on Equality between Women and Men. The following Acts and provisions as such are applied to posted workers: Occupational Safety and Health Act, Occupational Health Care Act, Young Workers’ Protection Act. As for minimum wage, provision on working time, annual holidays, and industrial safety, the Act refers to the universally collective binding agreement (see below).

For the application of the Act, it is of no significance whether the employer is from another EU country or from outside the EU. The Act is not applied to crews working on board ships of enterprises practicing merchant shipping.

The Act on Posted Workers is supervised by the occupational safety and health authorities, except the provisions of the Equality Act, which are supervised by the Ombudsman for Equality and the Board on Equality. The public servants (inspectors) of the occupational safety and health inspectorates advise the employers and workers in questions related to legislation on employment relationships and to universally binding collective agreements. The Occupational Safety and Health Department of the Ministry of Social Affairs and Health is the contact authority in Finland of posted workers as required by Directive 96/71/EC.

In January 2006 an **amendment to the Posted Workers Act** came into force. The implementation of Finnish minimum working conditions for foreign workers posted in Finland was rendered more effi-

⁸⁴ www.mol.fi

⁸⁵ *ibid.*

cient and its supervision became easier. The amendment mainly regulated that an employer who is operational abroad and posted workers in Finland shall have a representative in Finland. This representative can act as the employer's representative in a court of law and receive documents issued by authorities and summons. The representative does not, however, have the responsibilities of an employer. The representative shall be selected when the worker starts performing the work and the authorisation of the representative shall be in force for a minimum of 12 months after the worker has stopped working in Finland. A representative need not be selected, however, in case the working period is less than 14 days in duration.

The Act also contains more precise provisions on the maintenance of records concerning the employer of a posted worker and the terms and conditions of the employment relationship. This information is readily available in Finland as soon as the work starts.

Amendment to Act on Occupational Safety and Health Working Security

The share of migrant workers is especially high at construction sites. In February 2006 an amendment to the Act on Occupational Safety and Health Working Security came into force whereby all workers on construction sites must carry a photo identification (ID). The ID card has to detail whether the person working on the site is an employee or a self-employed person. The main constructor has to check on the fulfilment of the obligation. The site can be closed on failure to implement this obligation.

Collective Agreements

For decades the national labour and employer confederations and the Finnish government have regularly concluded comprehensive income collective agreements. The aim of these accords in recent years has been economic growth, a steady rise in the real value of incomes, quality standards for working life, and higher productivity and employment. Pay rises have been adjusted nationally to a level that conserves jobs and enables job creation under conditions of fierce international competition. The government has encouraged these national accords by offering tax relief and other incentives. Recent income policy settlements have been agreed for about two years at a time.⁸⁶

The condition of an employment contract, which is in conflict with the corresponding provision of a universally binding collective agreement, is void, and instead the provisions of the universally binding collective agreement should be observed according to section 7 of the Employment Contract Act.

Even though employers or employees might not be part of a collective agreement they are nevertheless bound to the provisions of a collective agreement, which is considered representative in the sector in question (universally applicable collective agreement), Employment Contracts Act, Chapter 2, section 7. The collective agreements are thus practically binding for all employers and employees in Finland. Like all other employees, migrants working in Finland are also covered under the collective agreement of the corresponding sector.

4.2.2 Sanctions in case of illegal employment of migrant workers, foreseen in current legislation

Measures sanctioning illegal employment of migrant workers mostly target employers. Sanctions are to be found in the Aliens Act and in the Penal Code. Punishments set out in the Aliens Act are fines, while imprisonment for serious violations is established in the penal code.

Chapter 47 of the Penal Code deals with employment offences and sanctions targeted at the employer. Section 3 establishes that work discrimination because of race, national or ethnic origin, colour, language, sex, age relations, sexual preference, or state of health shall be sentenced with a fine or imprisonment for up to six months. Section 3a was introduced in the Penal Code recently. It forbids aggravated discrimination by putting a job seeker or an employee in a notably inferior position by exploiting his/her economical or other distress, dependency, lack of knowledge, thoughtlessness, or ignorance.⁸⁷ It remains to be seen how this article will play out in practice; the first statistics are

⁸⁶ "Finland: a system that works", information brochure by SAK, STTK, and AKAVA.

⁸⁷ Unofficial translation, provided by the OSA.

expected in 2007. Section 6a establishes sanctions for work permit offences committed by the employer, namely employing a foreigner without a work permit, with a fine or imprisonment for up to one year.

These offences might be linked to other offences made punishable in the Penal Code, e.g. to sections 7, 7a, 8 and 8a in Chapter 17 (border offences and arrangement of illegal immigration offences). Forced labour is one possible aim of a trafficking in human beings offence (sections 3 and 3a in Chapter 25).

In the Aliens Act, section 185 and 186, violations of the Aliens Act by employers or employees are sanctioned with a fine.

However, pure violation of the rules for minimum wages by the employer is not punished by law unless discrimination as per chapter 47 section 3 of the Penal Code can be proved. Furthermore, according to section 9 of the Non-Discrimination Act the employer shall pay compensation of up to EUR 15,000 for damages. The Act is supervised by the Occupational Safety and Health and authorities. The matter has to be pursued under civil law, i.e. the employee can sue the employer. This is especially difficult for migrant workers since they often do not know their rights and might not be in the country any longer by the time the verdict is pronounced. In this regard, unions emphasize the necessity to establish a right for unions to sue employers.⁸⁸

The payment of a wage below the collective agreements or a violation of other working conditions constitutes a breach of the collective agreement. Violation of the collective agreements is sanctioned by the Collective Agreements Act by a fine.

4.2.3 Customer's Liability Act

A specific Act on customer liability was passed by Parliament in December 2006 and will come in force in January 2007 regulating the customer company's responsibilities and liability to gather information when using external labour force. In the view of the Ministry of the Labour the Act is badly needed and will promote fair competition between companies and compliance with employment conditions.⁸⁹

The draft for the legislation foresees that the customer would have a liability to establish if the company is entered in the Withholding Tax, Employer, and VAT Registers. This liability would also include an extract from the Trade Register, certificate of payment of taxes, tax liability certificate or a report of having prepared a payment plan of tax liabilities. In addition, this liability would include the need for certificates showing that pension insurance has been taken out and payment of pension insurance premiums has been done, or a report on having concluded a payment agreement concerning overdue pension contributions. It would also cover information on the collective agreement or central employment conditions applicable to the work. The corresponding information should also be obtained with regard to foreign companies so that the liability to provide this information would be as extensive as that concerning companies operating in Finland.

The Act would be applicable in case the hired employees work in the country for more than ten days or if the value of the subcontracting agreement exceeds EUR 7,500. This refers to the whole value of the contract, without detailing the share of labour in it.

First and foremost, the customer would have the liability to request this information from the contracting partner, who would be liable to submit it to the customer. The customer would not have to request this information, however, in case they have a justified reason to rely on their partner meeting their statutory liabilities.

In case this information has not been obtained, the customer would be ordered to pay a particular penalty for their negligence. The sum of this penalty would be no less than EUR 1,500 and no more than EUR 15,000, and its amount would be determined by the seriousness of the offence. The decision on the penalty would be made by the Occupational Safety and Health Office of the Occupa-

⁸⁸ Interview with SAK, 8 November 2006.

⁸⁹ Press release MoL, 7 September 2006.

tional Safety and Health Inspectorate, which would supervise compliance with the Act. It could also be imposed in case the customer has concluded a contract with a self-employed person who has been banned from engaging in business operations, or with a company whose partner, Board Member, Managing Director, or other person in a similar position has been banned from engaging in business operations.

The Act contains a provision pursuant to which the customer would have to, on request, inform the shop steward and the occupational safety and health representative of an agreement to use external labour force. When submitting this information, the customer should include the numbers of the labour force to be used, the name of the company, site, tasks, duration of contract, and the collective agreement or central employment conditions to be applied.

For the purpose of preparing the appropriate decisions concerning the supervision of the Act and the penalties for negligence, it is proposed that the staff numbers of the Occupational Safety and Health Offices of the Occupational Safety and Health Inspectorates be increased by 12 persons in the 2007 budget.

This legislative proposal is based on the unanimous proposition of the ULTEVA-2 Working Group established and chaired by the Ministry of Labour, representing various ministries and social partners, including unions. The Working Group has previously prepared Acts on the position of workers posted in Finland from abroad and on identification of foreign workers on construction sites.

4.2.4 Other preventive measures

As well as legislation and sanctions, to combat illegal employment and/or illegal treatment of TCNS, there are a range of other measures that are currently being used in Finland to prevent illegal employment. This section will briefly outline a number of the measures and tools currently being used in Finland and attempt to describe their effectiveness. They include the Occupational Safety and Health Inspectorates, the work of the PUT Unit at the National Bureau of Investigation, the VIRKE project, activities of the Border Guard, activities of employer and employee associations, and information campaigns.

One of the most important measures currently being taken against illegal employment is the work carried out by the **Occupational Safety and Health (OSH) Inspectorates**. The Inspectorates are under the supervision of the Department for Occupational Safety and Health of the Ministry of Social Affairs and Health. The department has a total of 80 persons and consists of four units. One of these is the Enforcement Unit, which mainly deals with guiding and monitoring the OSH inspectorates. There are around 25 people in the Enforcement unit (including two persons focusing on foreign labour).

The OSH Administration supports employers and employees to improve working conditions and fulfill employment obligations as well as integrate occupational safety and health into other activities of the workplace. In practical terms this means that the OSH inspectorates are responsible for on-site inspections to check the working conditions and terms of employment of employees according to around 100 relevant Finnish regulations, telephone, mail, email, SMS, and face-to-face counselling of employers and employees, training, distribution of OSH material, and wider publicity efforts such as interviews with media and the writing of columns and articles for trade magazines etc. Furthermore, the inspectorates carry out "Authority Initiated Supervision" according to a plan provided by the Ministry of Social Affairs and Health each year that lays out areas of particular focus, which this year for example includes prevention of accidents, prevention of musculoskeletal disorders, wellbeing at work, and supervision of the minimum level working conditions prescribed in OSH legislation. The OSH Inspectorates concentrate their enforcement activities on the following sectors: Construction, hotel and restaurant, cleaning, and the metal industry. In addition, each region has specific areas of focus (see section 4.1.1).

Currently there are 450 personnel belonging to the eight regional OSH Inspectorates in Finland, of which 350 are inspectors. In 2004 the Alien's Act was amended to include inspection of foreign employees' right to work. This change was largely driven by concerns surrounding the 2004 accession to the EU of ten new Member States and by the fears of some politicians and activists that this would result in a large influx of migrant workers to Finland.

In 2005 nine inspectors were hired specifically to inspect foreign labour. A further three inspectors were hired to specifically look at equality issues (based on Finland's anti-discrimination legislation). In their work they are sometimes involved in looking at the conditions of migrant workers. Out of the 20,000 OSH inspections per year, 2,000 relate to foreign labour.⁹⁰ The aim of the inspectorates focusing on foreign labour is to carry out a minimum of 840 inspections to investigate working conditions and terms of employment. The other 1,000 investigations should involve checking the "paperwork" of foreigners (residence status etc). Inspections are either random or based on hints from other companies, the police, tax authorities, "jealous neighbours", and so on. Furthermore, the inspectorates aim their activities at the work places where they can reach as many employees as possible; for example there is no inspection of persons working in private households. Inspections relating to foreign labour concentrate on the restaurant, construction, metal, and cleaning sectors. In addition, each inspectorate has chosen focus industries, for example the Eastern Finland OSH Inspectorate has a special focus on agriculture while the Vaasa OSH Inspectorate is looking at gardening and fur farming, and Uusimaa (Southern Finland) is particularly looking at the transportation industry.

OSH inspections focus on supervision of the employer. After each on-site inspection, the inspection officer writes an inspection report. Employers are provided with a list of requirements they must meet. The inspection reports are provided to the employer and the employee representative at that work place, or if there is no employee representative a copy is given for the staff notice board. The inspection reports are also publicly available through the OSH inspectorates. The OSH inspectorate then makes follow-up visits to supervise compliance. If the employer has not complied with the required regulations, sanctions are introduced. During IOM's discussion with the OSH Inspectorate of Uusimaa, inspectors emphasized that their first approach is to try to give employers guidance. They believe that many employers do not now how to cope with many of the regulations, for example for those employers that do not belong to employer associations it may be difficult to understand how to implement the collective wage agreements. The OSH inspectorates can provide advice on these types of issues.

Because the inspections specifically focusing on foreign labour are so new, the first comprehensive statistics will not be available until January 2007. Some cases specifically regarding migrant workers are now in the court system so we are yet to see how effective legislation and the OSH Inspectorates' efforts to focus on foreign labour have been. However, some early findings from the OSH Inspectorate in Uusimaa (South Finland) described in section 4.1.1 have already highlighted real concerns about the working conditions of foreign labour, especially with regard to low salaries.

Another highly important initiative that specifically focuses specifically on illegal employment and illegal treatment of migrant workers was the establishment in 2004 of the **National Bureau of Investigation's Project Unit (PUT Unit)** aimed at monitoring and preventing the use of illegal foreign workforce connected with economic crime. Funded by the Ministry of Interior, the project will run from 2004-2008. There are currently 24 staff working on the project.

The tasks of the PUT Unit are: 1) to expose informal economy crime based on the Police Act by gathering and analyzing information, intelligence, and data; and 2) to conduct pre-judicial inquiries through real time crime investigation based on Criminal Investigations Act and Coercive Measures Act to expose tax offences, accounting offences, money laundering, return of profit gained by illegal means, tax fraud, aggravated tax fraud, and so on. The Unit concentrates on real-time investigative efforts so as to facilitate interventions into ongoing criminal activities. From the viewpoint of repossessing money or property, real-time intervention is the best approach according to the Virke project.⁹¹

⁹⁰ All figures in this section provided by Antti Janas from the Ministry of Social Affairs and Health, interview 2 November 2006.

⁹¹ Mia Poutanen, Detective Chief Inspector, State Provincial Office of Southern Finland / VIRKE, "Description of Recent Police Investigation Efforts" in the Virke Project's *Report on Economic Crime*, Spring 2006, p 1.

The main target areas that the PUT Unit focuses on are: 1) ship building; 2) construction; 3) hotels and restaurants. These are all sectors with a significant amount of migrant workers. When selecting their targets, the PUT Unit focuses on investigating:

- crimes when they are committed (not old crimes);
- crimes where there are good possibilities for getting back illegal profits/assets;
- crimes that have a broad meaning and impact to society;
- crimes with international connections;
- crimes that are otherwise particularly harmful to the economy or people.

The PUT Unit also carries out a limited number of on-site inspections of informal labour enterprises in which they also check workers for permits. These inspections are usually based on criminal suspicion and the PUT Unit lacks the resources to carry out a large number of inspections. Although local police are also involved in similar investigations against economic crime, the PUT Unit looks at crimes with a national or international range. As expected, much of their work focuses on Southern Finland since the majority of the population lives in the South.

While the focus is almost primarily on the employer's criminal activities, the PUT Unit noted in their interview with IOM that they do not always see the employees as first and foremost victims.⁹² However, the main focus is on the actors (individual employers or companies) who are committing economic crimes. For example the PUT Unit keeps track of individuals banned from being employers or business owners. This focus comes from orders from the Ministry of Interior's Police Department, effective autumn 2004, to enforce the prohibition to pursue business, which has resulted in a "more efficient observation program, which is similar and unified throughout the country."⁹³ According to the Police, an increasing number of offenders have been prohibited from pursuing business (630 people in 2005, up from 81 in 2001) and this number is expected to grow.⁹⁴ Cooperation with other agencies and players in Finland is rather strong. Each year the PUT Unit coordinates 10-20 joint investigations with the OSH inspectorates and tax offices. Cooperation largely depends on resources but the PUT Unit notes it is the only way they can find information.⁹⁵

The VIRKE project for the Development of Inter-Authority Cooperation was set up by a Government decision in March 2000 on the basis of the idea that the fight against the informal economy and economic crime would more effective if co-operation between different authorities was developed. The project team includes representatives from police, taxation, customs and distraint authorities under the overall responsibility of the Ministry of Finance. According to the fourth Action Plan ratified by the Finnish Government the activities of the Authority Co-operation Development Project will continue until the end of the year 2008.

The tasks of the VIRKE project are to:

- distribute information on economic crime to different authorities in order to support and develop their control activities. This kind of information should especially improve authorities' facilities to uncover the informal economy and economic crime directed against public economy such as misuse of corporation subsidies;
- maintain a general picture of the economic crime as well as evaluate effectiveness of control actions;
- make initiatives to improve legislation and authority operations. The project should specially increase the efficiency of authorities' co-operation against the informal economy and the economic crime by charting its problems and making initiatives to develop it;
- develop methods to prevent economic crime.

⁹² Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

⁹³ *ibid*, p 2.

⁹⁴ *ibid*.

⁹⁵ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

Although the VIRKE project does not specifically focus on economic crime as it relates to foreign labour, through its work it collects, analyses, and distributes intelligence to different authorities, including information related to foreign labour and the practices of foreign companies working in Finland, for example. In particular they have focused on tax evasion of employees and companies registered abroad but working in Finland. The VIRKE project has also carried out several special projects including a survey of informal economy and receipt trade in construction trade, research projects concerning informal economy on construction, restaurant and transportation sectors, and research into foreigner's residence, real estate, and security transactions. One tool available to the VIRKE project is the tax database. Information can be checked based on the thousands of tips received each year from the police, companies, and the public. One of the achievements of the VIRKE project has been to push for the compulsory registration of foreign companies, which will begin in 2007. This will allow employers and employees to be registered for tax purposes.

Employee unions and employer associations are also involved in numerous actions targeted towards prevention of illegal employment practices. According to the Central Organization of Finnish Trade Unions (SAK) unionization is necessary in preventing illegal employment activities because the State cannot take on this issue alone.⁹⁶ The Construction Worker's Union has been particularly active in this regard in Finland. There are several tools used by unions, including boycotts, strikes, union bans, and other forms of pressure and lobbying. Currently, the level of unionization in Finland is around 70 to 80 per cent depending on the industry, although it is around 50 per cent for the construction industry.⁹⁷ The number of foreign members in the Construction Worker's Union is around 1000 although the Union is making considerable efforts to raise this number, for example by translating brochures and agreements into Polish, Russian, and Estonian languages and actively encouraging unionization through meetings and information material.⁹⁸ However, the Union noted that their efforts have not been very successful because foreign employers are afraid of unions and fear that their involvement in unions will lead to dismissal from their jobs by employers. Furthermore, in the case of posted workers, unionization is not a real option. The Construction Worker's Union noted that increasing the number of migrant workers directly and legally employed by Finnish companies rather than companies based abroad would be an effective prevention measure.

The Construction Worker's Union carried out 50 boycotts in 2005 and believes there will be a higher number in 2006.⁹⁹ If companies show that they are not following the proper employment terms they can be put on a boycott list, which in practicality means that other companies are likely to avoid taking them on as subcontractors. Companies are put on boycott lists, for example, when they break collective wage agreements. Boycotts/lockouts are stopped when the situation has been rectified, for example if proper salaries are paid. Unions also use strikes in serious cases, aware of the fact that strikes can result in massive financial losses for companies and are therefore something that employers want to avoid.

Employee and employer associations are also actively involved in providing information to their target groups. For example, SAK set up the Information Point in Tallinn, Estonia, which will run until 2008. This service provides information to potential migrants on employment in Finland. There are tentative plans to establish an Information Point in the Russian Federation in the near future. In January 2007 the Confederation of Finnish Industries (EK) and SAK will conduct an information campaign in six cities in Finland to provide information to employers and employees on employment terms and conditions.

Employee and employer associations have been active at the policy level in lobbying for legislation on the issue of illegal employment/illegal treatment of migrant workers. The strength of their input is largely due to the institutionalized tri-partite cooperation between the Government, employer associations, and trade unions in Finland. In many cases they have worked together. For example, both the Construction Worker's Union and the Confederation of Finnish Construction Industries (RT) both

⁹⁶ Interview with SAK, 8 November 2006.

⁹⁷ *ibid.*

⁹⁸ Interview with the Construction Worker's Union, 10 November 2006.

⁹⁹ Interview with the Construction Worker's Union, 10 November 2006.

lobbied to include the ID card for construction workers in the collective agreement for the construction industry. Recent lobbying efforts have resulted in the Client Responsibility Act and the above-mentioned provision in the Occupational Safety and Health Act that requires the promoter directing or supervising a construction site to ensure that every worker on the site has a picture identification card when on site that notes the name of the employer.

Information campaigns and provision of information were consistently raised in discussions with IOM as a useful preventive measure. This regards not only information for employees and potential migrants but also employers. As the OSH Inspectorate for Uusimaa noted, employers are responsible for understanding and following a wide range of regulations and employers need to be supported in order to fully understand their obligations. Similarly, there is a real need to provide information to migrant workers, particularly those who are posted workers and may not initially have access to information about the employment regulations in Finland. The challenge is to ensure that information is understood (i.e. that it is delivered in different languages and in different formats) and that employees feel that they can benefit from the information.

Although **regularization policies** have been used in the by EU Member States, such as Spain, to combat illegal employment of TCNs, officials have reported that they do not see this as an option for Finland. Both the Ministry of Interior and the Ministry of Labour noted that they believed the problem was not big enough in Finland to consider regularization policies, while the representative of the Ministry of Interior noted that his ministry believes that regularization is a “pull factor” for irregular migration, not a solution.¹⁰⁰

4.2.5 Obstacles to the success of preventive measures

During discussions with authorities and organizations involved in the fight against the illegal employment and illegal treatment of foreigners, several outstanding problems related to prevention efforts were raised. They are briefly outlined below:

Work permit system:

- It is a contradiction that the law foresees work permits as the principle means to regulate the entry of labour migrants. This does not longer correspond to the reality in Finland since 80 per cent of migrant workers come freely (mainly as citizens of the EU) and only 20 per cent come via the work permit system. The legislation in this regard is rather complicated.
- Some say that there are holes in the Finnish workers residence permit system since when the employee picks up the permit it may be the first time he or she is “seen” by officials. Some advocate for a more thorough check on the employee and employer before hand, including the use of biometric data.¹⁰¹
- It could be argued that the current system has a gap in so far that work permits are granted for a sector and not for an individual employer. On the other hand, unions have expressed the view that this is rather a protective measure since migrant workers and freely change jobs in case working conditions are not satisfactory.¹⁰²

Legislation and sanctions:

- Lengthy and costly prosecution processes in all areas, particularly in tax-related prosecutions.
- Difficulties with monitoring and prosecuting crimes of foreign companies working in Finland but registered in other countries (for example tax evasion, illegal employment practices). A subpoena has to be sent to the company in another country and the appearance of the company in court is unlikely. This process is very difficult even for unions and even

¹⁰⁰ Interview with the Ministry of Labour, 8/9 November 2006; Interview with Ministry of Interior, 26 October 2006.

¹⁰¹ Interview with SAK, 8 November 2006.

¹⁰² Interview with the Ministry of Labour, 8/9 November 2006.

more so for an individual posted workers.¹⁰³ In this regard, the unions reiterate the necessity for the right for unions to sue employers based abroad.

- Difficulties with monitoring and prosecuting crimes of foreign companies working in Finland but registered in other countries (for example tax evasion, illegal employment practices). This makes law suits, especially taken by employees, almost impossible to prosecute.
- The fines established for illegal employment practices are small in comparison with the possible benefit resulting from tax fraud/evasion.¹⁰⁴
- Legal restrictions on sharing of information between authorities impede cooperation. For example, tax information cannot be shared with other authorities such as the OSH Inspectorates, although according to the VIRKE project, tax information is among the best information describing companies' and employers' activities. Furthermore, there are other legal restrictions in place that can prevent real sharing of information between authorities such as the Police, tax administration, and OSH Inspectorates. One example is that tax inspectors can tell the police that they suspect "other" problems at a place of employment (inspection site) only if they believe they will result in imprisonment of over six months if prosecuted.

Lack of resources:

- Lack of resources amongst all authorities, in particular police, OSH inspectorates, and the tax administration leads to a focus mainly on large operations or problems involving many migrant workers, meaning that lesser crimes or crimes involving a lower number of employees may go uninvestigated, for example in private households or small companies. For example, very little is done to inspect foreign employees involved in domestic work. Also, only ten per cent of tax frauds are actually investigated in Finland.¹⁰⁵

Others:

- Conservative attitude towards tax evasion in the tax administration that discourages the involvement of the police in following up tax irregularities (there is no dedicated tax police in Finland).¹⁰⁶
- Difficulties with monitoring the wages and conditions of posted workers in Finland because they are not registered for tax purposes in Finland.
- Difficulties with unionizing migrant workers due in large part to their fear of unions (and consequences from employers). However, unions believe that illegal employment cannot be controlled by the state officials but only through work at the ground level.
- The practice of large companies paying the salaries of foreign subcontractors to tax havens to avoid tax.
- Lack of awareness about rights amongst migrant workers.

¹⁰³ Interview with SAK, 8 November 2006.

¹⁰⁴ Interview with the Construction Worker's Union, 10 November 2006.

¹⁰⁵ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

¹⁰⁶ Interview with the Virke Project, 9 November 2006.

5 PROTECTIONS OF MIGRANT WORKERS

5.1 Normative framework

Protection of the rights of migrant workers working in Finland is regulated by the same laws applied to Finnish nationals. Finland's labour legislation is applicable to all people working in Finland. The basic rights and obligations of workers and employers can be summarized as follows:¹⁰⁷

Workers' rights and obligations

Right:

- To a wage complying with the collective agreement and to other terms of employment;
- To the protection provided by laws and agreements, such as non-discriminating treatment ;
- To occupational organization;
- To a healthy and safe working environment.

Obligation:

- To perform the work carefully;
- To observe the instructions and provisions of the work management;
- To refuse activities competing with the employer;
- To refuse to reveal business and professional secrets;
- To consider the employer's interest;

Employers' rights and obligations

Right:

- To decide on the recruitment of workers;
- To lead the work and issue work management instructions and provisions;
- To give notice and revoke an employment contract within limits allowed by the law.

Obligation:

- To observe laws and agreements;
- To treat workers equally;
- To ensure occupational safety;
- To give the worker a written clarification on the central terms of employment;
- To promote the working atmosphere, the worker's work performance and occupational development.

The below provides an overview of the Finnish labour legislation. Most of the labour legislation is supervised by the Ministry of Labour. However, following a shift in responsibilities in 1996, the field of occupational health and safety is supervised by the Occupational Safety and Health Inspectorates under the Ministry of Social Affairs and Health.

Finnish labour legislation:

- Annual Holidays Act (162/2005)
- Act on the Protection of Privacy in Working Life (759/2004)
- Employment Contracts Act (55/2001)

¹⁰⁷ www.mol.fi.

- Act on Confirmation of the General Applicability of Collective Agreements (56/2001)
- Working Hours Act (605/1996)
- Posted Workers Act (1146/1999)
- Non-Discrimination Act (21/2004)
- Young Workers' Act (998/1993)
- Study Leave Act (273/1979)
- Act on Job Alternation Leave (1305/2002)
- Act on the Continuation of the Employment and Civil Service, Contracts of Persons liable for Military Service called to Service (570/1961)
- Act on the Employment of Household Workers (951/1977)
- Pay Security Act (866/1998)
- Pay Security Decree (868/1998)
- Act on checking the criminal background of persons working with children (504/2002) and Act on the amendment of sections 6 and 7 of the Criminal Records Act (505/2002)
- Criminal Records Act (505/2002)
- Act on the Integration of Immigrants and reception of Asylum Seekers (493/1999)
- Civilian Service Act (1723/1991)
- Collective Agreements Act (436/1946)
- Act on Mediation in Labour Disputes (420/1962)
- Act on The Labour Court (646/1974)
- Act on the Labour Council and Derogation Permits Concerning Labour Protection (400/2004)
- Act on Co-operation within Undertakings (725/1978)
- Act on Personnel Representation in the Administration of Undertakings (725/1990)
- Act on Personnel Funds (814/1989)
- Seamen's Act (423/1978)
- Seamen's Annual Holidays Act (433/1984)
- Seamen's Working Hours Act (296/1976)
- Act on Working Hours on Vessels in Domestic Traffic (248/1982)
- Seamen's Pay Security Act (1108/2000)
- Occupational Safety and Health Act (738/2002)
- Occupational Health Care Act (1383/2001)
- Act on the Supervision of Occupational and Co-operation Safety and Health Matters at the Workplace (44/2006)
- Customer's Liability Act

Finnish labour legislation provides for a high degree of regularisation of work conditions and for a rather well functioning protection system for the rights of workers.

The Occupational Safety and Health Act and the Occupational Health Care Act lay out principles for the working environment, such as light, work equipment, etc. Regulations concerning working hours are established in the Working Hours Act and the Annual Holiday Act. Importantly, the actual em-

ployment relations and working conditions are regulated in the Employment Contracts Act. The Collective Agreements Act is the legal base for collective agreements and their universally binding application. The collective agreements negotiated by the labour market organizations play a significant role with regard to the minimum working conditions of employees. Collective agreements contain provisions on wages, working hours, and other working conditions. In Finland, the share of organised workers is fairly high compared to many European countries. Some 75 per cent of workers belong to a trade union.¹⁰⁸ The legislation ensures for both the employers and employees the right to belong to an association or take part in their work. A worker may or may not belong to a professional organization.

The rights and protection of posted workers (see above) is regulated specifically in the Posted Workers Act. See section 4.2.1 for more information about posted workers.

Also relevant for migrant workers is the Non-Discrimination Act that prohibits discrimination based on age, **ethnic or national origin, nationality**, language, religion, belief, opinion, health, disability, sexual orientation, or other personal characteristics.¹⁰⁹ Discrimination against workers is prohibited during an employment relationship, in connection with recruitment, and when ending an employment relationship. Discrimination at work is punishable by law.

5.1.2. International instruments for the protection of migrant workers

There are three principal international instruments for the protection of the rights of migrant workers:

- Migration for Employment Convention, 1949 (Revised) (No. 97)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- International Convention on the Protection of All Migrant Workers and Members of Their Families, 1990.

ILO conventions¹¹⁰

The first international instruments providing for more comprehensive solutions to the problems facing migrant workers include the Migration for Employment Convention, 1949 (Revised) (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as their accompanying Recommendations. Forty-five states have ratified Convention No. 97 and 19 have ratified Convention No. 143. Finland has not ratified either of the two ILO conventions. Because migration often has consequences on both migrant workers and members of their families, ILO instruments on migrant workers provide for guarantees and facilities to assist migrant workers and their families in all stages of the migration process.

The instruments' provisions do not depend on reciprocity and are also intended to cover refugees and displaced persons in so far as they are workers employed outside their country. While the ILO instruments concerning migrant workers do not cover all migrant-related operations (for example, they do not deal with the elaboration and establishment of a national labour migration policy), the principles enshrined in these instruments provide an important framework for guidance on what should constitute the basic components of a comprehensive labour migration policy, the protection of migrant workers and measures to facilitate as well as to control migration movements. More specifically, they call for measures aimed at regulating the conditions in which migration for employment occurs and at combating irregular migration and labour trafficking, and measures to detect the illegal employment of migrants with the aim of preventing and eliminating abuses. Lastly, but essentially, the conventions call for the adoption of a policy to promote and guarantee equality of treatment and opportunity between regular status migrants and nationals in employment and occupation in the ar-

¹⁰⁸ "Finland: A system that works" by SAK, STTK and AKAVA.

¹⁰⁹ The prohibition of discrimination based on gender is covered by the provisions of the Act on Equality between Women and Men (609/1986), cf Non-Discrimination Act.

¹¹⁰ Information on the ILO conventions is largely drawn from the OSCE, IOM, and ILO's 2006 *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*: <http://www.osce.org/item/19187.html>

eas of access to employment, remuneration, social security, trade union rights, cultural rights and individual freedoms, employment taxes, and access to legal proceedings.

UN Migrant Workers Convention (ICRMW)¹¹¹

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention, ICRMW) was adopted in December 1990. To date, it has been accepted by 34 states, but it has not been ratified by a single major country of employment. Finland has signed but so far has not ratified the convention.

The UN Convention embodies most of the substantive provisions of the ILO Conventions and in some ways goes beyond them. The UN Convention and ILO Conventions Nos. 97 and 143 can therefore be considered as complementary.

While the long-term objective of the UN Convention is to discourage and eliminate irregular migration, at the same time it furthers the rights and protection of persons migrating for employment, including those who find themselves in an irregular situation. Compared to the specific ILO instruments, the UN Convention seems to articulate more broadly the principle of equality of treatment between migrant workers (irrespective of status) and nationals before the courts and tribunals, with respect to remuneration and other working conditions as well as with respect to migrant workers' access to urgent medical assistance and education for children of migrant workers (Arts. 18(1), 25, 28 and 30 respectively). It also contains more extensive rights for migrant workers to transfer their earnings and savings (Arts. 32 and 47), and migrant workers appear to benefit from a clearer level of protection in relation to expulsion (Art. 22). ICRMW provides for the possibility of individual complaints by migrant workers (Art.77), but does not, unlike the ILO instruments, emphasize the involvement of workers' and employers' organizations.

International protection tools and Finland

As mentioned above, Finland has not ratified the ICRMW. Given the broader scope of the ICRMW the ILO conventions are in this regard negligible.

The reasons for not having ratified the ICRMW are multifold.¹¹² The leading Ministry for this matter, the Ministry of Labour, believes that Finnish labour legislation already provides for better conditions for migrant workers than those regulated in the ICRMW. There is, however, also a technical obstacle to be overcome before the ICRMW could be possibly implemented. In Finland, social benefits are paid to those individuals who have obtained a social security number. There is at present no possibility to pay benefits to irregularly residing persons. Moreover, Finland is worried what kind of political signal it would send to the international community by signing the convention as the first developed country. However, at the time of writing this paper, the Ministry of Labour was looking into the issue again to see whether the current position of Finland should be amended.

5.2 Current measures with regards to protection of migrant workers

5.2.1 Measures implemented by the Ministry of Labour

Currently the Ministry of Labour and its subordinated authorities are implementing the following measures with regards to the protection of rights of migrant workers, including TCNs.

A check of the working conditions laid down in the employment contract is done when the application for a workers residence permit is handled by the labour offices. As most of the migrant workers in Finland do not need a worker's residence permit, the check covers only around 20 per cent¹¹³ of all migrant workers in Finland. Amongst those, however, the majority of TCNs is covered.

¹¹¹ *ibid.*

¹¹² Interview with Ministry of Labour, 8 November 2006.

¹¹³ *ibid.*

The Ministry **provides information** on the rights (and obligations) of foreign workers to employees and employers through different brochures and, for example, on the websites www.mol.fi and www.infopankki.fi (“Infobank – basic information for immigrants”). The website www.mol.fi/finnwork of the Ministry is dedicated to providing information for employers hiring foreigners and foreigners coming to work in Finland or already living in Finland. The website explains the rules of working life, permits needed to work in Finland, and the Finnish working culture. There is information on concluding an employment contract, minimum wages, taxation, and social security. Several information brochures have been produced providing detailed and comprehensive information to foreigners considering coming to Finland to work here, see for example, “Working in Finland. Information about living and working in Finland.”¹¹⁴

Furthermore, the Ministry **cooperates** with social partners and other authorities through networking and joint projects for protecting the rights of foreign workers. However, the Ministry of Labour notes that to a large degree the Ministry of Social Affairs and Health, through its Occupational Safety and Health Inspectorates, has a role and responsibility in the field of protection of migrant workers.

5.2.2 Measures implemented by the Occupational Safety and Health Inspectorates

The OSH supervises that the following laws related to working environment, working hours, employment relations, and equality issues are not violated. Provisions in the following laws are supervised by the OSH:

Working environment

- Occupational Safety and Health Act
- Occupational Health Care Act

Working hours

- Working Hours Act
- Annual Holiday Act

Employment

- Employment Contracts Act
- Collective Agreements Act
- Posted Workers Act

Equality Acts

- Alien Act
- Non Discrimination Act

Following the mandate for supervision of non violation of the above mentioned laws, the OSH conducts on-site inspections. An important tool in the protection of employees, including TCNs, are the **inspection reports** prepared as an outcome of the inspections. The instruction report is publicly available and easily accessible for employees. It gives instructions on improving insufficient working conditions. At the occasion of inspections, the OSH can give **advice and guidance to employees**, for example on the possibilities to take up a civil law suit against the employer. Furthermore, the OSH provides advice and guidance **through telephone consultations**. The OSH receives calls by employees inquiring about their rights at its regional offices. The OSH also **refers** employees to unions or public legal assistance, if indicated. In order to raise the general awareness and acceptance for the implementation of working conditions as required by Finnish law, the OSH conducts outreach efforts through contributions for relevant magazines, and gives interviews to the press, etc.

¹¹⁴ “Working in Finland. Information about living and working in Finland”, Ministry of Labour, Helsinki, 2005: http://www.mol.fi/mol/fi/99_pdf/fi/06_tyoministerio/06_julkaisut/05_esitteet/tme7601e_workinginfinland.pdf.

5.2.3 Measures implemented by unions

The unions also have a role in the protection of migrant workers.¹¹⁵ Even though unions are responsible in the first place only for their members, they see assistance to migrant workers as a case of solidarity and most of all as a pre-emptive strategy to protect their own workers. The overall strategy pursued by the unions is, however, to unionize migrant workers (see section 4.2.4).

Thus unions have found themselves providing counselling to migrant workers on their rights and possibilities for achieving/accessing their rights. In some cases the unions have provided financial support to take the cases of migrant workers to the court. The Construction Worker's Union has spent hundreds of thousands on the support of migrant workers; not without criticism by some members for spending money on non-union members.¹¹⁶ In some instances, the Construction Worker's Union also claimed compensation from employers for the violation of working conditions for migrant workers on the basis of violations of the collective agreement. Moreover, the Construction Worker's Union closely cooperates with the police; if unfair working conditions come to its knowledge, they inform the police.¹¹⁷

5.3 Gaps and weakness in the current protection legislation and measures

At the moment, the checking of the working conditions laid down in the working contract only applies to 20 per cent of all migrant workers. Protection could be increased if all contracts would be checked beforehand.

As noted above, Finland has not ratified relevant international agreement on the protections of migrant workers.

In general, the authors found that there is not much focus on protection. Throughout the interviews for this paper it became clear that most intervention strategies implemented in Finland are targeted to prevent tax fraud by employers hiring migrant workers, including TCNs. When dealing with illegal employment of TCNs, the focus is not on the protection of their human rights but rather on the compliance of the employer with Finnish law. Most of the measures specifically dealing with employment of TCNs are targeted at preventing tax fraud or evasion. There is at present no institution, governmental, non-governmental or other, dedicated solely to working for the protection of migrant workers.

The most common feature of illegal employment of migrant workers, besides tax fraud/evasion is the payment of less than the regular salary. However, most migrant workers are nevertheless satisfied since the money is still better than what they could earn for the same work in their countries of origin. It has to be noted, however, that only very few severe violations of the human rights of migrant workers have surfaced in Finland. However, limited resources and time impeded more thorough research in this regard, including interviews with migrant workers in Finland.

6 PROMOTION OF LEGAL EMPLOYMENT OPPORTUNITIES

6.1 International initiatives

Triggered by the demographic factor in many developed countries and the increased mobility of the world's population, the last years have seen an increasing interest on the part of states in labour migration practices. Starting from the idea that labour migration in and regular and orderly way is needed and wanted, the discussion evolves around the questions how to build and balance a comprehensive labour migration policy.

One of the forums that dealt with these questions, among others, was the Berne Initiative. The Berne Initiative was launched by the Swiss Government with the International Symposium on Migration on 14-15 June 2001. It is a State-owned consultation process with the objective of obtaining better man-

¹¹⁵ Interview with SAK, 8 November 2006; Interview with the Construction Worker's Union, 10 November 2006.

¹¹⁶ Interview with the Construction Worker's Union, 10 November 2006.

¹¹⁷ *ibid.*

agement of migration at the national, regional and global levels through enhanced co-operation between states. The most important outcome of the Berne Initiative has been the development of the International Agenda for Migration Management (IAMM).

The following effective practices with regard to labour migration have been identified.¹¹⁸

- Consideration of developing national measures that regulate supply of and demand for human resources that are linked to bilateral and multilateral efforts and are developed in consultations with key stakeholders.
- Consideration of labour migration schemes for highly skilled, skilled and lower skilled migrant workers that are systematically developed to meet labour demand in countries of destination and respond to labour supply and unemployment in countries of origin.
- Consideration of bilateral programmes in order to meet the specific needs of both source and destination countries, addressing the rights and responsibilities of all parties and providing for the protection of migrant workers including by ensuring access to consular officials of the country of origin.
- Transparency of legislation and procedures defining categories of labour migrants, selection criteria as well as length and conditions of stay.
- Consideration of consultation both at the national and international level bringing together relevant officials to address labour market and labour migration issues.
- Enhanced information-sharing and consultations on policy, legislation and procedures more systematically to identify surplus and deficits in respective labour markets and possibilities for matching labour demand and supply.
- Consideration of measures to prepare potential migrant workers for entry into foreign labour markets, and arrange for pre-departure assistance, such as language and cultural orientation, and vocational training as needed.
- Provision of information to departing migrant workers on working conditions, health and safety, their rights and sources of support potentially available in the country of destination.
- Exploration of measures for the mutual recognition of qualifications.
- Consideration of programmes to foster skills development and savings and investment schemes that will provide incentive for and assist migrants returning to their home countries.
- Protection of migrant workers through implementation of public information campaigns to raise awareness of migrants' rights, and ensuring that migrants receive the social and employment benefits that they are due.
- Promote the enjoyment by authorized migrant workers of the treatment accorded to citizen workers, such as access to training, minimum wage, maximum hour rules, prohibition of child labour and right to establish unions.
- Adoption of measures to ensure respect for the rights of female migrant workers.
- Provision of full access for temporary migrant workers to consular assistance.
- Adoption of measures for the integration of migrant workers in order to encourage cultural acceptance, and to ensure that the rights of migrants and members of their families are respected and protected.
- Implementation of measures to recognize and facilitate the use by highly skilled workers of their skills in the country of destination.

¹¹⁸International Agenda for Migration Management, Chapter 5 – Labour Migration.

- Consideration of providing information on employment vacancies to potential migrants, on the recognition requirements for occupational qualifications and other practical information, such as taxation and licensing.
- Promotion of research and analysis on the impact of migrant workers on the local labour market.

6.2 Current measures in Finland

According to Koivukangas, "Finland has never experienced flows of labour migration."¹¹⁹ However, in recent years the decline of the birth rate and aging of the population in Finland have raised discussion about the need for an active immigration policy. A Labour Administration study asserts that labour reserves will decrease in future, leading to labour shortages as long as economic development is robust and the number of jobs increases. The report states that it is "justified to estimate that the labour market situation in the next decades will be characterized by labour shortage."¹²⁰

In response to these concerns, on 19 October 2006 the Government approved a new migration policy programme. The purpose of the migration policy programme is to actively promote work-related immigration. The Ministry of Labour Press Release states:

As the population ages over the upcoming years, the supply of labour in our country will decrease. In Finland, the availability of labour is expected to become a problem more rapidly than in many other European countries. This programme particularly focuses on immigration to Finland from outside the EU and EEA region. Work-related immigration can also help to enhance the expertise base in Finland, which is threatened by the ageing of the population in various regions of the country. Greater diversity and multiculturalisation in society is often reflected as increased entrepreneurship and innovativeness. Utilisation of the existing labour force should also be enhanced in conjunction with the development of work-related immigration policy.¹²¹

The migration policy programme contains 34 policy guidelines and measures, many of which require further preparation (for example inclusion in legislation) and some are dependent on budgetary allocations to implement. The first programme discussed by the Government in March 2006 had a stronger focus on the employment of migrant workers from third countries. However, in the revised and accepted programme, measures targeted at foreign labour are largely targeted at EU countries, particularly Poland. In the first phase of the programme the work permit system will be refined while in the second phase there will be a possibility to further open the labour market, but only if no other measures are viable.

According to the Ministry of Labour, the idea of the programme is to further facilitate labour mobility but not to actively recruit migrant workers, for example through a quota system.¹²² It is envisaged that Memorandums of Understanding will be established between Finland and selected countries of interest to Finland in terms of labour migration, such as Poland. At this stage more overt promotion of labour migration is something to be considered in the future.¹²³ The Ministry of Labour noted that Finland received a lot of interest at international fora with regards to the programme.¹²⁴

Finland is awaiting parliamentary elections in March 2007 so implementation of the migration policy programme is dependent on the next Government. However, all the major parties approved the programme and most are actively looking into the migration issue, particularly in connection with population decline in Finland. There is also broad consensus in Finland among employer associations and

¹¹⁹ Olavi Koivukangas, "European Immigration and Integration: Finland," National Europe Centre Paper No. 63

¹²⁰ Finnish Ministry of Labour, *Preparing for the Labour Market Change Caused by the Baby Boom Generation: Final Report of the Project*, Labour Market Administration, Helsinki, 2003.

¹²¹ Finnish Ministry of Labour, Press Release, "Government approved immigration policy programme", 19 October 2006: http://www.mol.fi/mol/en/01_ministry/06_press/press20061019/index.jsp

¹²² Interview with the Ministry of Labour, 8/9 November 2006.

¹²³ *ibid.*

¹²⁴ *ibid.*

labour unions regarding the need, in principle, for labour migration. Unions emphasize that labour migration to Finland should be carried out legally and smoothly under fair terms. Furthermore, the Central Organization of Finnish Trade Unions noted that alongside labour migration, more efforts should be put into other measures in Finland to the demographic aging and the unemployment rate, for example extending pension ages, increasing productivity per hour, and getting more of the unemployed into work (SAK estimates that at least a half and up to a third of the 228,000 people currently unemployed could get into work).¹²⁵ The Construction Worker's Union noted that the free movement of workers was not desirable from their point of view and that the current work permit system is functions adequately but is avoided or abused because of profit motives.¹²⁶

7 COOPERATION

7.1 Cooperation in Finland

The most significant cooperation platform in Finland with respect to labour is without doubt the **tripartite income policy agreements** between the Ministry of Labour and social partners.

Finland has a long tradition of social democracy. Social partners are a highly integrated into national economic and social policy decision-making processes. Together with the government, the central confederations of workers and employers' organizations negotiate income policy agreements, covering not only wages but also employment and labour market policies and other social policy issues such as balanced work and family life, promotion of gender equality, social welfare and pension schemes, as well as taxation policies. The income policy agreements have been signed on a bipartisan basis: by workers' and employers' representatives, but not by the government. The government does not have the power to give binding promises to social partners, because parliament can veto government decisions. However, government representatives take part in the negotiation process, and income policy agreements reflect the tripartite consensus. The government endorses the agreements by undertaking to implement the necessary policy measures. Such measures in recent years have included holiday return bonuses, earning related unemployment benefits, shortened working hours, as well as tax relief. Income policy agreements normally last two years.¹²⁷ The tripartite income policy agreements are deeply rooted in the Finnish labour market and are recognized by most partners to be "largely working."¹²⁸

At a ministerial level, the platform for cooperation concerning labour migration and illegal employment are different working groups. The working groups are made up of representatives of different ministries; for labour migration and illegal employment usually the MoI and the MoL are involved. Working groups are often ad hoc and a chair is agreed for each working group. E.g. at the moment of writing this paper there are, inter alia, a working group on work permits, chaired by the MoL.

There are, however, also working groups, which are of a more permanent nature. For example, the existence of the ULTEVA-2 working group is based in the tripartite income policy agreements. The working groups meets every second week and its outputs are considered to be very concrete and effective.¹²⁹ Based on existing legislation, there is the "Committee of Labour Market Policy" (chaired by MoL). The Committee has several sections including working environment, labour law, and international mobility.

Most of the operational partners involved in labour migration and the fight of illegal employment (OSH inspectorates, unions, the Directorate of Immigration, ministries, NBI, Virke project, etc.) are aware of each others' work. They do cooperate in a very flexible way. The cooperation might entail information and data sharing, joint information campaigns or - in the case of NBI - joint investigations. For example, each year the NBI carries out 10 to 20 joint investigations in Finland together with

¹²⁵ Interview with SAK, 8 November 2006.

¹²⁶ Interview with the Construction Worker's Union, 10 November 2006.

¹²⁷ <http://www.ilo.org/public/english/dialogue/ifpdial/info/pacts/finland.htm>.

¹²⁸ Cf. e.g. interview Ministry of Labour, 8/9 November 2006.

¹²⁹ Interview with the Ministry of Labour, 8/9 November 2006.

the OSH inspectorates and the tax offices. NBI is the leading and coordinating office for these investigations.¹³⁰

Despite existing cooperation, it is to be noted that at the operational level the cooperation is not formalized or standardized. There are no mechanisms for a broader and more regular cooperation in place. It was also noted that even though the cooperation is good, it is characterized by the fact that the different partners do have different priorities as well as legal restrictions on the extent of their cooperation.¹³¹ For example, certain information obtained in tax inspections relevant to illegal employment cannot be passed on to other institutions, such as labour inspectorates.¹³²

It is to be noted that in the field of labour migration and fight of illegal employment there is only very little involvement of NGOs. Only the MSAH has had some cooperation with the Finnish League for Human Rights.¹³³

7.2 Cooperation at the international level

In Finland there is traditionally strong cooperation with other Nordic countries and partners: the ministries work together in Nordic ministerial working groups. There is, however, no Nordic ministerial working group dedicated specifically to the topic of labour migration and the fight against illegal employment of migrant workers.

NBI has its usual police cooperation with other Nordic polices, which is working very well. Furthermore, the Task Force on Organized Crime in the Baltic Sea Region formalizes police cooperation in this region. The Virke project reported that they work with tax administrations in the Barent region on an ad hoc basis. Attempts for more regular cooperation have failed due to the lack of similar structures in other countries.¹³⁴ The Construction Worker's Union reported that whereas cooperation with the Nordic Construction Union Federation remains at a very theoretical level, there is some more practical cooperation with Norwegian Unions.¹³⁵

Due to the geographical situation as well as the amount of labour migrants originating from Estonia, cooperation with Estonian partners was mentioned quite prominently, for example by NBI and Ministry of Labour.

While all interviewed parties agreed that due to the geographical situation more cooperation with the Russian Federation would be important, the cooperation is at the present moment less elaborated and workable at a practical level than with the Nordic or Baltic states.¹³⁶ However, the Ministry of the Interior has a cooperation agreement with the Federal Migration Service of the Russian Federation. NBI is collaborating with partner agencies, especially in St. Petersburg.¹³⁷

The Ministries of Labour and Interior cooperate with relevant agencies at the EU level on labour and migration issues.

The Ministry of Labour maintains a working relationship with respect to labour migration with international organizations. Although MoL sometimes attends seminars and so on hosted by the ILO and OECD, it does not have concrete and practical cooperation with these organizations. Relevant ministries in Finland, however, have a close working relationship with IOM and the PIELAMI project is one example of this.

¹³⁰ Interview with National Bureau of Investigation PUT Unit, 26 October 2006.

¹³¹ For example, interview with the Virke Project, 9 November 2006.

¹³² *ibid*

¹³³ Interview with the Ministry of Social Affairs and Health, 2 November 2006.

¹³⁴ Interview with the Virke Project, 9 November 2006.

¹³⁵ Interview with the Construction Worker's Union, 10 November 2006.

¹³⁶ Interview with the Ministry of Labour, 8/9 November 2006; Interview with Construction Union, etc.

¹³⁷ Interview with National Bureau of Investigation PUT Unit, 26 October 2006; Interview with the Ministry of Labour, 8/9 November 2006.

7.3 Gaps and weaknesses in measures and cooperation

For the cooperation between different agencies in Finland, it can be concluded that, even though, in Finland the different players are aware of each other and cooperate in a flexible manner, there are no standardized mechanisms or procedures for a broader cooperation on labour migration and illegal employment. Obstacles in the cooperation are partly due to the fact that the different agencies have different priorities. They might look at illegal employment only from the tax angle or only from the persecutions perspective. Moreover, legal restrictions for sharing data can complicate the process.

Representatives from the MSAH summarized the phenomenon by saying : "... in Finland there is no body or organ with full responsibility for the issue. There are many different bodies involved but a coordinating body is needed."¹³⁸

As regards international cooperation by Finnish agencies, it can be concluded that each agency basically follows its own traditional cooperation mechanisms. The different agencies did not set up specific cooperation mechanisms to deal with labour migration and illegal employment.

8 THE EU AND ILLEGAL EMPLOYMENT OF THIRD COUNTRY NATIONALS

Preventing and combating illegal immigration are priorities for the Union. Their legal basis is contained in the Treaty of Amsterdam, which states that "the Council shall adopt measures on immigration policy, ... [including] illegal immigration and illegal residence." From 1 May 2004, measures are adopted in Council by qualified majority. As from the same date, the Commission has a monopoly on legislative initiative.

In the context of developing a common immigration policy, the Tampere Council agreed to make every effort to halt illegal immigration. Also the proposed Constitution (the adoption of which is currently on hold) expresses the same determination, stating that EU must take "enhanced measures to combat" this phenomenon. Furthermore, the Hague Programme – the multi-annual work programme in the area of justice, freedom and security, adopted by the European Council of 4/5 November 2004 – sets out the agenda to step up the fight against illegal immigration in a number of broad policy areas: border security, illegal employment, return, and cooperation with third countries. The European Council of 15/16 December 2005, responding to recent and ongoing illegal immigration to the Mediterranean region, underlined the need for a broad approach and agreed on a set of concrete priority actions to be implemented in the short and mid-term.¹³⁹

Based on these general decisions to make illegal immigration an EU priority, the Commission has put forward several documents proposing policies and measures. Two recent key documents are the *Policy Plan on Legal Migration*¹⁴⁰ and the *Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals*.¹⁴¹ These documents underline the Commission's stance that immigration is a "complex phenomenon" requiring a combination of enabling (e.g. coordinated admission, integration) and restrictive measures. The informal economy within in the EU is identified as an important "pull factor" for illegal immigration as well as a catalyst for exploitation. While there is thus awareness of the interlinkages between illegal immigration and illegal employment, **no concrete measures** are currently in place on the EU level addressing this specific issue. Rather, when discussing the possibilities for preventing the illegal employment of third country nationals, reference is made to the existing EU-wide regime concerning unauthorized entry (anti-trafficking measures, Schengen etc.) and/or the European Employment Strategy (EES). The European Employment Strategy and the Employment guidelines call for action to foster regular employment. Initiatives foreseen by the EES, such as the modernization of social security, the reduction of non-wage labour costs, and reducing the tax burden on low-income/ low-skilled workers are expected to contribute to lowering incentives for undeclared work and, in turn, to recruiting illegal immigrants.

¹³⁸ Interview with the Ministry of Social Affairs and Health, 2 November 2006.

¹³⁹ MEMO/06/296 (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/296&format=HTML>)

¹⁴⁰ COM(2005) 669 final

¹⁴¹ COM(2006) 402 final

Furthermore, the Commission proposes that the employment of illegally present third-country nationals or persons working in violation of their residence status should be specifically targeted in the future. Measures proposed in this regard include a single work/residence permit (with biometric identifiers), or the financial responsibility of employers. A framework Directive under the Policy Plan on legal migration specifying such measures is expected for 2007.

9 CONCLUSION

The illegal employment of third country nationals in the construction and service industries in Finland remains an issue of concern to Finland largely because of financial crimes, in particular tax evasion, within the informal economy. One of the features of the informal economy in Finland is the existence of illegal employment practices. An estimated 3,000-4,000 migrant workers from both the EEA area and third countries are thought to be involved in some way in the informal economy in Finland as compared to 16,000-17,000 Finnish nationals. Regarding violations against migration laws, that the number of unauthorized migrants working illegally in Finland is relatively low (a few hundred). Consequently, there is little reason to believe that at present there is large-scale migration to Finland for the purposes of illegal employment or involvement in the shadow economy. However, it is important that vigilance on this issue is maintained and further efforts are made to reduce the current violations and ensure that illegal employment of migrant workers does not increase in the future.

The authors found that the largest problems with regard to the illegal employment of TCN migrant workers were to be found in the construction, ship building, and ethnic restaurant sectors, and particularly among the employment conditions of posted workers. The most common violations were violations of tax and employment laws, including tax fraud, non-payment of social security payments, wages that are under the levels set in the collective wage agreements, failure to implement the occupational health agreement, fake invoices, long hours, and other related violations.

The principal motive driving illegal employment practices appears to be profit, although labour shortages are felt to be at least a contributing factor and are expected to have more impact in the future. Avoidance of taxes and other practices common to the informal economy result in lucrative profits for employers. Employees are often willing to accept poor employment conditions in order to at least earn some salary while lack of information and knowledge on appropriate employment terms and conditions may be a factor leading to the involvement of migrant workers in the informal labour market for some.

There are a range of preventive and protective measures in legislation regarding migrant workers. In many cases the Finnish Government has worked together with social partners in order to develop and implement these measures, including the Posted Workers Act and its amendment and the Act on Occupational Safety and Health and its amendment. Several other preventive measures such as the work of the OSH Inspectorates, the PUT Unit of the National Bureau of Investigation, the VIRKE project, information campaigns, as well as union action such as boycotts and strikes and so on are in general effective measures against illegal employment but suffer from a general lack of resources. This lack of resources results in the fact that energies are put into investigating only serious crimes. Furthermore, the authors found that despite efforts to cooperate on this issue, there were some gaps in cooperation because of the very many different players and lack of overall coordination, different focuses and interests, and in particular legal restrictions on sharing information such as tax records.

While sanctions and preventive measures are generally targeted at employers and employees are not generally viewed as criminals as such, they are often seen as willing participants in the informal employment sector. The authors found that there was little real focus on protection and rights issues with regard to migrant workers involved in the informal labour market among most of the authorities and organizations working on the issue. The focus of investigations and efforts appears to be almost entirely on the employers. The authors are not aware of any organizations specifically providing support to migrant workers in the informal labour market.

Labour migration to Finland until now has been rather limited. Each year there are approximately 30,000 labour migrants who work in Finland. In response to demographic pressures and predicted

labour shortages, the Finnish Government has just this year adopted its Migration Policy Programme, which includes a number of guidelines related to the promotion of labour migration, particularly from EU countries, but not excluding third countries. The success of this scheme and the measures provided within it to facilitate the employment of migrant workers in Finland remains to be seen but it is clearly an important first step towards an active labour migration policy.

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- Study Leave Act (273/1979)
- Working Hours Act (605/1996)
- Young Workers' Act (998/1993)

10.3 ANNEX III: List of interviewees

- **Border Guard** , *Major Ilkka Herranen*, 7 November 2006.
- **Central Organization of Finnish Trade Unions, SAK**, *Matti Viialainen*, Deputy Director, 8 November 2006.
- **Construction Worker's Union**: *Kyösti Suokas* (Vice President), 10 November 2006.
- **Directorate for Immigration**: *Tutta Tuomainen*, Head of section, Migration Unit and *Marjo Mäkelä*, Senior Advisor, 2 November 2006.
- **National Bureau of Investigation**: *Jouko Ikonen*, Detective Chief Inspector – information provided by email, 15 November 2006.
- **National Bureau of Investigation**: *Markus Terenius*, Detective Chief Inspector and *Nina Kangas*, Detective Chief Inspector, 25 October 2006.
- **Ministry of Interior**: *Tuomo Kurri*, Ministerial Advisor, 25 October 2006.
- **Ministry of Labour**: *Olli Sorainen*, Senior Officer, 8/9 November 2006.
- **Ministry of Social Affairs and Health**: *Antti Janas*, Department for Occupational Safety and Health, 2 November 2006.
- **Uusimaa Occupational Safety and Health Inspectorate**: *Tarno Järvinen*, Inspector, *Katja-Pia Jenu*, Inspector, *Erika Kähärä*, Inspector, 9 November 2006.
- **Virke Project**: *Markku Hirvonen*, Project Manager and *Janne Marttinen*, Inspector General, 10 November 2006.

10.4 ANNEX IV: Contact information of responsible authorities and organizations

10.4.1 Government entities

- **Border Guard**
P.O. Box 3, FIN-00131 Helsinki, Finland
Tel: +358 20 410 6511; Fax +358 20 410 6755
http://www.rvl.fi/rvl/home.nsf/pages/index_eng
Email: rajavartiolaitos@raja.fi
- **Centre for Occupational Safety**
Lönnrotinkatu 4 B, 00120 Helsinki, Finland
Telephone: +358 9 616 261; Fax: +358 9 6803 3315
<http://www.tsr.fi/>
- **Directorate for Immigration**
Lautatarhankatu 10, FIN- 00581 Helsinki, Finland
Tel: +358 9 476 5500; Fax +358 9 4765 5858
<http://www.uvi.fi/netcomm/Default.asp?language=EN>
Email: ulkomaalaisvirasto@uvi.fi

- **Finnish institute of Occupational Health**
 Topeliusenkatu 41 a A, 00250 Helsinki, Finland
 Tel: +358 9 47 471; Fax: +358 9 241 4634
<http://www.occuphealth.fi/>
- **Ministry of Interior**
Postal address:
 PO Box 26, FIN-00023 Government, Finland
Visiting address:
 Kirkkokatu 12, Helsinki, Finland
 Tel: +358 9 16001; Fax +358 9 160 44635
http://www.intermin.fi/intermin/home.nsf/pages/index_eng
- **Ministry of Justice**
 P.O. Box 25, FIN-00023 Government
 Tel: +358 9 160 03; Fax: +358 9 1606 7730
<http://www.om.fi/Etusivu?lang=en>
 Email: viestinta.om@om.fi
- **Ministry of Labour**
Postal address:
 P.O. Box 34, FIN-00023 Government, Finland
Visiting address:
 Eteläesplanadi 4, Helsinki, Finland
 Tel: +358 10 60 4001; Fax +358 10 60 48990*
<http://www.mol.fi/english/index.html>
 Email kirjaamo.tyoministerio@mol.fi
- **Ministry of Social Affairs and Health**
Postal address:
 PO Box 33, FIN-00023 Government, Finland
Visiting address:
 Meritullinkatu 8, Helsinki, Finland
 Tel: +358 9 160 01; Fax: +358 9 160 74126
<http://www.stm.fi/Resource.phx/eng/index.htm>
 Email: kirjaamo.stm@stm.fi
 - **Department for Promotion of Welfare and Health**
 Meritullinkatu 8 PL 267, 00171 Helsinki, Finland
 Tel: +358 9 1601; Fax: +358 9 160 9862
 - **Occupational Safety and Health Department**
 Uimalankatu 1 PL-536, 33101 Tampere
 Tel: +358 3 260 8111; Fax: +358 3 3 260 8511
- **National Bureau of Investigation**
Postal address:
 Keskusrikospoliisi, PL 285, 01301 Vantaa, Finland
Visiting address:
 Jokiniemenkuja 4, 01370 Vantaa, Finland
 Tel: +358 9 8388 661; Fax: +358 9 8388 6536
<http://www.poliisi.fi/poliisi/krp/home.nsf/pages/indexeng>
- **Virke Project**
 Paasivuorenkatu 5 b 00530 Helsinki, Finland
 Tel: +358 9 73 1136; Fax: +358 9 7311 6077
 Email: virke@vero.fi

10.5 Employer associations

- **Confederation of Industries EK**
Postal address:
P.O.Box 30, FIN-00131 Helsinki, Finland
Visiting address:
Eteläranta 10, 00130 Helsinki, Finland
Tel: +358 9 42020; Fax: + 358 9 4202 2299
http://www.ek.fi/ek_englanti/index.php
Email: netti@ek.fi
- **Confederation of Finnish Construction Industries (RT)**
P.O. Box 381, FIN-00131 Helsinki, Finland
Tel: +358 9 12 991; Fax: +358 9 628 264
<http://www.rakennusteollisuus.fi/english/>
Email: rt@rakennusteollisuus.fi

10.6 Trade Unions

- **Central Organization of Finnish Trade Unions (SAK)**
Hakaniemenranta 1, PO Box 157, 00531 Helsinki
Tel: +358 20 774 000; Fax: +358 20 774 0225
<http://www.sak.fi/englanti/index.shtml>
Email: sak@sak.fi
- **Construction Worker's Union (RL)**
Siltasaarenkatu 4, PO Box 307, 00531 Helsinki
Tel: +358 20 774 003; Fax: +358 20 774 3060
<http://www.rakennusliitto.fi>
- **Service Workers Union (PAM)**
Paasivuorenkatu 4-6 A, PO Box 54, 00531 Helsinki
Tel: +358 20 774 002; Fax: +358 20 774 2039
<http://www.pam.fi>
Email: pam@pam.fi

10.7 International Organizations

- **International Labour Organization**
4, route des Morillons , CH-1211 Geneva 22, Switzerland
Tel: +41 22 799 6111; Fax: +41 22 798 8685
<http://www.ilo.org>
Email: ilo@ilo.org
- **International Organization for Migration, Geneva**
17, Route des Morillons, CH-1211 Geneva 19, Switzerland
Tel: +41 22 717 9111
Fax: +41 22 798 6150
<http://www.iom.int>
Email: hq@iom.int
- **International Organization for Migration, Regional Office in Helsinki**
Unioninkatu 13, 6th floor, P.O.Box 851, FIN-00101 Helsinki
Tel: +358 9 684 1150; Fax: +358 9 684 11511
<http://www.iom.fi/>
Email: mrfhelsinki@iom.int

- **OECD**

2, rue André Pascal, F-75775 Paris Cedex 16, France

Tel: +33 1 45 24 8200 ; Fax: +33 1 45 24 8500

<http://www.oecd.org>

10.8 List of acronyms

EEA – European Economic Area

EK – Confederation of Finnish Industries

IAMM – International Agenda for Migration Management

ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

ILO – International Labour Organization

IOM – International Organization for Migration

NBI – National Bureau of Investigation

OECD – Organization for Economic Co-operation and Development

OSH – Occupational Safety and Health

PIELAMI – Cooperation on Preventing Illegal Employment of Labour Migrants with a View to Promoting Legal Employment Opportunities

PUT – National Bureau of Investigation's Project Unit

SAK – Central Organization of Finnish Trade Unions

TCN – Third Country Nationals

UVI – Directorate of Immigration

VIRKE – Project for the development of inter-authority cooperation

IV. Illegal Employment of Third Country Nationals in Latvia

Ivars Indāns

Latvian Institute for International Affairs

1 EXECUTIVE SUMMARY

According to official information, illegal employment of third country nationals in Latvia is not a significant problem on the political agenda. In comparison with other EU Member States, immigration numbers in Latvia are low. On the one hand, this can be explained by a restrictive immigration policy defined by national legislation to protect the national labour market. On the other hand, the social assistance system in Latvia is not attractive for third country nationals. According to official information and data from the Latvian Employers' Confederation, the level of illegal employment of third country nationals is very low. However, the level of hidden employment and informal economy is rather high. Research shows that hidden employment basically concerns the local residents of Latvia. National legislation has not been sufficient to limit hidden employment and the lack of administrative capacity is an important obstacle for effective employment policy. Thus the problems in the Latvian labour market have a certain potential for raising the issue of illegal employment of third country nationals in future.

2 INTRODUCTION

Global migration trends depend on two important considerations – the will of inhabitants of developing countries to improve their standards of living by finding better conditions of life as well as demand for labour and concerns over population ageing in developed countries. This problem is also becoming topical for Latvia. In the near future it will be necessary to carry out surveys on demographic and economic development in Latvia in order to develop a long-term migration policy.

After having joined the European Union, living standards in Latvia will rise and income and price differentials will decrease, leading to a slow down in outward migration. The country might also become more attractive for immigrants. Migration patterns are already changing. Central and Eastern European countries – Poland, Hungary, the Czech Republic, and Slovenia – have already begun turning from mere emigration countries to countries of emigration, transit, and immigration at the same time. The same will apply for Latvia because geographical proximity, family ties, and compatriot networks will be the crucial factors making the Baltic States a popular destination. For the most part, according to surveys, Latvia is unprepared for such an influx.

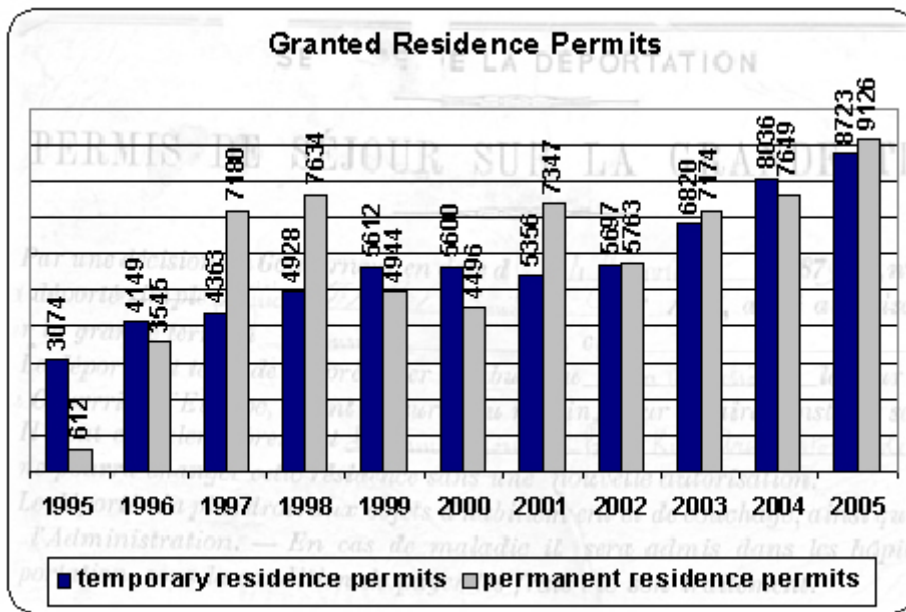
Currently, Latvia does not have a large number of immigrants. As the population ages but the birth-rate remains low, in the near future Latvia will have to rely on immigrants to sustain economic growth. On the other hand, there are other factors determining critical attitudes towards immigration – mainly social integration and security issues. Underlying tensions between "traditional" Europeans and immigrants over cultural differences have led governments to encourage "cultural integration" rather than multiculturalism. EU states including Latvia will have to address concerns such as these on the part of their native citizens if they are to encourage the immigration that will keep their countries economically viable. The Latvian case might be even more complicated because the government already has problems with the implementation of the social integration programme for the Russian speaking population.

3 IMMIGRATION

3.1 Overview

Foreign nationals presently comprise 1.56 per cent of Latvia's population, which is a rather small percentage in comparison with other European countries. According to official data, the number of foreign nationals residing in Latvia is increasing. In 2005 2,748 foreign nationals took out residence permits, most were from the Russian Federation, Ukraine, Belarus, and the United States (US). Citizens of CIS countries are arriving in Latvia – they are able to work and live in Latvia as Russian is a commonly spoken language in Latvia.

Figure 1: Granted Residence Permits



Source: Office for Citizenship and Migration Affairs

3.2 Regular immigration

The number of foreigners who have entered Latvia since joining the EU has not changed significantly – it has risen only by approximately 1,000 permits. The tendencies are the same in comparison with statistics from 2003 and 2005 when numbers increased by 836 persons within two years. Within a year the number of foreigners who received residence permits in Latvia was in total 3,000. Most often residence permits have been issued in cases of family reunification, study, and work. Permanent residence permits work but permanent residence permits have been granted to former non-citizens who have acquired citizenship of another state. For instance, the number of employed foreigners in Latvia in 2005 in comparison with 2004 has risen by 54 per cent.

During the period 1 May 2003 to 30 April 2004, 5,286 persons received a permanent residence permit and 5,469 received a temporary residence permit. After joining the EU, 5,874 permanent and 6,328 temporary residence permits have been issued. The number of visas issued has steadily decreased. Thus, during the period 1 May 2002 to 30 April 2003, 146,044 visas were issued. After joining EU, this number dropped to 131,106.

Table 1: Number of foreigners with residence permits

	01.01.2002	01.01.2003	01.01.2004	01.01.2005	01.07.2005	01.01.2006
Temporary r/p	6,676	6,886	7,512	7,429	7,695	8,003
Permanent r/p	23,527	24,522	25,570	26,976	28,206	29,487
Total¹	30,203	31,408	33,082	34,405	35,901	37,490

Table 2: Basis for issuing temporary residence permits (01.07.2005)

Basis	Number
Spouses of Latvian citizens	1,884
Spouses of Latvian non-citizens	976
Parents of Latvian non-citizens	515
Students	563
Business	788
Work	1,499
Other	1,344
Total	7,659

Source: Office for Citizenship and Migration Affairs

Table 3: Citizenship of applicants for temporary residence permit

Country	Number
Russian Federation	2,433
Ukraine	937
Lithuania	699
Belarus	499
Germany	294
US	293
Estonia	236
Israel	179
United Kingdom	153
Finland	149

Source: Office for Citizenship and Migration Affairs

Table 4: Basis for acquisition of permanent residence permit (01.07.2005)

Basis	Number
Repatriates	1,369
Family members of repatriates	337
Spouses of Latvian citizens	3,046
Spouses of Latvian non-citizens	1,270
Spouses of foreigners	105
Children	1,827
Foreigners who were Latvian non-citizens	19,944
Other	308
Total	28,206

Source: Office for Citizenship and Migration Affairs

Table 5: Citizenship of permanent residence permit holders

Country	Number
Russian Federation	21,777 (78%)
Lithuania	1,773
Ukraine	1,602
Belarus	1,130
Estonia	466
US	171
Germany	120
Poland	118
Armenia	117
Israel	100

Source: Office for Citizenship and Migration Affairs

¹ Total of whole population: 35,865, which is 1.56 per cent of foreigners of Latvian population (2,296,062).

3.2.1 Humanitarian immigration

According to statistics by the Office of Citizenship and Migration Affairs (OCMA), in the period 1998 to 30 June, 2006, nine persons in Latvia received refugee status and nine persons received alternative status (i.e. subsidiary protection).

At the beginning, most requests for asylum were submitted by persons from Asian countries but in recent years they have originated mainly from the former USSR, for example, the Russian Federation and Belarus.

3.2.2 Labour immigration

A residence permit is a document that allows a foreign national to stay in the Republic of Latvia for a specified period of time. Two types of residence permit exist: temporary residence permits and permanent residence permits. A residence permit is required if a foreign national or a stateless person wishes to reside in the Republic of Latvia for more than 90 days within a six month period.

According to the Office of Citizenship and Migration Affairs, during the period January-March 2005, there were only 906 foreigners from third countries employed, 269 of those were Russian citizens, 108 Ukrainians, and 87 Belarusians. Most foreigners employed in Latvia (303) were in the age group 25-34, 293 aged 35-44 years, and 134 were aged 45-54.²

In the first quarter of 2006, the State Employment Agency (SEA) only approved 330 invitations for workers from third countries and the total number of guest workers has also decreased considerably. According to the Employment Agency, invitations for 1,790 guest workers were approved in 2002, the figure in 2003 was 1,409, and only 448 in 2004. In 2004, 49 guest workers from the Russian Federation were invited to Latvia, 17 from the US, 18 from Lithuania, 27 from Estonia, 28 from India, 184 from the Ukraine, and 21 from China. Forty-six point five per cent of guest workers were employed in industry, 12.5 per cent in hotels, 6.7 per cent in trade, 4.9 per cent in the construction sector, and 4 per cent in education.

With regard to nationality, welders, mostly working in shipyards, are most often from Ukraine while cooks come from China and India. Many foreigners work as consultants at international companies. Since the Immigration Law came into force on 1 May 2003, company executives who have the right of signature no longer require work invitations to Latvia because they create new jobs in the country. Inviting guest workers from third countries is not particularly advantageous to employers because one work permit costs LVL 35 per month and there is also a fee for the residence permit. Guest workers from third countries must be paid at least the average salary of LVL 246. Additionally, the vacancy must be announced at least a month before a guest worker from a third country is invited so local specialists are able to apply.

Table 6: Basis for issuing temporary residence permits

Basis	Number
Business	788
Work	1,499

Source: Office for Citizenship and Migration Affairs

3.2.3 Study

There are a number of conditions that make studying in Latvia unattractive for foreign students. First, they have to comply with admission requirements, including command of the Latvian language in accordance with the requirements of the centralized language test that is undertaken upon graduation from secondary school. Although certain subjects can be taught in other languages, there are very few courses offered in foreign languages. Most often students arrive in the framework of the Socrates/Erasmus and Higher Education Support program HESP programs. In 2005 the University of Latvia hosted 170 students, 81 of whom were exchange students (58 Socrates/Erasmus students). The university has 49 bilateral cooperation agreements with universities in 22 countries. There are perma-

² "LM: ES valstu darbspēks neapdraud Latvijas darba tirgu", National News Agency LETA, 05.08.2005.

ment students from Sri Lanka, Syria, and India who study medicine. In the framework of exchange programs, students choose to study economics, management, philology, and political science.

Fifty-nine international students are enrolled in studies in the Riga International School of Economics and Business Administration. Most of them are from the US (42), Belarus, Croatia, the Russian Federation, Lithuania, Uzbekistan, Poland, Ukraine, and Israel. Five students are from the UK, India, Ukraine, Kazakhstan, and the Russian Federation. The rest are from France, Germany, Finland, and Poland and study for one semester. Fifty-three foreign students are enrolled in studies at Riga Technical University from Kazakhstan, India, Pakistan, Syria, Sri Lanka, the US, Turkmenistan, Ukraine, Lithuania, Germany, Egypt, the Russian Federation, China, Moldova, Cameroon, and Lebanon. The Transport and Telecommunications Institute in Riga has hosted 30 foreign students from 12 countries. The remaining universities host approximately ten or less foreign students.

Table 7: Basis for issuing temporary residence permits (1.07.2005 for 7,659)

Basis	Number
Students	563

Source: Office for Citizenship and Migration Affairs

3.2.4 Family reasons

Table 8: Basis for issuing temporary residence permits (1.07.2005 for 7,659)

Basis	Number
Spouses of Latvian citizens	1,884
Spouses of Latvian non-citizens	976
Parents of Latvian non-citizens	515

Source: Office for Citizenship and Migration Affairs

3.3 Irregular immigration

3.3.1 Facts and assumptions

Since Latvia joined the EU in 2004, 12 million people have crossed the border, constituting an increase of two million since 2004. Border regime violation cases have not increased. Most violators have come from Moldova and Ukraine. On average there have been 859 migrants stopped at the border in the last four years but in 2005 this number was only 341. Since EU membership the number of persons barred from entering Latvia has decreased. Illegal immigrants are mainly from Ukraine, Belarus, and Georgia. Latvia is most often used for transit for travel to Western European States, thus stronger control is necessary for migration.³

According to information from the State Border Guard, in 2005 the State Border guard imposed administrative penalties on 262 foreigners (103 Russians, 28 Ukrainians, 11 Belarusians, seven Moldovans, seven Somalis, five Armenians, five Israelis, four Azerbaijanis, three Syrians, three Georgians, three Turkmens, and three Sri Lankans, two Americans, two Indians, and two Egyptians. There were three main reasons for imposing administrative penalties: (1) illegal border crossing; (2) forged ID documents; (3) unregistered residence.⁴

Only 28 foreigners were detained in Latvia last year for not having work permits. Most were employed as construction workers. Overall, the Border Guard's Immigration Service detained and extradited 190 persons extradited from Latvia in 2005, including 60 Russians, 27 Belarusians, 23 Ukrainians, six Uzbekistanis, seven Chinese, three Azerbaijanis, four Moldavans, three Kazakhstanis, four Georgians, two Israelis, two Armenians, and one citizen each from Thailand, Korea, and South Africa.

³ "Par strādāšanu bez darba atļaujas šogad sodīti deviņi ārzemnieki", Latvian National News Agency *LETA*, 30 Aug 2005.

⁴ Interview with Press Service of State Border Guard, 15.03.2006.

4 ILLEGAL EMPLOYMENT OF THIRD COUNTRY NATIONALS

4.1 Overview

4.1.1 Characteristics

Any assessment of aggregate employment trends must take into account the possible extent of hidden employment and hidden unemployment (or "under-employment"). Estimates by Latvia's Central Statistics Bureau put the informal economy at 16 per cent of Latvia's GDP, while Latvia's Finance Ministry has estimated the level of hidden employment to be 14-20 per cent. However, labour force surveys, based on interviews with a sample of the population, are more likely to identify various forms of marginal employment than is the case with other sources of employment statistics such as administrative data or surveys of firms. Hidden unemployment occurs in enterprises that are stagnating or operating below capacity, forcing employees to work shortened working weeks or forcing employees to take unpaid leave in the case of production stoppages.

4.1.2 Extent of the problem

In Latvia, illegally employed persons are considered to be inhabitants who have not formalized their legal relations in writing (labour contract not signed, social insurance contributions and personal income tax not ensured) and aliens who work in Latvia without work permits. Undeclared employment is a more extensive concept that includes non-payment of taxes, remuneration paid "in envelopes", non-payment of compensation for overtime and work carried out at night. At present, the notions of "illegal" and "undeclared" employment are used interchangeably because contraventions in regard to work without labour contracts and negligence of wage regulations are counted together.

According to information from the State Border Guard, most workers arriving from third countries are employed in construction, many illegally. Illegal employment also exists in childcare as well as in entertainment and sports. In 2005, the State Border Guard caught only 21 workers who were employed illegally, mainly from the Russian Federation (10).⁵ In comparison, during the first two months of 2006, 209 workers in 108 enterprises were caught working without a contract.⁶ The estimated number of illegal workers is higher.

One of the most negative tendencies is an increase of illegal employment in the Republic of Latvia since it has joined the EU. Illegal employment negatively affects both the economic development of the Republic of Latvia and the social protection and safety of each inhabitant. Therefore the struggle against it is one of the SLI's priorities.

According to the official data of SLI⁷ Data from 2005 shows that during the last year illegal employment cases were disclosed in every fifth enterprise inspected by the SLI.

In 2005 the State Border Guard and the State Labour Inspectorate intensified controls on illegal employment. The Latvian State Labour Inspectorate employed 121 inspectors. In 2005 they detected 936 illegally employed persons. During the first four months of this year, already 536 persons without an employment contract have been detected.

In 2006, the SLI plans to conduct 4,500 inspections in enterprises with a heightened risk of illegal employment, such as building, wholesale, and retail companies. During the first five months of the year 2006, the SLI in cooperation with the State Border Guard inspected 68 enterprises and disclosed 66 infringements when employees were employed without written employment contracts. In total, during the first five months of the year 2006, the SLI has inspected 1,626 enterprises in which 695

⁵ "No robežsardzes Preses un sabiedrisko attiecību dienesta apkopotās informācijas", National News Agency *LETA*, 17.12.2005.

⁶ "Šogad jau piekerti 209 nelegāli nodarbinātie", news portal www.DELFI.lv, 21.03.2006, according to information provided by the State Labour Protection, most of cases were identified in Riga (81). No information on nationality of workers was provided.

⁷ Latvian State Labour Inspectorate, http://www.vdi.gov.lv/index.php?menu_id=5&lang_id=1

employees had no legal labour relations.⁸ The most problematic economic sectors in Latvia are forestry, construction, and services (including trade, cosmetic services, and public transport services).

4.2 Preventive measures

In order to pay intensified attention to the elimination of illegal employment in Latvia, the Ministry of Welfare has identified it as a priority for 2006. For this objective, LVL 251,100 has been allocated for labour inspection activities for 2006. Within the framework of allocated resources an increase in the number of labour inspectors and their remuneration is planned. As of 2006, 140 inspectors will be employed – 14 more than in 2005. The average monthly salary of inspectors in 2006 will be increased by LVL 96, reaching LVL 258 in total. In addition the SLI aims to reduce illegal employment by educating employers and employees on legal labour relations.

4.2.1 Legislation

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents entered into force on 23 January 2006. In order to implement this Directive, the Ministry of Interior has elaborated amendments to the Immigration Law and has prepared the law on “Long-term resident status of the European Community in Latvia”, which foresees the introduction of a new status, namely the long-term resident status of the European Community in Latvia. In accordance with this law, a third country national is any person who is not a citizen of Latvia or of one of the Member States of the European Union, European Economic Area, or Switzerland. All foreigners and non-citizens of Latvia are considered third country nationals.

The long-term resident status of the European Community will not be compulsory and will not be granted to persons automatically – a person who wishes to acquire long-term resident status shall apply to the Office of Citizenship and Migration Affairs and must meet certain criteria.

The main criteria for acquiring the EC long-term resident status in Latvia are the following: The Member State shall grant the EC long-term resident status if a person has resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application, permitting periods of absence from the territory of the state concerned less than six consecutive months and not in excess of a total of ten months within the period referred to. The applicant shall prove that he or she has sufficient resources to maintain himself or herself and the members of his or her family. Additionally, the means of subsistence shall be stable and regular, namely, he or she must have received during last the 12 months at least the minimum wage and have paid the applicable taxes. Also, pensions will be considered as sufficient financial means

Taking into consideration that the objective of this directive is the integration of third country nationals who have resided in the Member State for a period of determined time, knowledge of the state's language is required for acquiring EC long-term resident status. Persons who wish to acquire this status have to pass state language tests at the State Language Certification Center. It is envisaged that knowledge of the Latvian language will have to correspond to stage B of the first level, which is the second lowest level on the state language certification scale.⁹

The acquisition of the EC long-term resident status would be convenient for those third country nationals who wish to move to another EU Member State with a view to exercising an economic activity in an employed or self-employed capacity. Henceforth a person who has acquired the EC long-term resident status in Latvia, after one year, during which he or she has worked in another EU state, might freely change an employer (currently such person is obliged to work only for an employer who has invited him or her for a job). Moreover, it would be easier for the holder of the EC long-term resident status to find a job.

⁸ Latvian State Labour Inspectorate, http://www.vdi.gov.lv/index.php?menu_id=5&lang_id=1

⁹ Centre for Curriculum Development and Examinations (ISEC), Latvian Ministry of Education and Science, (<http://www.isec.gov.lv/en/stlang.shtml>), accessed 9 November 2006.

The directive will also create more favorable conditions for those persons who enter the territory of Latvia for the purpose of residence. Up to now, a permanent residence permit could be acquired after ten years of residence in Latvia (after five years for spouses). In accordance with Directive 2003/109/EC, the long-term resident's EC residence permit may be acquired after a person has resided in Latvia legally and continuously for five years.

4.2.2 Applicable sanctions against employers

In 2005, 153 employers were sanctioned for illegally employing third country nationals. In 2004, administrative liability was applied in the cases of 27 employers. The usual fine for an employer convicted of illegal employment practices is LVL 500-10,000 (EUR 700-15,000). The insufficient resources of the SLI are the main reason for the low number of sanctions. The SLI has difficulties to prove illegal employment. It is also rare that maximum fines are imposed. The average fines do not have preventive effect since they are not proportionate to the financial advantages employers can get by illegally employing people.

4.2.3 Applicable sanctions against employees

In 2005, only nine workers were punished for working without permits. During 2004, altogether 49 employees were punished for working without work permits. The usual fine for working without work permits is LVL 100-500 (EUR 150-700).

4.2.4 Previous and ongoing initiatives

In order to combat illegal employment more effectively, the Ministry of Welfare has elaborated a proposal for restricting illegal employment. The proposal includes changes in legislation, improvement of infrastructure, as well as development of awareness and consultation measures. The proposals are summed up in a report "On requisite proposals for restriction of illegal and undeclared employment" introduced on 26 May 2006 at a press conference by Minister for Welfare, Ms Dagnija Staže, and representatives of the working group from the Ministry of Welfare, the State Labour Inspectorate (SLI), and the State Revenue Service (SRS).¹⁰ The working group that presented the proposal was made up of the following agencies: Ministry of Welfare, Ministry of Economics, Ministry of Finance, State Police Central Criminal Police Department, Economic Police Department, SLI, State Construction Inspection, Latvian Forest Industries Federation, Latvian Traders Association, Latvian Free Trade Union Confederation, Latvian Construction Contractor Association, State Border Guard, and Latvian Employer's Confederation.

The working group proposed amendments in Labour Law prescribing an opportunity to ensure the labour contract or a copy of labour contract at the working place as well as defining a duty for employers to register each employee at the territorial division of SRS twice a month. Further, the report suggests the signing of a general agreement between employer's organizations and employee's trade unions that would relate to all people involved in the respective sector.¹¹

The report also notes that dishonest entrepreneurs that reduce production costs have greater opportunities to win public government tenders. In order to solve this problem, the proposal suggests an amendment to the Law on Public Purchase to include a prohibition on participation from three to five years in public tenders for companies found guilty of illegal and undeclared employment.

The report also recommends that the main contractor of a construction site be obliged to keep a list of all employees working at the construction site. To avoid illegal work in private construction (e.g. private houses) where ostensibly the owner is doing the building him/ herself the report suggests a definition of "do it yourself building" and the stipulation that a private person may involve only family members and self-employed but legal persons in the construction, i.e. legally employed persons.

¹⁰"Ministry of Welfare offers specific proposals for restriction of illegal employment", Ministry of Welfare, 26.05.2006, <http://www.lm.gov.lv/print.php?id=2394>.

¹¹ *ibid.*

At the same time experts advise the development of a single register of employed persons with information about all able-bodied persons. Before employment people would have to register to receive an identification card and a written statement as confirmation.

One of the proposals is to introduce a definition of undeclared employment in legislation to practically apply it in supervision of labour legal relations as well as to focus on other aspects of undeclared employment, such as payment for overtime hours and work at night etc. Likewise the report suggests complementing legal norms of Labour Law, the Administrative Offence Code of Latvia, and several Regulations of the Cabinet of Ministers.

On 14 June 2006, a press conference was organized in which the Director of the State Labour Inspectorate Mrs. Rita Elce signed an Interdepartmental Agreement on mutual exchange of information with the Chief of the State Border Guard Mr. Gunars Dabolins.¹² In order to enhance the efficiency of the State Labour Inspectorate (SLI) in combating illegal employment, in accordance with paragraph 3 of Article 10 of Law on the State Labour Inspectorate, on 21 June 2005 Cabinet Regulation No. 431 "On the procedures of early exchange of information" was adopted, entitling SLI to conclude cooperation agreements and interdepartmental agreements with other governmental authorities. Based on the aforementioned Cabinet Regulation and effective long-term cooperation with the State Border Guard, the SLI concluded on July 4, 2006 the first interdepartmental agreement on mutual cooperation in the field of information exchange.

In order to bring down the unemployment rate and curb illegal employment, the Ministry of Welfare has launched in 2005 launch a major research project on the labour market. The project will examine the labour force and the labour market in various economic sectors, the geographic mobility of workers, specific regional problems, and gender equality on the job market. The research will also look at how employment is affected by salaries, the tax system and bonuses, non-registered employment and efforts to curb it, unemployment, and social alienation. Ms. Tare Ineta, Head of Labour Policy Department at the Ministry of Welfare, believes that the research will open the door for long-term projections for the job market. No major research has ever been conducted before, therefore it is difficult to carry out any specific employment policy for regions and target groups.¹³

4.3 Responsible authorities and organizations and their roles

4.3.1 Government authorities

The State Labour Inspectorate (SLI) is a state supervisory and control institution established on 24 December 1992. Its activity is determined by the "Law on State Labour Inspectorate." The SLI consists of seven regional inspectorates (RSLI): Riga RSLI, Latgale RSLI, Kurzeme RSLI, Zemgale RSLI, Southern RSLI, Northern Vidzeme RSLI and Eastern Vidzeme RSLI. SLI is under the supervision of the Minister of Welfare of the Republic of Latvia.

The following persons and institutions are subject to the supervision and control of the SLI: entrepreneurs, the state and municipal institutions, religious and nongovernmental organizations, employers and their representatives according to the mandate and responsibilities delivered to them, the owners of dangerous equipment, as well as the workplaces and the other places at the enterprises available for the employees during their work process. The main task of the SLI is to carry out the activities in order to ensure an effective implementation of the government policy in the field of labour legal relations, labour protection, as well as the technical supervision of the dangerous equipment.

The SLI is the national Focal Point of the European Agency for Safety and Health at Work (Agency) in Latvia. The main activity of the agency in collaboration with the focal point is to organize the European Week for Safety and Health at Work. An important activity of the focal point is to update and develop the website (www.osha.lv) that contains information about labour protection issues in Latvia.

¹²"State Labour Inspectorate Concludes Interdepartmental Agreement with State Border Guard", State Labour Inspectorate, 28 June 2006, http://www.vdi.lv/index.php?zinas_id=114&lang_id=2&menu_id=45.

¹³ National News Agency LETA 2 March 2006.

Information can be found on changes in legislation, planned activities, legislative acts, publications and statistical data, and other information about occupational safety and health in the country.

4.3.2 Regional and local authorities

At regional level the main role belongs to the regional branches of the governmental institutions. The SLI consists of seven regional inspectorates (RSLI): Riga RSLI, Latgale RSLI, Kurzeme RSLI, Zemgale RSLI, Southern RSLI, Northern Vidzeme RSLI and Eastern Vidzeme RSLI.

4.3.3 NGOs

Since the illegal employment of third country nationals in Latvia is not, for the time being, a significant issue there is no active interest concerning this problem among NGOs.

4.3.4 Employer associations

Latvian Employers Confederation LDDK represents and participates in drawing up strategic programme documents in the field of employment, drawing up and improving regulatory enactments that regulate labour relations and work conditions, harmonization of cooperation and interests among state agencies, municipal institutions, and public and non-governmental organizations on the enhancement of employment policy.¹⁴

LDDK encourages the establishment of an elastic regulatory framework for labour relations at national, EU, and international level by providing employers with opportunities to respond effectively to constant changes in the labour market. LDDK supports the strengthening of the role of social dialogue in defining work conditions.

LDDK also provides employers with updated information and prepares informative materials on improvement of labour relations. LDDK provides its members with consultations on improving the business environment as well as on education, employment, social security, health care, employment rights, and labour safety. LDDK members also receive consultations on:

- adjustment of regulatory enactments (interpretation of regulations, evaluation of their impact);
- draft policy planning documents and draft regulatory enactments as well as their impact upon entrepreneurship ;
- opportunities to initiate amendments in regulatory enactments.

LDDK develops and distributes informative materials on topical issues of employers' and entrepreneurs' concern. Informative materials are available to members free of charge at the LDDK Directorate.

4.3.5 Trade Unions

The Latvian Free Trade Union Federation (LBAS) has been the largest non-governmental organization in Latvia for 15 years. It unites 27 different branch organizations with 250,000 members at more than 2900 enterprises, institutions, and organizations. In the regions, trade unions are represented by 18 districts and municipal trade union centres. LBAS represents and protects the social and economic interests of its workers through tri-partite social dialogue in relations with employers, state institutions, courts, and different international institutions.

4.3.6 Cooperation

The Employers' Confederation (LDDK) cooperates with governmental institutions and establishments through:

- National Tripartite Cooperation Sub Council of Vocational Education (PINTSA);
- Advisory Committee of State Employment Agency (NVA) ;

¹⁴ Information from the LDDK website: <http://www.lddk.lv/index.php?main=153&lang=2&c=173>.

- Work group of the National Development Plan;
- Sub Council of Tripartite Cooperation of Labour Affairs (DLTSA).

LDDK cooperates both with experts from Latvia and international organizations and employers' organizations from other countries with the aim to provide its members with in-depth analysis on issues of concern.

Currently, the tripartite social dialogue is well developed in Latvia at the national level. The National Tripartite Co-operation Council (NTCC) operating within the framework of the Ministry of Welfare is the main forum for tripartite dialogue. In the NTCC, employers are represented by Latvia Employers' Confederation, whose membership covers 66 enterprises and 14 associations, covering over 30 per cent of the total workforce in Latvia. Workers are represented by the Free Trade Union Confederation of Latvia, which unites trade unions covering approximately 30 per cent of all employed persons. The NTCC, in addition to its plenary sessions, operates through a number of sub-councils dealing with specific elements of economic and social policy (for example, labour affairs, vocational education and training, and social security matters).

Bi-partite dialogue and collective bargaining are, however, less well developed. As is clear from the preceding paragraph, employers' organisations and trade unions cover a relatively small share of all employers and employees. Collective agreements have been concluded on wages and labour conditions in more than half of the enterprises where a trade union is represented. In 1996 there were 1,188 collective agreements covering 189,545 employees; by 2000 this had risen to 2,057 collective agreements covering 203,725 employees.¹⁵ Of these agreements, 2,018 were at company level, and 39 were at branch level. Thus, collective agreements cover only approximately 25 per cent of the employees in the country. Coverage is highest in large and state-owned enterprises, and lowest in new and smaller private enterprises.

Some trends that point to the strengthening of bipartite dialogue can be observed. For instance, at the national level, co-operation between social partners has resulted in the conclusion of an agreement between the Latvia Free Trade Union Association and the Latvia Employers' Confederation on social partnership. However, no proper structures for bipartite social dialogue have been set up in the regions or at sector/branch level.

4.4 Regional and international cooperation

A contract was signed with the Ministry of Economics and Labour Affairs of Germany for implementation of a joint project. Project activities will be coordinated by the Ministry of Welfare of Latvia. The total length of the project is 15 months. Within the project framework there is a plan to elaborate a national action plan on issues related to labour protection and occupational health and to develop the capacity of the SLI by introducing new training models and sector approach. Additionally a restructuring of the current Labour and Environmental Health Institute is planned to transform it into the National Labour Environment Institute as well as develop social dialogue at the level of companies in relation to labour protection issues.¹⁶

Accidents at work and occupational diseases still remain a serious and unresolved problem in Latvia. Evaluating the number of persons per 100,000 employees killed in accidents, Latvia is one of the countries with the most negative indicators among all EU Member States.¹⁷ This project will be focused on elimination of the most relevant drawbacks of institutional system and is evaluated as a step forward in arrangement of labour protection system in our country and improvement of labour environment," admitted Renārs Lūsis, Deputy Director of Labour Department of the Ministry of Welfare.¹⁸ The project also involves other experts from the German Ministry of Economics and Labour Affairs

¹⁵ "Joint Assessment Paper on Employment priorities in Latvia", European Commission, 06.02.2006, http://ec.europa.eu/employment_social/employment_analysis/japs/latvia_en.pdf.

¹⁶ "Ministry of Welfare launches project for development of occupational health and labour protection system", Latvian Ministry of Welfare, 31.03.2006, <http://www.lm.gov.lv/print.php?id=2375>.

¹⁷ National News agency LETA 11.03.2006

¹⁸ National News agency LETA 11.03.2006

and the Finnish Occupational Health Institute. The total cost of the “Occupational health and labour protection system further development” project is LVL 508,121. Of that sum, about LVL 455,000 (approximately EUR 649,992) is assigned from the EU with the rest as co-funding from the Latvian state budget.

On 25-26 May 2006 a meeting of the Directors of the Lithuanian, Latvian, and Estonian Labour Inspectorates took place. The main issue focussed on during the meeting was the problem of illegal employment. Countries shared their experiences in order to draw together the best practices regarding combating illegal employment. The Baltic countries face several common problems related to the reduction of illegal employment. One is the weak legal framework. Another common and topical problem is the widespread practice of paying “envelope salaries” (cash in hand). In Estonia and Latvia the situation is very similar – the lack of certificate for each employee substantially impedes the implementation of illegal employment reduction policy.

4.5 Gaps and weaknesses in measures and cooperation

The scope of illegal employment in the state is currently rather notable. During the last two years the scope of the informal/shadow economy in the state was on average 18 per cent of gross domestic product.¹⁹ Realizing the vast extent of this problem and its negative impact on both the state’s development as a whole and every person’s social protection and security, the fight against this problem requires the active involvement of state institutions, local governments, social partners and non-governmental organizations, as well as employees themselves.

One of these relate to difficulties by officials from the SLI and SRS to prove the fact of labour contract signing in companies since for the most part labour contracts have been “written” during the last twenty-four hours following an inspection in the respective object, as well as labour contracts and working time tables are not found at the working place. Besides, quite often there are situations where both employers and employees themselves give contradictory and “false” information about working time and remuneration, thereby forbidding SRS employees to prove actually paid remuneration and calculate unpaid taxes and dues.

In cases when employers deliberately escape and do not allow labour inspectors entry to the company, rights of the SLI employees are not defined as to the possibility to prepare an administrative act without presence of an employer to define a fine not only for employer who employs workers without labour contract but also for employees who work without labour contract. In addition experts propose to reduce the level of fine or to not impose fines if one of the involved parties informs the SLI or SRS about illegalities at the working place.

Since at present the concepts of “illegal work” and “undeclared employment” are not defined in regulatory enactments, it has been proposed to elaborate a new law for combating of illegal and undeclared employment including definitions of illegal work and undeclared employment.

It shall also be noted that responsible institutions are not well equipped in terms of administrative capacity. The focal point for migration policy is the Office of Citizenship and Migration Affairs (OCMA) under the auspices of the Ministry of Interior. OCMA is not able to develop a long-term vision in relation to immigration because of its limited competence related to immigration procedures. Moreover, OCMA is suffering from lack of administrative resources. The number of obligations is growing but the institution’s budget remains insufficient. Young employees leave OCMA to work in the private sector after getting training. Thus, only a limited number of public servants is still working at these institutions and these sometimes lack adequate knowledge and language skills to live up to current demands.

There is no analysis of how efficient the inspectorate's measures against illegal employment are and how effectively resources are being utilized. Prime Minister Aigars Kalvitis has also concluded that

¹⁹ “Ministry of Welfare offers specific proposals for restriction of illegal employment”, Latvian Ministry of Welfare, 26.05.2006, <http://www.lm.gov.lv/print.php?id=2394>.

the State Labor Inspectorate has not been properly implementing the Welfare Ministry's strategy for curbing illegal employment.²⁰

5 PROTECTION OF MIGRANT WORKERS

5.1 Normative framework

In the Republic of Latvia, labour protection is regulated by the following legislative acts: the Labour Law, the Law on Labour Protection (adopted by Parliament on 20 June 2001; with amendments until 16.12.2004), the Law on State Labour Inspectorate (adopted by Parliament on 3 December 2001, with amendments passed 20 October 2004).

Latvia as an EU Member State has to implement in its legislation the requirements of EU Directives, including those referring to labour protection matters. Currently almost all requirements from the EU directives in the field of labour protection have been implemented in the national legislation but the latest ones are being implemented in accordance with the terms defined and coordinated with the EU institutions.

In the Labour Protection Law, which has been compliant with the EU's legislative requirements since 1 January 2002, the establishment of a labour protection system is foreseen. In other European countries, competent authorities and specialists in the field of labour protection have already operated for a long time. However, in Latvia the system began to operate at full force only from 1 January 2006 when the following regulations entered into force (8 February 2005): regulation No. 99 regarding the "Types of Commercial Activities in which an Employer shall Involve a Competent Authority"; and regulation no. 101 regarding the "Requirements for Competent Authorities and Competent Specialists in Labour Protection Issues and Procedure of Competence Evaluation."²¹

In accordance with the *Law on Social Services and Social Assistance* (OG No. 168 19.12.2002 as amended until 2004 OG No. 199, 15.12.2004) the right to receive social services and social assistance shall be enjoyed by citizens, non-citizens, aliens, and stateless persons who have been granted a personal identity number except for persons who have received a temporary residence permit (Article 3). The article covers EU, EEA, and Swiss citizens if they have acquired a personal number in Latvia as well as third country nationals with long-term resident status granted in Latvia. Social services and assistance are financed from resources of local governments. The procedure for receipt is further determined by the Cabinet of Ministers. The Cabinet has adopted Regulation No. 373 on *Procedure for Receiving Social services and Social assistance* (31.05.2005).

5.2 Current measures

Currently the Ministry of Welfare is preparing amendments to the Law on Refugee Status in order to include refugees and persons holding alternative status. This will allow them to receive assistance at the level of minimum income. Amendments will also cover those who have been victims of trafficking in human beings. They will qualify for social rehabilitation. In relation to other groups of residents the law would not be applicable because they do not possess a personal ID number, which is granted only to citizens, non-citizens, and persons with permanent resident status. Thus, the law itself does not have a residence requirement but requires only possession of a personal number. This means that Latvian citizens will qualify for assistance even if they have not resided in Latvia for five years.

The Ministry of Welfare has a plan to define the new strategic trends of labour protection policy and elaborate a national action plan in the labour protection field from 2007 to 2012 that is complementary to the new EU labour protection strategy period.

²⁰ National News agency LETA, 12.06.2006.

²¹ "System of labour protection services", Latvian Ministry of Welfare, [not dated], <http://www.lm.gov.lv/print.php?sadala=734>.

5.3 Responsible authorities and organizations and their roles

5.3.1 Government authorities

The State Social Insurance Agency (SSIA) is a state institution under the supervision of the Ministry of Welfare performing a public administration function in the area of social insurance and social services.

The SSIA's main tasks are:

- to administer the social insurance budget;
- to register socially insured persons and their contributions into the socially insured person's accounts;
- to provide social insurance and selected social assistance services to the population – grant, calculate, recalculate and pay pensions, benefits and allowances;
- to provide individual consultations to the population about the social insurance and social assistance services;
- regularly inform the public about the topical social insurance matters;
- to ensure, that the services are accessible to every customer as close to their place of residence as possible.

The **Professional Career Counselling State Agency (PCCSA)** is a state institution under the supervision of the Ministry of Welfare offering career counselling for anyone who seeks it (young people about to choose a career, adults – whether currently employed, unemployed or returning to the labour market after a hiatus, disabled persons, parents and educators). PCCSA offers not only individual but also group consultations and seminars. Counselling is free of charge.

The PCCSA's main tasks are:

- to offer consultations about choosing education and career, vocational development, returning to the labour market and changing occupations;
- to assess client's vocational aptitude, interests and preferences, abilities, skills and suitability for a given profession;
- to consult about the effective ways of searching for work;
- to provide information about the content and requirements of different professions;
- to offer information about possibilities of education in Latvia and abroad;
- to elaborate new methodological tools for vocational guidance and career counselling;
- to carry out a research into guidance and career counseling.

The **Social Service Board (SSB)** is a state institution under supervision of the Ministry of Welfare, taking part in implementing social policy of the state in the field of social services and social assistance. The SSB's activities are defined in the Regulation of Cabinet of Ministers No. 863 from 19 October 2004 "Social Service Board Statute", adopted on 4 November 2004. Until this date the institution, established in 1996, existed under title Social Assistance Fund.

The SSB administers the state budget resources for social service institutions, controls expenditure of these resources, and provides informative and methodological assistance for social services and social assistance institutions.

The SSB's main tasks are:

- to plan and prepare project of requisite budget resources for financing the state social services;
- to coordinate assignment of the social services financed by the state ;

- to submit proposals to the Ministry of Welfare about improvement of regulatory enactments in social services and social assistance sphere;
- to control quality of rendering the social services, review and provide responses to complaints and proposals about quality of social services and social assistance ;
- to collect, summarize and analyze data about realization of the social policy;
- to develop and update register of social services` providers;
- to provide information and consultations to physical and legal persons about issues related to social services and social assistance, inform society by means of SSB home page, bulletin "Social assistance news", seminars and etc. about the state financed social services and the order how to receive services.
- to manage resources from EU structural fund grant schemes by ERDF and ESF.

5.3.2 Employer associations

The Employers' Confederation of Latvia (LDDK) is the biggest organization representing the interests of employers. The LDDK acts as a partner in socioeconomic negotiations with the Saeima, the Cabinet of Ministers of Republic of Latvia, and the Free Trade Union Confederation of Latvia.

The LDDK unites 26 branch and regional associations and federations that have a significant role in Latvian economics, as well as enterprises that employ over 50 people. The members of LDDK include 25 per cent of employees in Latvia.

LDDK has laid emphasis on ensuring labour force availability and establishing a favourable business environment for employment as its basic aims in field of employment, thus providing a foundation for the development of enterprises and increasing competitiveness.

5.3.3 Trade Unions

The Latvian Free Trade Union Federation (LBAS) has been the largest non-governmental organization in Latvia 15 years. It unites 27 different branch organizations with 250,000 members at more than 2900 enterprises, institutions, and organizations. In the regions, trade unions are represented by 18 districts and municipal trade union centres. LBAS represents and protects the social and economic interests of its workers through tri-partite social dialogue in relations with employers, state institutions, courts, and different international institutions.

5.3.4 Cooperation

Currently, tripartite social dialogue is well developed in Latvia at the national level. The National Tripartite Co-operation Council (NTCC) operating within the framework of the Ministry of Welfare is the main forum for tripartite dialogue. In the NTCC, employers are represented by Latvia Employers' Confederation, whose membership covers 66 enterprises and 14 associations, covering over 30 per cent of the total workforce in Latvia. Workers are represented by the Free Trade Union Confederation of Latvia, which unites trade unions covering approximately 30 per cent of all employed persons. The NTCC, in addition to its plenary sessions, operates through a number of sub-councils dealing with specific elements of economic and social policy (for example, on labour affairs, vocational education and training, and social security matters).

Bi-partite dialogue and collective bargaining are, however, less well developed. As is clear from the preceding paragraph, employers' organisations and trade unions cover a relatively small share of all employers and employees. Collective agreements have been concluded on wages and labour conditions in more than half of the enterprises where a trade union is represented. In 1996 there were 1,188 collective agreements covering 189,545 employees; by 2000 this had risen to 2,057 collective agreements covering 203,725 employees. Of these agreements, 2,018 were at company level, and 39 were at branch level. Thus, collective agreements cover only approximately 25 per cent of employees in the country. The coverage is highest in large and state-owned enterprises, and lowest in new and smaller private enterprises.

Some trends highlight the strengthening of bipartite dialogue. For instance, at the national level, co-operation between the social partners has resulted in the conclusion of an agreement between the Latvia Free Trade Union Association and the Latvia Employers' Confederation on social partnership. However, no proper structures for bipartite social dialogue have been set up in the regions or at sector/branch level. Special emphasis should be put on promotion of social dialogue at company level, which has not been easy to reach so far.

6 PROMOTION OF LEGAL EMPLOYMENT OPPORTUNITIES

Latvia's employers have increasing interest regarding the opportunity to hire workers from Belarus and Ukraine. Construction companies are inquiring about the opportunity the most often, as well as companies that are short of unskilled workers – for example, enterprises operating in the wood processing and similar sectors. However, employers lose interest as soon as they find out that guest workers from third countries must be paid at least LVL 249 before tax every month, which is the average salary in Latvia. Additionally, employers also have to pay a monthly LVL 35 duty per every guest worker from third countries. There are two reasons for employers' increasing interest in guest workers. Most of the 50,000 to 75,000 Latvian residents who work in other EU Member States are doing unskilled jobs, resulting in a shortage of unskilled workers in Latvia now. The other reason is that the number of residents who study to university level is increasing. Many employers in Latvia are not ready yet to pay proper salaries, and many prefer to pay "envelope wages" to avoid taxes. This is why so many residents are looking for a job in other European countries.

6.1 Current measures and responsible authorities and organizations

The State Employment Agency (SEA) is a public body subordinate to the Ministry of Welfare. The aim and mission of the SEA is to help persons seeking employment, to promote their competitiveness in the labour market, and to provide the state economy with the necessary labour force. The work performed by the SEA is directed at unemployment reduction as well as supporting the unemployed and job seekers.

- to participate in the development and implementation of the National Employment Plan;
- to organize and implement Active Employment Measures;
- to help unemployed persons and job seekers to become involved in the labour market;
- to record vacant workplaces;
- to register and record unemployed persons and job seekers;
- to inform unemployed persons and job seekers about vacant workplaces, as well as their rights and obligations;
- to consult unemployed persons and job seekers on the subject of issues of occupational suitability, selection of an appropriate occupation and vocational retraining;
- to analyze and forecast the conjuncture of the labour market;
- to organize co-operation and exchange of information between the State Employment Agency and employers;
- to organize a dialogue between employers and unemployed persons in order to reduce the level of unemployment;
- to approve work invitations for foreigners in accordance with the procedures prescribed by the regulatory enactments of the Republic of Latvia;
- to provide an information according to European Union's requirements regarding the unemployment situation in Latvia;
- to issue licenses and to supervise legal persons who provide work placement services (except work placements on ships). This is a paid service;

- to participate in the development of draft international co-operation agreements, as well as other co-operation projects, and in the implementation of these agreements and projects in the fields of unemployment reduction and movement of work force;
- to organize employment measures for persons studying in general secondary and professional secondary educational establishments during summer holidays.

The Ministry of Welfare has proposed the simplification of the authorization for employment offers and granting job permits to foreigners and ease administrative barriers. According to a government initiative employers will no longer have to submit notice of their tax liabilities to the State Employment Agency (SEA). The new bill determines that employers must indicate in their application the reason for employing a foreigner and state that they have not received tax liabilities administered by the SRS. In the proposal, the Office of Citizenship and Migration Affairs can give permission to work for foreign victims of human trafficking without notifying the SEA.

According to the Immigration Law, work permits are also given to individuals who have the status of EU permanent resident or to their family members if they have already lived and worked in Latvia. The procedure for work permits for foreigners will be also facilitated if their family members would have the alternative status, according to the Asylum Law.

The Ministry of Welfare considers that existing labour resources should be used more efficiently and does not plan to take measures to ease access to the labour market for third country nationals. However, if necessary, the Ministry will consider simplification of the work permit procedure for specialists that are not available in Latvia and Europe. In 2004 a quota of 100 was set for IT specialists but only four individuals used this possibility while from January-October 2005 this number was seven. Migration, according to the Ministry, is topical because of general tendencies of depopulation and low birth rates.

The number of requests for work permits has decreased: 871 requests during 2002; 505 requests during 2005.²² On 12 July 2005 the Cabinet of Ministers adopted Regulation No. 515 *on order for establishing that foreigners have necessary financial resources* (OG No.112 19.07.2005). According to Section 5 the minimum subsistence amount is LVL 10 (approximately EUR 15) per day if accommodation expenses are covered and LVL 30 (EUR 45) if accommodation should be paid by the foreigner. The minimum subsistence amount can be reduced for humanitarian considerations (Section 6). In case a person requests a residence permit s/he should prove that their salary or income is equal to:

- double average monthly salary before taxes as calculated annually by the Statistical Bureau (average salary per month being LVL 193 or EUR 276, during 2004 it was LVL 172 or EUR 246) if person applies for residence permit not exceeding five years and is a registered business person or member of a company in different capacities or self-employed for a duration not exceeding one year;
- average monthly salary if the foreigner is requesting a residence permit for any other reason not mentioned above;
- average subsistence minimum, as established by the Statistical Bureau annually in all other cases.

On 13 September 2005 Cabinet of Ministers adopted amendments in Regulations No.44 *on work permits for foreigners* (OG No.147 15.09.2005). They provide in Section 5 that foreigners who are students in educational institution in Latvia will be allowed to work for maximum 20 hours a week. Asylum seekers will be able to get a work permit until the final decision on their status is made. As a result of amendments a provision that provided that family members of EU citizens need to apply for a work permit has been deleted.²³

On 3 October 2006 the Cabinet of Ministers adopted the new Regulation No. 813 *on Residence permits* (OG No.157 4.10.[2005]). The regulation is unclear in relation to the right of family members

²² "Neplāno vienkāršot darba atļauju saņemšanu trešo valstu pilsoņiem", 25.01.2006, news portal www.DELFI.lv.

²³ Ārvalstu studenti Latvijā nevarēs strādāt vairāk par 20 stundām nedēļā, National News Agency LETA. 13.09.2005.

to apply for residence permits. In most cases a foreigner applying for a residence permit does so on the basis of an invitation that is registered at OCMA. This is the case, for instance, for workers. Section 7 provides for exceptions in which an invitation is not required. For instance, in the case of self-employed persons, posted workers, children, persons who have acquired education in Latvia, and so on. Their family members are also exempt from the invitation requirement.

The annotation to the Law on Ratification of Agreement on Accession of New Member States to the EU includes evaluation of social consequences of accession (OG 159 12.11.2003). It states that free movement of workers is one of the main factors that will increase the welfare of individuals. Latvian authorities have acknowledged that there is possibility to rely on the Accession agreement to introduce certain measures limiting the free movement of persons. Article 70 of the Immigration Law provides that for the introduction of such measures an analysis of the labour market shall take place. The procedure set for evaluation of the labour market includes reports from Ministries of Interior and Welfare to the Cabinet of Ministers. In September 2005 the Ministry of Welfare invited EU Member States to reconsider transitional measures and lift the restrictions in May 2006. According to the Communication Department of the Ministry of Welfare, the reason for the announcement was that transition measures foster the 'informal economy' and illegal employment. They also informed that it is not necessary for Latvia to introduce restrictions for free movement because the workforce from the EU Member States does not threaten the Latvian labour market. Moreover, mass influx from other Member States cannot take place due to low remuneration.²⁴ For instance, in social care institutions and the communications sector remuneration is lower than generally in the EU.²⁵

Until 1 October only 3,028 persons with EU or another nationality have entered Latvia. 1,614 of foreigners who have entered are family members of foreign nationals. Seven hundred and eighty-five of those who entered were from the Russian Federation. Although the numbers are gradually increasing, in total numbers they remain low.²⁶

During 2005 discussions continued on establishing a data system to record the number of foreigners employed. The Ministry of Welfare insists that the focal point for the system shall be the State Revenue Service. The information provided by employers would be precise and State Employment Agency could also rely on the data provided. However, this proposal is not accepted by the Revenue Service who argues that statistics are outside its field of competence.²⁷

The core institutions dealing with employment policy matters at national level are the Ministry of Welfare, the Ministry of Economy and the Ministry of Education and Science. The Ministry of Economy holds responsibility for promotion of entrepreneurship and the creation of a business friendly environment, including development of infrastructure. The Ministry of Education and Science is responsible for all levels and types of education and training. The Ministry of Welfare has responsibility for active labour market measures for unemployed persons as well as passive employment measures.

The main strategic policy document on employment is the National Employment Plan (NEP). In April 1999, the government approved a concept paper "On Promotion of Employment in the Country", prepared by the Ministry of Welfare. Based on this concept, the formulation of an annual employment plan is co-coordinated by the Ministry of Economics.²⁸ A key body in employment planning is the working group for elaboration of the National Employment Plan, which consists of representatives of nearly all the ministries, the Latvia Free Trade Union Federation, the Latvia Employers Confederation, and local governments. The working group is responsible for drafting the NEP and co-ordination of its implementation. Responsibilities for specific measures are distributed during the drafting process and subsequently each of the institutions involved carries responsibility for its respective measures

²⁴ "LM aicina ES dalībāļus atcelt ierobežojumus darba tirgum", National News Agency *LETA*, 23.09.2005.

²⁵ "LM: ES valstu darbaspēks neapdraud Latvijas darba tirgu", National News Agency *LETA*, 5.08.2005.

²⁶ "Viesstrādnieki", National News Agency *LETA*, 18.10.2005.

²⁷ „Rosina veidot Latvijā nodarbināto ārzemnieku uzskaites sistēmu”, National News Agency *LETA* 19.01.2005, „Iecerēts veidot Latvijā nodarbināto ārzemnieku uzskaites sistēmu”, National News Agency *LETA*, 24.02.2005.

²⁸ „Background paper”, EU-Latvia Sub-committee on Economic and Monetary Issues, Capital Movement and Statistics, 02.07.2001, http://www.fm.gov.lv/image/file/Background_Paper.doc.

and performs regular monitoring of these measures. Overall monitoring and assessment under the leadership of the Ministry of Economy is carried out twice a year and the results are presented to the Cabinet of Ministers.

6.2 Exchange of information in Latvia

Currently there are four local databases maintained by the State Employment Agency, the State Revenue Service, OCMA, and the Ministry of Welfare. Exchange of information takes place in the form of official correspondence and there is no online collaboration. Therefore, in certain cases information overlaps while in others there might be discrepancies. OCMA is working on establishment of system with the Land Register and the Register of Enterprises that would make it easier for foreigners to apply for residence permits. The need for closer co-operation is very acute.

7 CONCLUSION

The level of illegal employment among third country nationals in Latvia is insignificant. However, the level of hidden employment and informal economy is rather high. According to research, hidden employment basically concerns the local residents of Latvia. National legislation has not been sufficient to limit hidden employment and lack of administrative capacity is an important obstacle for effective employment policy. Thus the problems in the Latvian labour market have a certain potential for raising the issue of illegal employment of third country nationals in the future.

The most problematic economic sectors in Latvia are forestry, construction, and services (including trade, cosmetic services, and public transport services). The highest level of undeclared work is found in the regions with high unemployment rates, as well as in Riga. The reasons for this situation are several: complicated requirements for start up of entrepreneurial activity and restricted access to financial resources (administrative barriers); complicated and inflexible labour legislation that does not correspond to the current needs of labour market; high staff costs, and heavy social insurance payments; the lack of prestige for socially responsible business.

The scope of illegal employment in the state is currently rather notable. During the last two years the scope of the illegal economy in the state was on average 18 per cent of gross domestic product. Realizing the vast spread of this problem and its negative impact on both the state's overall development and social protection and security, the fight against this problem requires the active involvement of state institutions, local governments, social partners, and non-governmental organizations, as well as employees themselves.

One challenge is the difficulty of governmental institutions to prove the fact of labour contract signing in companies since for the most part labour contracts have been "written" during the last twenty-four hours following inspection. Furthermore, labour contracts and working hour records are not found at the working place. Besides there are often situations where both employers and employees themselves give contradictory and "false" information about working time and remuneration, thereby meaning that SRS employees are unable to prove actually paid remuneration and calculate unpaid taxes and dues. In cases where employers deliberately escape and do not admit labour inspectors to a company's premises, SLI employees are unable to prepare an administrative act without the presence of an employer fine employers or employees. In Latvian legislation "illegal work" and "undeclared employment" are not defined in regulatory enactments. It is important to elaborate a new law for combating illegal and undeclared employment including their definitions of illegal work and undeclared employment.

[This work is based on a review of secondary sources published in Latvia.]

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- Civil Law (adopted 1 September, 1992, entry into force 2 October 1992)
Law On the State Labour Inspectorate (adopted 13 December 2001, entry into force 28 December 2001)
- Commerce Law (adopted 4 May 2000, entry into force 22 May 2000)
- Immigration Law (adopted 15 April 2003, entry into force 1. May 2003).
Law on Long-term Resident Status of the European Community in Latvia (adopted 13 September 2006, entry into force 23 September 2006)
- Labour Law (adopted 20 June 2001, entry into force 6 July 2001)
Law on Labour Protection, (adopted 20 June 2001, entry into force 6 July 2001)
Law on Social Services and Social Assistance (adopted 7 April 2003, entry into force 23 April 2003)

Relevant Regulations of the Cabinet of Ministers:

- Cabinet Regulation No. 379 Adopted 23 August 2001 Procedures for the Performance of Internal Supervision of the Working Environment;
- Cabinet Regulation No. 539 Adopted 27 December 2001 Regulations regarding Requirements for Labour Protection When in Contact with Carcinogenic Substances at Workplaces;
- Cabinet Regulation No 125 Adopted 19 March 2002 Requirements for Labour Protection in Workplaces;
- Cabinet Regulation No 189 Adopted 21 May 2002 Labour protection requirements at work with biological agents;
- Cabinet Regulation No 253 Adopted 25 June 2002 Labour protection requirements for the exploration and extraction of minerals;
- Cabinet Regulation No 343 Adopted 6 August 2002 Labour Protection Requirements when Working with Displays;
- Cabinet Regulation No 344 Adopted 6 August 2002 Regulations for Labour Protection Requirements when Moving Heavy Objects;
- Cabinet Regulation No 372 Adopted 20 August 2002 Labour Protection Requirements when using Personal Protective Equipment;
- Cabinet Regulation No 373 Adopted 20 August 2002 Labour Protection Requirements in Work with Asbestos;

- Cabinet Regulation No 399 Adopted 3 September 2002 Labour Protection Requirements when coming into contact with Chemical substances at Workplaces;
- Cabinet Regulation No 400 Adopted 3 September 2002 Labour Protection Requirements for Use of Safety Signs;
- Cabinet Regulation No 427 Adopted 17 September 2002 The procedures for the election and activities of trusted representatives;
- Cabinet Regulation No 526 Adopted 9 December 2002 Labour Protection Requirements when using Work Equipment and Working at a Height;
- Cabinet Regulation No 61 Adopted 4 February 2003 Regulations on safety and health protection requirements on fishing vessels;
- Cabinet Regulation No 66 Adopted 4 February 2003 Labour protection requirements for the protection of employees against the risk arising from work environment noise;
- Cabinet Regulation No 92 Adopted 25 February 2003 Labour protection requirements when carrying out construction works;
- Cabinet Regulation No 300 Adopted 10 June 2003 Labour protection requirements when working in explosive atmosphere;
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- Cabinet Regulation No 585 Adopted 9 August 2005 Procedures for Investigation and Registration of Accidents at Work.

8.3 Annex III: List of interviewees

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- **International Organization for Migration Riga office**, *Baiba Bieza*, 20.09.2006.
- **International Organization for Migration**, *Ilmars Mezs*, 02.06.2006.
- **Latvia University**, *Aija Lulle*, 12.10.2006.
- **Latvia University**, *Zaiga Krisjane*, 12.10.2006.
- **Latvian Employers Confederation**, *Elina Egle*, 24.09.2006.
- **Latvian Free Trade Union Federation**, *Peteris Krigers*, 24.09.2006.
- **Latvian Free Trade Unions**, *Silva Dolmane*, 10.10.2006.
- **Ministry of Welfare**, *Ineta Tare*, 15.10.2006.
- **Ministry of Welfare**, *Linda Dimante*, 27.09.2006.
- **OCMA**, *Maira Roze*, 03.09.2006.
- **Riga Graduate School of Law**, *Kristine Kruma*, 11.10.2006.
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- **State Employment Agency**, *Ilze Heberlinga*, 03.10.2006.
- **State Employment Agency**, *Iveta Lublina*, 25.10.2006.
- **State Employment Agency**, *Ringolds Beinarovics*, 02.10.2006.
- **State Labour Inspectorate**, *Press Service*, 29.10.2006.

8.4 ANNEX IV: Contact information of responsible authorities and organizations

8.4.1 Government authorities

- **Ministry of Welfare**
Skolas iela 28, Riga LV 1331, Latvia
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- **Office of Citizenship and Migration Affairs (OCMA)**
Raina blv 5, Riga LV 1050, Latvia
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- **State Border Guard**
Rudolfa iela 5, Riga LV 1012, Latvia
Tel: +371 7075616
- **State Employment Agency**
Kr. Valdemara iela 38, Riga LV 1010, Latvia
Tel: +371 7270253
- **State Labour Inspectorate**
Kr. Valdemara 38, Riga LV 1010, Latvia
Tel: +371 78008004

8.4.2 Employer associations

- **Employers Confederation of Latvia (LDDK)**
Vilandes iela 12-1, Riga LV 1010, Latvia
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8.4.3 Trade Unions

- **Free Trade Union Confederation of Latvia (LBAS)**
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V. Illegal Employment of Foreign Nationals in North West Russia

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1 EXECUTIVE SUMMARY

The transition of the Russian Federation (RF) to a market economy and freedom of movement has entailed numerous disagreeable phenomena including large-scale irregular migration and an increasing informal labour market. Illegal employment of foreign citizens results in tax underpayments, contributes to a clandestine economy, harms the formation of the national labour market, and breeds corruption and slavery-like practices contrary to human rights and human dignity.

At the same time, the Russian economy faces labour shortages in many industries and a growing need for migrant workers. The success of economic reforms in the RF strongly depends on whether it manages to regularize migration flows and put migrants out of the shadow.

Analysis of the patterns of illegal employment of foreign nationals, areas and industries where they concentrate gives to state officials and practical workers engaged in elaboration and implementation of law-enforcement and economic policies in the RF better understanding of what can be done to reduce the informal sector of the labour market.

The paper makes a distinction between illegal employment of labour migrants from CIS states and of those migrants from non-CIS countries who are in fact in transiting the RF but stay for rather long time in the Russian territory to earn their further migration to the EU. Transit migrants often get stuck in the North West border areas of the RF being unable to slip into Europe. They earn their living in the shadow informal sector of Russian economy and seek any chance to leave for the West. These two groups of migrants differ in their intentions, spheres of employment, willingness to go out of illegality, involvement in human trafficking, etc. To these and other reasons, Russian migration legislation makes differentiation in terms of entry, stay and work for citizens of the CIS states and other countries.

This report puts special emphasis on migrants from the CIS states, as (1) they are more numerous and (2) they are the focus of the revised Russian legislation in the field of migration management. The report shows how the new laws are likely to pave the way to regular migration and legal employment of CIS citizens. Liberalization of migration legislation is going along with restricting sanctions against unscrupulous employers and illegal workers who violate labour and tax regulations, as well as migration rules. By promoting legal employment of CIS nationals, on the one hand, and making illegal employment non-lucrative and felonious for both employers and employees, on the other hand, the new strategy of the Russian Government solves a set of problems: it counteracts irregular migration, oppresses the shadow sector, normalizes the situation on the national labour market, provides the Russian economy with legal labour inflow, and protects migrant workers' rights.

The Russian experience can surely be of interest and practical use for those countries that are facing the challenge of irregular migration and illegal employment of foreign nationals. After 15.01.2007 when the new legislation is put in force, the RF will be practicing the most facilitated opportunities for legal employment of migrant workers in sectors where there is a demand. The new mechanism promises to be an effective instrument to protect migrant workers by giving them a chance to enter the legal labour field, where the law and work contract act as major protective instruments.

In the concluding chapter the analysis is translated into concrete recommendations addressed to Russian policy-makers and relevant regional authorities in North West Russia responsible for implementing the revised migration/employment mechanism.

It is highly reasonable to revisit the report in 2007 in order to understand the results of the Russian experiment in implementation most facilitated opportunities for legal employment of CIS citizens in the RF and evaluate its effectiveness in preventing illegal employment of migrants.

2 INTRODUCTION

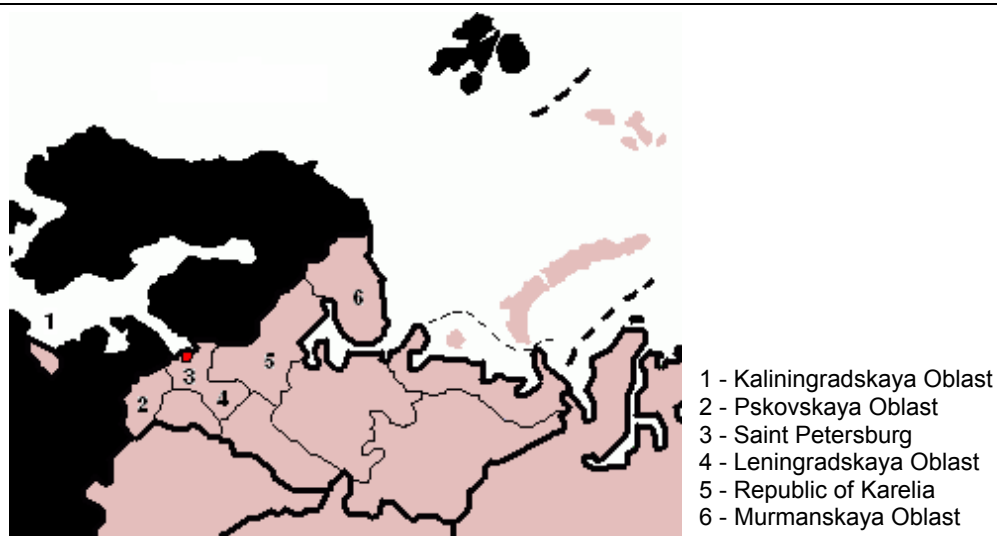
Large-scale irregular immigration and illegal employment of foreign citizens is a sad reality of contemporary the Russian Federation (RF). The number of illegally employed migrants¹ in the RF is estimated as 7-10 million, while the total national labour force is 68 million and the number of registered migrant workers is 702,500 (2005).

This report is focused on North West Russia (NWR), namely the six administrative units bordering the EU:

- Saint Petersburg
- Leningradskaya Oblast
- Kaliningradskaya Oblast
- Pskovskaya Oblast
- Murmanskaya Oblast
- Republic of Karelia

These provinces are a part of the North West Federal District, one of seven major federal districts of the RF. The criterion to select the provinces for this report is the fact that they border the EU and their closeness to the Baltic Region, which is the focus of the PIELAMI project. Therefore, the term North West Russia in this report covers only the above six units.

Figure 1: Map of North West Russian administrative units bordering the EU



Source: Wikipedia Commons,

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Under the Constitution of the Russian Federation (RF), these units are self-governing regions with predominance of federal laws. In terms of migration this means that entry, stay, and employment of foreign citizens in these regions are regulated by the federal legislation but can be implemented by local

¹ This report is focused on illegal employment of foreign nationals. For this reason we put aside internal migration and possibilities of illegal employment of Russian citizens and fully concentrate on international migration. So, in the context of this particular report the terms labour migrants and migrant workers correspond to international migrants, i.e. foreign nationals only.

instruments (regional programmes, quotas, etc.) to meet the specific economic and demographic interests of the provinces.

The Geographical location of NWR at the border of the EU determines the specificity of its international migration situation. During one and a half decades of post-soviet development, the RF has become a popular transit route for irregular migrants from Asian and even African countries whose aim is to reach the EU. They stay in the RF for months and even years (usually with an irregular status) in order to earn their living and accumulate some money for the next migration step. In this context, the RF, with its huge shadow sector, provides good opportunities for illegal employment. The dramatic differences in the technical level of border control at the eastern and western frontiers of the RF result in the fact that it is much easier for a transit migrant to enter the Russian territory from the east than to depart to the west. When having approached the western Russian border, transit migrants can fail in their efforts to pass through; in this case they are forced to stay in border provinces in the expectation of another chance to earn their living illegally.

Furthermore, NWR is becoming increasingly attractive for labour migrants from CIS states², especially those with visa-free regimes for entry. Regretfully, the dominating pattern of labour migration to the RF is irregular migration and illegal employment – due to the unjustified toughness of national migration policy and over-complicated bureaucratic procedures for getting permissions. NWR, like many other Russian regions, is facing demographic decline, population ageing, and a growing labour deficit in many industries. In these circumstances, its need for migrant labour will increase. The total number of registered migrant workers increased from 28,800 in 2000 to 45,400 in 2005. At the same time, illegal employment of migrants in NWR is estimated from 120,000 to 400,000.

The large numbers of irregular migrants staying in the RF have made the Russian Government rate irregular migration as a national security challenge. The growth of criminal activities in migrant communities stressed by law-enforcement bodies along with the worldwide trend to correlate irregular migration with international terrorism, aggravated by the media, have created a negative general image of migrants in the RF and stirred up intolerance in society. Recent dramatic ethnically based conflicts in Saint Petersburg and the city of Kondopoga in Karelia were extreme outbursts of social prejudice.

In its attempts to “normalise” the situation, Russian authorities have radically liberalised federal legislation related to labour migration to the RF from CIS states with visa-free entry regimes. The new rules for getting work permissions that will be put in force after 15 January 2007 replace the former employer-driven over-complicated procedure that acted as a breeding ground for corruption, to a clear, easy-to-follow, and transparent mechanism. Accompanied by restriction of penalties for employers and employees who break the law, the new regulation is expected to bring labour migrants out of the shadow sector and exclude illegal employment relations from the Russian labour market as far as possible.

3 IMMIGRATION

3.1 Overview

The root causes of international migration are well known. Except for emergency cases, they are primarily economic by nature. Gaps in standards of living and economic opportunities between countries encourage cross-border human flows. This is true for the RF as well. Immigration flows to the RF are obviously classified into two major streams: (1) migrants from former Soviet republics who come for temporary work or permanent residence and benefit from the visa-free entry regime, geographical proximity, convenient transport infrastructure, historical ties, and knowledge of the Russian language,

² CIS (Commonwealth of Independent States) is a regional structure that has existed since 1993. The CIS member states are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, i.e. all the post-Soviet states except the Baltic countries (Latvia, Lithuania, and Estonia). Russia has a visa-free entry regime with all the CIS countries except Georgia and Turkmenistan.

and (2) migrants from other countries, mainly China, Turkey, Vietnam, Afghanistan, Iraq, and Somalia. The second stream is also split into two groups: “economic” migrants who come to the RF in a quest for jobs and small-scale business; and transit migrants whose aim is to reach the EU or other more developed countries. For the latter group, the vague and contradictory Russian laws regulating entry and stay of foreign citizens, half-transparent borders within the post-Soviet space, and the vast shadow sector where they derive their income, are of particular value.

All these flows include both regular and irregular migrants. *Irregular migration from the CIS states for the purpose of illegal employment is a dominating pattern of contemporary migration to the RF.* In the CIS region, differences in standards of living between the post-Soviet countries are striking. In table 1, data from national and international sources, though differing, highlights the strong economic incentives for citizens of the poorer CIS countries to move to the RF, as well as to Kazakhstan in recent years, because of their relative success in moving to the market economy.

Table 1: Differences in standards of living between the CIS countries

CIS country	GDP per capita \$US*	Average monthly salaries \$ US**	Poverty rate (population living below poverty line) %**	Population living on less than 2 \$US per day %***
Armenia	1234.0	98.4	...	49
Azerbaijan	2585.9	78.7	68	9
Belarus	3316.2	161.8	22	2
Georgia	1765.8	58.5	11	16
Kazakhstan	4386.1	207.3	35	25
Kyrgyzstan	507.7	51.7	40	25
Moldova	917.4	89.5	23	64
Russian Federation	6330.8	237.0	31	8
Tajikistan	411.5	21.5	...	43
Turkmenistan	3888.6	44
Ukraine	2020.6	110.8	32	46
Uzbekistan	498.6	35.8 ^{a)}	...	72

Sources: * IMF. World Economic Outlook Database. April 2006

** Population and Standards of Living in the CIS Countries. Statistical Bulletin. Moscow, the CIS Inter- state Statistical Committee, 2005

*** UN. Population Reference Bureau. World Population Data Sheet. 2005

^{a)} Data for 1995

3.2 Regular immigration

3.2.1 Humanitarian immigration

The large-scale immigration of hundreds of thousands of former Soviet citizens, mainly ethnic Russians who found themselves as oppressed ethnic minorities in the new sovereign states following the fall of the Soviet Union, was over by the end of the 1990s. NWR hosted over two million refugees and re-settlers from other ex-Soviet states during the first decade of post-Soviet development. Table 2 shows the decline in numbers of refugees in NWR provinces after 1997.

The UNHCR Office Russia says that between 2001 and 2005, 841 persons from different countries applied for asylum in Saint Petersburg. Of those, 547 persons were granted asylum (92 per cent were from Afghanistan).

Table 2: NWR: Numbers of refugees by province, 2005

	Saint -Petersburg	Leningradskaya Oblast	Kaliningradskaya Oblast	Pskovskaya Oblast	Karelia Republic
1997	1549	0	996	136	5
1998	403	5	381	155	3
1999	257	5	2	32	0
2000	147	10	0	18	0
2001	139	11	0	0	0
2002	117	17	0	0	0
2003	73	13	0	0	0
2004	72	15	0	6	0
2005	67	14	0	6	0

Source: Data from the Federal Migration Service of the RF

The existing and prospective demographic trends in NWR (growing excess of number of deaths over number of births that results in an annual population decline of over 100,000; absolute annual decline in the working age population, up to 70,000 from 2010 onwards; population ageing and growth of the dependency ratio³) are resulting in increasing demand for immigrants. However, immigration for permanent residence in NWR is impeded by a complex of factors; most significant among them are gaps in immigration legislation,⁴ tough citizenship policy, and an underdeveloped housing market. As a result, immigration inflow to NWR has declined by more than ten times between 1994 and 2005: from over 130,000 to 11,336. In Murmanskaya Oblast, the migration balance has been consistently negative since 1989 (-4,645 persons in 2005)⁵.

By the mid-2000s, the RF's migration strategy is at a turning point. Migration policy is shifting from a primarily restrictive approach to a more flexible approach that widens the legal space for migration and removes bulky bureaucratic barriers for migrants. The 'key words' for the new migration policy are *selectivity* and *regularization*, i.e. facilitated mechanisms to give regular status to migrants coming to the RF from other former Soviet states for permanent residence or for temporary work. This shift lies in amendments to the 2002 Federal Law "On citizenship", adoption of the new Federal Law "On registering foreign citizens and persons without citizenship", the Federal Law "On Amendments to the Federal Law on legal status of foreign citizens" (both to be put in force on 15 January 2007), adoption of the "2006-2012 State Program on providing support for voluntary resettlement of compatriots to the Russian Federation", elaboration of the new *Concept of the State migration policy*, elaboration of the *Concept of regularization of irregular labour migrants from the CIS states with a visa-free entry regime to the RF*, followed by the 2005 pilot project to regularize ten regions of the RF, as well as more attention to collaboration with NGOs involved in migrant issues.

These nation-wide initiatives are aimed at (1) growth of immigration by means of increasing the "migration attractiveness" of the RF for former Soviet citizens living in ex-USSR republics; (2) improvement of the migration management system; (3) regularization of the migrant labour market and the shrinking sector of illegal employment; and (4) guaranteeing migrant's social and legal rights to reduce humiliation and discriminatory practices. For NWR these aims are of particular importance. The demographic indices in the region are among the most negative in the RF while economic growth is accelerating. Thus the Kaliningradskaya Oblast has demonstrated high interest in the *State Program on providing support for voluntary resettlement of compatriots to the Russian Federation*, which began in 2006. It is ready to receive 450,000 persons over ten years. This is the highest figure among the Russian provinces. The Government of the Kaliningradskaya Oblast has elaborated a detailed *Program of resettlement* that defines the demand for immigrants with certain skills and professions. This Program is closely correlated to big investment projects planned in the province in the coming years. The necessary condition for successful integration of immigrants is their access to the house

³ Dependency ratio is the ratio between the working age population and the pre/over working age population.

⁴ For example, since 2002 regularization of the legal status of foreign citizens (including ex-USSR citizens) in the RF was realized in accordance with dramatically out-dated law "Regulations of stay of foreign citizens in the USSR" of 26 April 1981. The co-existence of this with numerous hastily elaborated laws from the 1990s meant that the regulation of entry and stay of foreign citizens to the RF was full of discrepancies and contradictions.

⁵ ROSSTAT, *Demographic Yearbook of Russia (Demograficheskiy Yezhegodnik Rossii)*. Moscow: Federal Statistics Service, 2005.

market. For this reason the Kaliningradskaya Oblast is presently experiencing a construction boom, which in its turn gives rise to an additional need for migrant workers.

3.2.2 Labour immigration

Labour immigration is the most numerous and dynamic migration inflow into NWR. According to official data, 45,391 migrant workers were registered in the six provinces under research in 2005 (table 3). This is slightly more than one per cent of the total number employed in the Kaliningradskaya and Leningradskaya Oblasts, less than one per cent of those employed in Saint Petersburg and the Republic of Karelia, and a lowly 0.33 per cent in the Murmanskaya and Pskovskaya Oblasts. However, to have a more reliable picture, it is necessary: (1) to take into account distribution of migrant workers by industry; and (2) to keep in mind the large number of irregular migrants that is employed illegally. Consequently, as we can see from table 4, migrant workers are concentrated primarily in the construction and service sectors (in Saint Petersburg these two sectors accumulate 74 per cent of registered labour migrants, in Murmanskaya Oblast – 60 per cent; in Kaliningradskaya and Leningradskaya Oblasts – 50 per cent). Another sector where migrant workers are concentrated is manufacturing. In Karelia Republic the timber processing industry and other manufacturing industries attract 57 per cent of migrant workers: The figure for Saint Petersburg and the Leningradskaya Oblast together, with their big industrial enterprises, is 28 per cent.

Table 3: NWR: Employment and unemployment by provinces, 2005

	Saint-Petersburg	Leningradskaya Oblast	Kaliningradskaya Oblast	Murmanskaya Oblast	Pskovskaya Oblast	Karelia Republic
No. of employed	2,514,716	832,139	488,662	477,441	347,210	346,389
Employment rate, %	67.8	63.1	64.3	66.6	60.5	61.8
No. of unemployed	55,000	66,000	34,000	46,000	25,000	33,000
Unemployment rate (ILO standard), %	2.2	7.4	6.6	8.8	6.6	8.8
No. of migrant workers	23,477	9,871	6,583	1,559	1,158	2,743
Share of foreign labour, %	0.93	1.19	1.36	0.33	0.33	0.79

Source: Data from the Federal Migration Service of the RF

Illegal employment of irregular migrants will be analyzed in section 4. Here it should be noted that when estimating the true impact of migrant workers on the regional labour market in NWR it is necessary to take into account the fact that 90 per cent of labour migration to the RF is made up of a large number of unregistered cheap and unprotected migrant workers who reduce wage levels. The influence of illegal employment of irregular migrants goes far beyond quantitative distortion of labour statistics.

Table 4: NWR: Numbers of migrant workers by industry, 2005

	Saint-Petersburg	Leningradskaya Oblast	Kaliningradskaya Oblast	Murmanskaya Oblast	Pskovskaya Oblast	Karelia Republic
Total	23,477	9,871	6,583	1,559	1,158	2,743
Construction	13,003	4,086	2,653	322	127	820
Manufacturing	2570	2,352	1,061	258	162	1,570
Agriculture	238	589	41	33	42	11
Transport & communications	936	228	2,296	25	131	124
Services & commerce	4,198	469	433	622	299	174
Others	2,532	2,147	99	299	397	44

Source: Data from the Federal Migration Service of the RF

Unemployment in NWR ranges from 2.2 per cent in Saint Petersburg to 8.8 per cent in Murmanskaya Oblast and Karelia Republic. Unemployment is structural by nature, i.e. resulting from an imbalance between demand and supply in the local labour market. For example, the number of unemployed in Saint Petersburg was estimated at 55,000 persons while 296,200 vacancies remained unfilled in

2005. In Kaliningradskaya Oblast, 40 per cent of unemployed people have higher education. As a receiving country, the RF is facing growing demand in the national labour market where '3D jobs' (dirty, dangerous, and difficult) are neglected by Russian nationals. Thus, the regional department of the Federal State Employment Service for Pskovskaya Oblast notes high unsatisfied demand for manual workers (loaders, bricklayers, plasterers, electricians, and turners) while the supply of economists, jurists, accountants, and managers exceeds the demand by two to three times. This situation is typical for other NRW provinces.

While the construction and service sectors have a huge demand for low-skilled labour, big enterprises, like Izhorsky Pipe Factory, Kirovsky Plant, Admiralteiskiye Shipyards in Saint-Petersburg, 'Yantar' Amber Factory and the Dockyard in Kaliningrad, have a need for skilled workers, including fitters, metal-workers, electric and gas welders, drivers, etc. Local vocational schools are not coping with local employers' demands for skilled workers. For example, in Kaliningradskaya Oblast in 2004 the number of vacancies for electric and gas welders exceeded number of graduates from vocational schools in this profession by 8 times, for plasterers – 7.5 times, for bricklayers – 5.6 times, for drivers – 7 times, for cooks – 7.3 times (Yemelyanova, 2006, p. 31). Thus, labour migration is an important resource for filling skilled worker vacancies. Another example comes from Murmanskaya Oblast: fish-processing enterprises prefer to invite Chinese workers to produce filleted fish as they produce higher quality fillets and minimize fish waste in comparison with local workers. At the same time, unemployment among the local population in the fish-processing industry is the highest in this province (Tchernov, 2006).

Table 5 shows that migrant workers come to NWR mainly from CIS states (67 per cent of the total): Ukraine (29 per cent), Tajikistan (10 per cent), Uzbekistan (11 per cent), Moldova (5 per cent). Kaliningradskaya Oblast is the only case where the number of registered migrant workers from non-CIS states is almost double those from CIS states. Seventy-six per cent of non-CIS labour migrants to Kaliningradskaya Oblast come from Baltic States, primarily Lithuania. They are employed mostly in the transport industry together with Ukrainian drivers. Migrants from Ukraine are also recruited for construction work and shipyards. Turkish labour migrants are primarily project workers employed by Turkish construction companies that undertake construction projects in NWR, primarily in Saint Petersburg and the surrounding Leningradskaya Oblast. In Karelia, migrant workers from Finland and Ukraine are employed in the timber industry while workers from the Central Asian states are hired for casual work in construction and services.

Table 5: NWR: Numbers of migrant workers by country of origin, 2005

	Saint-Petersburg	Lenin-gradskaya Oblast	Kaliningradskaya Oblast	Murman-skaya Oblast	Pskovskaya Oblast	Karelia Republic
Total	23,477	9,871	6,583	1,559	1,158	2,743
CIS states	14,972	8,831	2,332	1,242	834	2,369
Azerbaijan	648	236	139	333	99	32
Armenia	959	627	92	33	74	110
Georgia	353	16	1	7	4	16
Kazakhstan	97	54	48	18	14	4
Kyrgyzstan	378	116	34	144	32	112
Moldova	1,549	646	42	92	55	47
Tajikistan	3,455	588	36	53	30	47
Turkmenistan	41	65	0	0	4	0
Uzbekistan	2,941	848	729	215	177	105
Ukraine	4,551	5,635	1,211	347	345	1,896
Non-CIS states	8,505	1,040	4,251	317	324	374
Baltic states	358	113	3,264	11	306	25
Poland	160	16	237	1	3	0
Finland	503	83	0	14	0	255
China	1,789	0	232	34	0	0
Vietnam	553	74	1	1	1	78
Turkey	3,767	529	280	167	5	2
Others	1,375	225	237	89	9	14

Source: Data from the Federal Migration Service of the RF

3.3 Irregular immigration

3.3.1 Facts and assumptions

Estimates of stocks of irregular migrants in NWR differ greatly. Estimates by officials from government migration bodies exceed the estimates of academic experts. The estimate of the Federal Migration Service is based on the assumption that total numbers of regular and irregular labour migrants in the RF correlate by a ratio of 1:10. Therefore, for NWR where 45,400 labour migrants are registered, the number of irregular migrants could be up to 400,000 in the summer period.⁶ Researchers insist on 100,000-120,000.⁷

Two major groups of irregular migrants in NWR are (1) irregular labour migrants from CIS states and (2) transit irregular migrants from non-CIS states who are 'stuck' in the regions bordering the EU.

Irregular labour migrants from CIS states

Labour migrants from ex-Soviet republics are pushed from their countries of origin by poor economic situations, unemployment, and low standards of living. The RF is the major country of destination for them because the economic situation in the RF is relatively better and demand for labour is growing, visa-free entry facilitates migration, and wide-spread informal labour relations provide opportunities to find jobs quickly. Additionally, the historical understanding of the post-Soviet territory as a common country and knowledge of Russian language create 'psychological easiness' for migrant workers to go to the RF rather than to other countries outside the former USSR. Since the opportunities for legal employment in the RF are narrow due to the inefficient system for recruiting migrant workers and migration out-flow potentials in the Central Asian states, Ukraine, Moldova, and Caucasus republics are still high, migrant workers migrate to the RF to undertake illegal employment. They find jobs as seasonal workers in the construction, agriculture, and service sectors.

Visa-free population movements between the majority of former Soviet republics is a 'natural' and humane migration regime in a space where state borders have separated families, relatives, and compatriots – the result of centuries in which people have lived in a common country.

Visa-free entry gives a right to stay in the RF for 90 days; for a longer stay a temporary residence permit must be issued. Citizens of Georgia and Turkmenistan arrive with entry visas like citizens from any other country outside the CIS.⁸

The visa-free entry regime with CIS states facilitates population movements in the post-Soviet territory. Migrants who come to the RF in quest of jobs usually enter illegality through undocumented employment, not by illegal border crossing, with false documents or out of border crossing points. However, the poorly equipped and poorly guarded 7,500 km border between the RF and Kazakhstan is also used by migrants for illegal entry into the RF.

When crossing the border, any foreigner must fill a *migrant card*, which is stamped at the border point and remains his/her principal document for staying in the RF for 90 days without getting a temporary residence permit. According to Article 20 of the 2002 Federal Law on legal status of foreign citizens in the RF, within three work days after crossing the RF border a foreign citizen must register their place of stay.⁹ Registration is proved by a *registration stamp* in the migrant card.

The very short three-day period for registration in the place of stay (in combination with a relatively complex procedure when, e.g. *all* persons registered in the living quarters where a migrant is to be registered are to come to the local registration desk (attached to local police departments), *at the same time* to confirm their agreement in a written form) is a bottleneck of Russian legislation on mi-

⁶ Interview with Natalya Vlasova, Deputy Head of International Labour Migration Department, Federal Migration Service of the Russian Federation.

⁷ Interview with Mikhail Klupt, Professor of the Saint Petersburg University for Economics and Finance, and Natalia Tchistyakova, Senior Researcher at the Institute for Regional Economics, Russian Academy of Sciences, Saint Petersburg.

⁸ With some countries Russia has bilateral agreements regulating a specific visa regime for certain groups of travelers (e.g. 1993 Agreement with China on visa-free entry for tourist groups).

⁹ For Ukrainian citizens, the term of compulsory registration in the place of stay is 90 days (since November 2004).

gration: it practically makes the procedure unrealizable and pushes migrants of the legal field (as they cannot be in legal employment without a registration stamp) and engenders corruption. In case a migrant has no registration stamp he/she is a violator of administrative rules,¹⁰ not an irregular migrant.¹¹ He/she enters irregularity through undocumented employment (without work permission) or staying for over 90 days without a temporary residence permit.

Transit irregular migrants

Since the RF has become 'open' to international migrations in the early 1990s, numerous transit 'corridors' have run through its territory, and it has become a rather comfortable and cheap land route for Asian migrants on their way westward. The global criminal network specializing in smuggling of migrants and trafficking in human beings has included the RF in a sphere of its professional interest. Generally, transit migrants move through the RF's territory with the help of intermediaries who provide them with the necessary contacts, routes, and, if necessary, forged passports, stamps, documents, invitations, visas, etc.¹²

The geographical location between Europe and Asia and common land border with EU countries makes the RF a chain in transit routes aimed at the EU. Relatively "transparent" borders within the post-Soviet territory in combination with agreements on visa-free entry that some CIS states have signed with third countries¹³ are weighty arguments in favour of the lengthy but rather comfortable route via the RF for migrants from Asian and even African countries. Additional motivating factors are lack of proper legal control on the stay of foreign citizens in the territory of the RF, the high level of corruption, the huge informal labour market, numerous ethnic networks of migrants from former friendly and non-friendly developing countries who have arrived to the USSR and settled there earlier (as political asylum seekers, or war refugees, or graduates from Russian universities and higher professional schools). This category of migrants enters the RF with transit, guest, tourist, or student visas. The asylum channel is used more rarely.

NWR is the final step in the RF for transit migrants who choose the so called 'north corridors'. Saint Petersburg, Leningradskaya Oblast, and Kaliningradskaya Oblast are on several transit routes detected by the law enforcement bodies:¹⁴

- Middle East/South-East Asia – Turkey – Georgia/Armenia/Azerbaijan – Moscow – Saint Petersburg – Estonia/Latvia – Poland
- Afghanistan – Tadjikistan – Bishkek (Kyrgyzstan) – Almaty (Kazakhstan) – Aktyubinsk (Kazakhstan) – Ural'sk (Kazakhstan) – Saratov (the RF) – Samara (the RF) – Saint Petersburg – Scandinavia
- Afghanistan – Tadjikistan – Bishkek (Kyrgyzstan) – Pavlodar (Kazakhstan) – Moscow – Kaliningrad – EU
- Vietnam/China – Bishkek (Kyrgyzstan) – Almaty (Kazakhstan) – Saratov (the RF) – Moscow – Kaliningrad – Poland – Germany

In the 1990s, liberal border crossing regimes between the RF and former socialist East European states inspired thousands of migrants moving westwards to choose the above routes. In the course of time, with eastward EU expansion and tighter entry regulations into the EU, transit migrants are compelled

¹⁰ In 2004, charges for administrative offences, primarily in regard to terms of stay, were brought against 713,000 foreign citizens staying in Russia.

¹¹ Since now there is no formal definition of irregular migrant in Russian legislation, it is understood that irregular migrants are foreign citizens and persons without citizenship who have violated the national laws regulating entry, stay, and work in the territory of the Russian Federation.

¹² For details please refer to I. Ivakhnyuk, "Analysis of the economic, social, demographic and political basis of transit migration in Russia – Moscow case", report for the Regional Conference on *Migrants in transit countries: sharing responsibility for management and protection*, 30 Sep-tember – 1 October 2004, Istanbul, Turkey, Strasbourg: Council of Europe, 2004.

¹³ For example, there are agreements on visa-free entry between China and Kyrgyzstan; between Kyrgyzstan and Kazakhstan; between Kazakhstan and Russia (Sadovskaya, 2002, p. 51).

¹⁴ Smuggler networks are flexible and transit routes change frequently in response to increased control in certain border points. Therefore, only the primary routes are mentioned here (IOM, 2002, p. 37-38).

to stay in the RF, although they are only in transit there. However, there is no evidence of a decreasing number of transit migrants from China, Afghanistan, Vietnam, or Ethiopia. This means that they have managed to adapt themselves to the situation of “complicated transit”: now transit is predominantly of irregular/illegal character, more extended in time, and expensive (due to the growing cost of bribes and prices for forged papers, the multi-step scheme of transportation of migrants westward, etc.). In many cases migrants evaluate the transit route via the RF as the most preferable because it gives them a chance to stay in the RF without effective control, earn money for further movement, and then slip into Europe with the help of well-developed criminal smugglers’ networks.

The phenomenon of so-called ‘asymmetric borders’ in the RF – when eastern borders remain poorly equipped and guarded while the western border is a fortified outpost of the EU fortress – often interrupts the onward movement of many transit migrants and causes them to over-stay in the RF.¹⁵ In case a transit migrant loses his/her regular status while staying in the RF, he/she may attempt to use illegal methods to cross the RF’s western frontier (with forged or invalid travel documents, with no document at all, or through corruption). However, Russian border guards most often prevent attempts of illegal exit. In this case, irregular transit migrants stay on the RF territory *sine die*, and the country becomes a sort of “reservoir” for irregular migrants.

It is worth mentioning that the RF has become a transit corridor and gateway to Europe not only for migrants from remote countries. Irregular migrants from former Soviet Union states who want to migrate to the EU increasingly use the RF as a transit area as well. Here, in contrast to their own countries, they have a chance to earn money for moving to the West, and besides, gain certain psychological adaptation to irregular status while being in relatively favourable conditions (common language, similar labour traditions and requirements, etc.) However, it is rather difficult to identify them as transit migrants who are separate – even in theory – from the numerous irregular labour migrants from post-Soviet states staying in the RF. Thus, experts assume that the growing number of migrants from Uzbekistan in Kaliningradskaya and Leningradskaya Oblast may be a sign of their interest towards eventual migration to the EU.

3.3.2 Information from countries of origin

For the CIS countries of origin, a possibility for their citizens to work and earn their living in the RF is a method to reduce unemployment, lessen social tension, and to attract an inflow of migrant remittances. At the same time, the governments of these countries are concerned with the vulnerable position of their citizens staying and working in the RF irregularly. Large-scale irregular migration in the CIS region is fraught with possible complications in bilateral relations between the countries.

Table 6 is based on national estimates of origin countries of numbers of irregular migrants in the RF. For some states, like Tajikistan or Kyrgyzstan, these are 30-40 per cent of their national labour force.

Table 6: Numbers of irregular migrants from CIS states in the RF (thousands), early 2000s

CIS origin country	Estimated number of irregular migrants '000
Armenia	650
Azerbaijan	550-650
Georgia	200
Kyrgyzstan	350-400
Moldova	250
Tajikistan	600-700
Ukraine	1.000-1.500
Uzbekistan	550-600

Note: Based on national estimates of origin countries.

Source: Overview of the CIS Migration Systems. ICMPD, Vienna, 2006

¹⁵ It is not an exaggeration to say that almost all migrants from the countries outside the former USSR who are presently staying in Russia are in fact transit migrants aimed at immigration to the European Union or the American continent (primarily as asylum seekers and refugees). This is the reason for repeated separation of the two major groups of migrants in Russian legislation: migrants from the former Soviet states who would like to be residents and citizens of the RF, and migrants from other countries who regard the territory of the RF mainly as a transit stage.

4 ILLEGAL EMPLOYMENT OF FOREIGN NATIONALS

4.1 Overview

It is a recognized fact – acknowledged even by Russian migration officials – that large-scale illegal employment in the RF is to a great extent the result of over-complicated and difficult-to-follow procedures for migrants to register their place of stay and get permission to work.

President Putin, when speaking about the vital need for more effective migration policy in the RF at the *ad hoc* meeting of the RF National Security Council on 17 March 2005, specially pointed at the large-scale irregular migration issue and emphasized:

*among irregular migrants there are people who unwittingly and often through our fault find themselves in the shadow sector. The main reasons are notorious administrative barriers, which stand up against people who would like to stay and work in the RF legally... Migrants are excluded from the social security system... By lack of consideration for millions of migrants we ourselves push them to the criminal sphere.*¹⁶

According to the current legislation, a foreigner must be registered in his/her place of stay within three work days after crossing the RF border.¹⁷ Registration is proved by a *registration stamp* in the migrant card. Temporary stay registration provides legal stay of a foreigner within the visa regime for 90 days.

In practice, registration rules are over-complicated (for details refer to section 3.3.1). Migrant either resort to bribe-giving to get a false registration stamp (which is a penal action) or stay in the RF without registration. This inevitably results in illegal employment (as migrants cannot undertake legal employment without a registration stamp).

The procedure of getting permission to work in the RF is another trap for migrants. The procedure for a Russian employer to legally hire a migrant worker from a CIS country consists of two stages: (1) getting permission to hire migrant worker(s) with definite professions and skills from the local organ of the Federal Migration Service (FMS) (preceded by a positive decision of the Federal Employment Service); (2) obtaining personal employment permission for every migrant worker from the FMS local organs and registration of the employees in local taxation bodies. In practice it appears over-bureaucratic; it needs a lot of time and efforts from an employer. In total, an employer has to submit about 30 documents including certified copies of the company registration certificate, state license, charter of the company, tax registration certificate, bank certificate on the company account balance, balance sheet for the latest quarter, etc. Involving a range of state institutions, waiting for decisions takes up to half a year, making hiring migrant workers for example for seasonal work, absurd. Combined with high taxes (permission tax for every migrant worker; 40 per cent 'social tax' rate on foreign labour force wages fund; 30 per cent income tax rate for migrant workers, in contrast to 13 per cent income tax rate for national workers) it *forces* both Russian employers and migrant workers to make their choice in favour of informal schemes of employment. Low control and relatively small penalties for hiring migrant workers illegally, on the one hand, and the opportunity 'to settle the affair' with bribes, on the other hand, have encouraged the development of a large-scale informal labour market. According to the FMS's estimate, over 93,000 employers in the RF were practicing undocumented employment of migrant workers in 2004.¹⁸

4.1.1 Characteristics

Surveys of irregular migrants in the RF prove that their socio-demographic characteristics generally correspond to these of regular migrants, i.e. temporary labour migrants, both regular and irregular, are primarily working age males (average age is 32-33 years, 80 per cent are males), married (over 60

¹⁶ Speech by President Putin on the topic of Migration Policy, delivered to the Security Council, 17.03.2005, <http://www.kremlin.ru/text/appears/2005/03/85300.shtml>.

¹⁷ For Ukrainian citizens, the term of compulsory registration in a place of stay is 90 days (since November 2004).

¹⁸ Federal Migration Service of Russia, <http://www.fmsrf.ru>.

per cent) and with children (40-45 per cent) left behind with their families. However, in terms of skill level and areas of origin (urban/rural), irregular migrants are characterized by a relatively low level of education and skills (less than a half have secondary and higher education; only a quarter has the professional skills needed for their work in the RF); irregular migrants more typically come from rural areas (Kyrgyz and Uzbek migrants often arrive in groups originating from one village). Irregular male migrants are concentrated in the construction sector (low-skilled or casual workers), in trade and services (market trade, car repair shops, street cleaning, etc.) and agriculture, while female migrants find jobs in agriculture and, more commonly, in the service sector (as house cleaners, dish washers, waiters, call-girls, and in sex services).¹⁹

4.1.2 Extent of the problem

The extent of the problem of illegal employment of foreign nationals in the RF is determined by two major factors: (1) narrow channels for legal employment due to the above mentioned bureaucratic obstacles; and (2) the large-scale informal sector of the economy with its illegal employment practices. According to some estimates, production from the informal sector of the RF's economy is estimated at a quarter of GNP, and illegal employment at 15-30 per cent of the total labour force (Radayev, 1999, p. 10). Irina Yeliseeva, Professor in Statistics from Saint Petersburg, is less optimistic. She argues in figurative terms: "The Russian economy has no black-and-white structure. All industries are the same – dark grey – colour. Even in the industries that are considered to be the most transparent, e.g. manufacturing, the scale of informal operations is up to 50 per cent (primarily in the form of concealed wages and undeclared tax). Informality in terms of employment and illegality in terms of taxpaying and accounting penetrates the whole of national economy."

Due to these reasons, illegal employment of irregular migrants is a common problem for all industries to some extent. However, as irregular migration is typical exclusively for low-skilled migrants who find jobs predominantly in labour-intensive industries, illegal employment is most widespread in casual work in construction, agriculture, market trade, scavenging, road asphaltting, and other municipal services. In NWR the practices of illegal employment of migrant workers mentioned by the experts can be classified as the following:

- *Illegal employment of migrant workers along with registered migrant workers in labour-intensive industries* (construction, wholesale and retail trade, services, manufacturing). The surveys prove that even among the most transparent group of migrant workers in the RF – Turkish construction workers who are hired by Turkish contracting companies in Turkey and are brought to the RF as project workers for a definite period of time – there are illegal workers who are supposed to work among the legally employed.
- *Illegal employment of migrant workers in the informal (but legal) economy*. The informal economy consists of private household economy based on family cooperation and small-scale enterprises that use hired labour in addition to the non-waged labour of family members. Household services, small farms, and market trade are typical examples.
- *Illegal employment of migrant workers in the grey (semi-legal) economy*, i.e. in the domestic service sphere and in various types of small businesses that are outwardly legal but whose practices widely break the law (in terms of taxpaying, accounting, labour contracting, etc.). Exploitation practices (over-time, unpaid salaries, confiscation of identification papers, physical violence, sexual violence, debt bondage, etc.) are widespread in the grey economy. Despite that, illegal workers often stay with their employers as they are afraid to lose their work. Besides, employers provide minimal conditions for life and security: housing, medical services, protection against militia (there are cases where employers ransom their detained employees).
- *Illegal employment of migrant workers in the black (criminal) economy*. The black economy involves illegal types of activity (drugs production and trade, prostitution, black market

¹⁹ For surveys of irregular migrants in the RF, please refer to IOM, 2004; Krasinets, 2006; Kozina et al, 2005; Yemelyanova, 2006.

operations, etc.). It also includes clandestine factories for the manufacture of pirated production and clandestine workshops in manufacturing, i.e. sweatshops in textiles, footwear, leather, and clothing industries.

In many cases employers deliberately benefit from illegal forms of employment and the irregular status of migrant workers hired for casual work. Exploitation, low salaries, the absence of formal obligations vis-à-vis employees, impunity for deceit, and groundless dismissals are estimated as advantages of illegal forms of employment by unscrupulous employers. Sometimes the nature of a business excludes legal employment. This is true for trafficking in drugs or prostitution. A clandestine sweatshop producing counterfeit goods will never hire workers legally either.

In other cases employers prefer (and are even forced) to hire migrants illegally as legal procedures of getting permissions are over-bureaucratic and difficult to follow.²⁰ In fact, it is intolerable that such situations take place in a country that declares its concern with the negative effects of irregular migration and illegal employment.

Illegal employment of migrant workers is often accompanied by violation of human rights and freedoms. "Modern slavery" is an insulting term but it reflects the actual situation in many cases of illegal employment. Human traffickers' international networks stir up exploitation practices by providing employers with cheap labourers deprived of their legal rights. Trafficking in human beings in the RF operates not only by providing females and under-aged migrants for the sex industry, which is most typical elsewhere, but by providing thousands of male and female migrants for non-sexual forms of exploitation as well. When migrants are – voluntarily or involuntarily – objects of human traffickers activities, they are always victims that are an item for purchase and sale. Their individuality and their freedom are commercialized. This situation is inadmissible.

Therefore, effective counteraction to irregular migration and illegal employment lies rather in the sphere of the economic policy of counteracting clandestine and black economies, while counteracting human trafficking is first and foremost a complex of punitive measures against the traffickers.

4.2 Preventive measures

4.2.1 Legislation

By the beginning of the 2000s, the Government of the RF has become seriously concerned with the scale of irregular migration to the RF and illegal employment of foreign nationals. The irregular migration issue has been considered a national security challenge affecting the economic and social interests of the country. In this context, in 2002 migration management issues were transferred under the guidance of the Ministry of Interior. This law enforcement body began the active fight against irregular migration by means of their inherent police methods – toughening of migration regulations, strengthening of the immigration control system, complication of the procedures for getting residence permits and permission to work, detention of irregular migrants, deportations, police raids to possible places of concentration of irregular migrants, etc.

Soon it became clear that this model of migration management was inefficient. When isolated from economic instruments of migration policy and discredited by bribe-taking among police officers and bureaucrats, it had the opposite effect, i.e. pushed migrants into the shadow sector; gave rise to illegal employment; presented obstacles for the development of the national labour market; left millions of people staying in the RF without legal protection; bred corruption; and provoked the growth of crimi-

²⁰ The 2002 IOM survey of illegal migrants employed in the informal sector in several big cities of Russia including Saint Petersburg proved that over 80 per cent of illegal migrants would prefer to be hired legally and get the corresponding social protection and benefits even if their income would be lower with the deduction of taxes. (Even taking into consideration that the most 'loyal' from the totality of illegal migrants agreed to be interviewed, and their answers were not always sincere; this high percentage clearly demonstrates the vast reserve for illegal employment sector legalization.) For understandable reasons, employers were not covered by interviews, however the experts (municipal and territorial authorities, migration departments officers, representatives of private agencies, leaders of ethnic communities, and academics engaged in migration studies) insisted that at least every third employer is ready "to go out of the shadow" if small-scale business regulations were more agreeable (IOM, 2004).

nality among migrants. Most importantly, this approach does not correspond to the national economic and demographic interests of the RF in the face of a labour deficit in many industries.

Meanwhile, the concept of national security in the RF has gradually shifted from being focused exclusively on state security to a wider understanding taking into account the complex combination of economic security, demographic security, societal security, and human security.²¹ So, by the mid-2000s a pragmatic approach driven by the need for labour resources has paved the way to a more open and liberal model of migration policy aimed at impeding illegal employment by facilitating opportunities for the legal employment of labour migrants from CIS states with a visa-free entry regime. Two Federal Laws adopted on 18 July 2006 and to be put in force on 15 January 2007 are the essence of the revisited legislation:

- The Federal Law “On Registering foreign citizens and persons without citizenship in the Russian Federation”;
- The Federal Law “On Amendments to the Federal Law on legal status of foreign citizens in the Russian Federation”.

Innovations in the above laws are related primarily to three issues:

(1) *Registration of foreign citizens* in their place of stay in the RF is made more clear and simple. The procedure is shifted from *permissive* to *informational*: a foreign citizen does not need to follow the complicated procedure for getting permission to be registered in a certain living quarter, as before, but simply submits to the *receiving party*²² his/her identification paper and migrant card. In turn, the receiving party informs the local migration office by a notification letter (notification form) about the arrival of a foreign citizen within three days. The detachable part of the notification form stamped by the local migration office replaces the former registration stamp in the migrant card and gives the migrant the legal right for temporary stay for 90 days. Temporary labour migrants can be registered in living quarters as well as in *other* places, i.e. at the legal address of their employer.

(2) *Temporary residence permit* for migrants who come to the RF from the CIS states through the visa-free entry regime can be issued more easily than before. The packet of documents includes: (1) application; (2) identification paper; (3) migrant card stamped at border control point; (4) receipt showing payment for a temporary residence permit. Revocation of acceptance of the application is not allowed. After the verification procedures, the local organ of executive power is to issue the requested temporary residence permit no later than 60 days after acceptance of the application.

(3) *Employment of migrants*, who come to the RF from the CIS states through the visa-free entry regime to find employment are released from former bureaucratic procedures. Migrants get work permission personally or via their employers within ten days of submitting: (1) identification paper; (2) migrant card stamped at border control point; (3) receipt on paid fee for a work permission. Migrants (temporary stay) with work permissions can look for job with any employer within the administrative unit (province) of the RF where the work permission has been issued. If a migrant has a temporary residence permit he/she can look for a job in any region of the country, despite the place of issue of his/her work permission. Employers can hire migrant workers from the CIS states with the visa-free entry regime who have permission to work *without getting permits to hire migrant workers*. In case a migrant worker is detained for working without work permission and deported from the country, the expenses related to his/her deportation are to be recovered in legal form by his/her employer, in addition to a high financial penalty for hiring every irregular migrant worker. The penalties for hiring migrant workers without job permission are raised.

The above innovations can be considered a breakthrough in turning irregular labour migration flows in the CIS region into regular ones. By removing needless administrative obstacles and giving migrants wider channels for regular stay and legal work on its territory, the RF has chosen the most ef-

²¹ Presently, the draft of the new National Security Concept of the Russian Federation is under consideration.

²² Receiving party in the Federal Law on Registering foreign citizens... is understood as a citizen of the RF, or a permanent resident in the RF, or a legal person, federal or local organ of state power, diplomatic mission, or international organization where a foreign citizen or a person without citizenship is staying or working.

fective path to counteracting irregular migration. Under the circumstances of rapid demographic decline and growing demand for labour in the developing labour-intensive industries (first of all, the construction and service industries) the RF is in need of migrants. The former migration policy guided by national security concerns tried to put strict filters on the entry of migrants. However, these filters were a breeding ground for corruption. Migrants were still coming but they were often *forced* to stay and work out of the legal field. The new policy is expected to take migrants out of irregularity, especially due to the fact that it is coordinated with an overall attack on the informal sector.

Organizationally, management of labour migration is regulated by the Presidential Decree “*On attracting foreign labour force to the Russian Federation*” (16.12.1993, revisited on 05.10.2002). In accordance with this Decree, regional legislation in the Russian provinces mostly affected by local labour deficit is formulated. Thus, the regional law “*On attracting foreign labour force to the Kaliningradskaya Oblast*” was adopted on 8 October 1998. Since the federal legislation introduced the quota system in attracting foreign labour force to the RF in 2003, the regional administrations have organized inter-ministerial Commissions to define the migrant labour needs of regions (republics, provinces, territories). Commissions include representatives of the Regional Department of the Federal Migration Service, the Regional Department of the Federal State Labour Service, and the Regional Trade Unions Association. Quotas are applied only to migrant workers from the countries that have a visa entry regime with the RF while migrant workers from CIS states with visa-free entry regime come in accordance with bilateral agreements.

4.2.2 Applicable sanctions against employers

Liberalisation of migration legislation related to registration procedures, temporary residence permits, and employment of migrants from CIS states is linked to sanctions against dishonest Russian employers and illegal workers who violate labour codes, tax legislation, and migration rules.

Simultaneously to the formalization of new rules for migrants on 15 January 2007, the penalties for employers who hire foreign nationals illegally will increase up to 300,000 rubles (about EUR 8,500) for every illegal worker. (To compare: the current penalty for “the proven fact of infraction of the law when hiring migrant workers” is 30,000 rubles.)

Additionally, since 2004 the Russian *Criminal Code* has included several articles that criminalize organization of irregular migration and exploitation of migrants. These are: Article 322.1 – Organization of irregular migration, Article 127 – Trafficking in human beings, Article 127.2 – Use of slave labour. It is important to note that the definition of exploitation in the *Criminal Code* includes “...forced labour, slave labour, and bondage”. Slave labour is understood as “use of labour of an individual by right of property when an individual cannot refuse to work due to circumstances beyond his/her control.” Punishment for use of slave labour is deprivation of liberty for five to 15 years.

4.2.3 Applicable sanctions against employees

The most widely used sanctions against migrants who are working illegally are penalties and expulsion from the territory of the RF. Migrants can be expelled under a court decision that proves their irregular stay and/or illegal employment. Expulsion is noted in the migrant’s passport and inserted in the Russian Frontier Service database. For expelled persons, entrance to the RF is prohibited for five years. On the threshold of the new migration regulations the number of cases of detention has increased. This measure is specially aimed at demonstrating that the Russian state and society are not going to put up with irregular migration and illegal employment any longer. The media and Internet are rich with information about sanctions against irregular migrants. Here are two samples for NWR:

*On 7-8 September 2006 in the city of Pechenga in Murmanskaya Oblast at the guarded territory of a military unit (!), 27 citizens of Kyrgyzstan were detained for violating rules of stay in the Russian Federation.*²³

²³ <http://www.fmsrf.ru/index.asp>

*On 26 September 2006 in Petrozavodsk, Karelia, under a court decision 13 citizens of Uzbekistan were expelled as infringers of legislation on stay and employment in the Russian Federation.*²⁴

4.3 Responsible authorities and organizations and their roles

4.3.1 Federal Government authorities

The **Federal Migration Service of Russia (FMS)** is the major organization responsible for international migration management. It has been affiliated with the Ministry of Interior since 2002. The role of the FMS is to elaborate and implement the migration policy of the RF, register entry and stay of foreign nationals in the RF, control immigration, and counteract irregular migration.

In terms of international labour migration, the FMS regulates labour migration flows by approving annual migrant worker quotas and issuing permissions to employers to hire migrant workers within the quotas, summarizes data on labour migration, issues licences to private recruitment agencies, and controls employers who attract migrant workers and licence-holding recruitment agencies.

The **Federal State Employment Service (FSES)** is the major instrument to determine the foreign labour needs of Russian industries and protect the interests of national workers. The FSES is an important actor in the mechanism for attracting foreign labour: by studying the Russian labour market it approves annual quotas for labour migrants for regions of the RF, estimates the validity of applications to attract migrant workers, and issues confirmation of the need to hire migrant workers to definite regions, industries, and enterprises.

The **Federal Frontier Service** controls the validity of passports and other entry documents of migrants and protects Russian borders from attempts to enter illegally.

The **Ministry of Foreign Affairs**, through its consular service, issues invitations and visas to enter the RF.

The **Federal Service for Taxes and Duties (FSTD)** is gaining a growing role in labour migration management. Under the revised liberal legislation for labour migrants from CIS states with visa-free entry regime, the FSTD will be the major economic instrument to control employers and legal migrant workers. Meanwhile, the current penalties for violation of tax legislation do not coincide with punishment for illegally hiring migrant workers.

4.3.2 Regional and local authorities

The **Regional Departments of the Federal Migration Service** are engaged in registration of migrants and their employment. They issue permission to employers to hire migrant workers and personal work permits for labour migrants. For labour migrants from the nine CIS states with a visa-free entry regime with the RF, regional FMS departments issue permissions locally, while for workers from “visa countries”, who come in accordance with annual labour quotas, permissions are issued in the Federal Migration Service in Moscow.

The **Regional Departments of the Federal State Employment Service** control implementation of the *Labour Code*, reveal cases of breaches of workers’ rights, contribute to the decline of the informal labour market, and participate in the estimation of annual regional quotas for labour migrants.

The **Migration Departments in the Regional Departments of Militia (GUVB)** assume control of the stay of foreign nationals in the region (republic, oblast, territory), provide migrants with information on up-dated legislation in the field of migration, and reveal irregular migrants and illegal employees and employers.

State Labour Inspectorates are affiliated with local ministries of labour. They control conditions of work, if necessary examine terms of work contracts, and protect workers’ rights for secure labour.

²⁴ <http://www.vremya.ru/news/1012366.shtml>

Specialized Committees in Regional Governments take responsibilities for control over implementation of federal and regional laws on migration and employment.

4.3.3 NGOs

The impact of non-government organizations (NGOs) in the humanization of Russian migration legislation and the shift in the State attitude towards irregular migrants cannot be overestimated. NGOs together with the academic community were unceasingly emphasizing that the majority of migrants from former Soviet states were staying in the RF with irregular statuses and working illegally not due to malicious intent but because they could not legalize due to over-bureaucratic procedures. As a result of these efforts, the focus of the strategy to counter irregular migration has shifted from unregistered migrants to organizers of irregular migration including human traffickers and employers who hire foreigners illegally. By mid-2000s, the new strategy was reflected in the above-mentioned innovations in migration legislation.

In NWR, NGOs engaged in migrant issues are most active in the provinces with the largest number of migrants: in Saint-Petersburg, Leningradskaya Oblast, Kaliningradskaya Oblast, and Karelia Republic. E.g. **Red Cross** regional organizations coordinate their activities with regional departments of the Federal Migration Service and carry out legal consultations for migrants, organize telephone 'hot lines', issue brochures clarifying migration legislation, the risks of irregular migration, step-by-step regularization, etc. NGOs like "Ochag" in Karelia, "Baltiyskiy Soyuz" in Leningradskaya Oblast, "Dom" in Kaliningrad, "Eurasia" in Saint-Petersburg, and others are in fact creating an alternative system of migration infrastructure reflecting the dramatic underdevelopment of the official migration infrastructure by providing migrants with information, legal, social, psychological support, and assisting them in regularization of their status and assistance to find legal employment.

4.3.4 Employer associations

Local employer associations exist in every major administrative unit of the RF as sub-units of the **Russian Union of Businessmen and Employers (RUBE/RSPP)**. Within the framework of projects on the development of social responsibility among national business they take active part in guaranteeing social and labour rights of employees, including migrant workers, and in revealing clandestine enterprises that use migrant labour illegally. The RSPP, at the federal level, and local associations of employers in the provinces, are engaged in the process of elaboration of new migration regulations and determination of annual labour import quotas.

4.3.5 Trade Unions

Recently, trade unions have assumed an active role in counteracting illegal employment and promoting legal channels for employment of labour migrants. The reason is rooted in a growing understanding of the negative effects of wage dumping and unfair competition linked to an increase in the illegal segment of the national labour market. Trade unions' national associations took part in discussions on the 2005 Concept of regularization of irregular labour migrants from the CIS states that have a visa-free entry regime with the RF. In May 2005 the Concept was approved by the Tripartite Commission on Regulation of Labour Relations (the Government, employers' national associations, and trade unions' national associations) and a decision to conduct a pilot small-scale regularization program in ten provinces of the RF was made.

In the construction industry, where illegal employees mostly concentrate, trade unions are especially active. For example, in the Kaliningradskaya Oblast the trade union of construction workers (**Construction Union**) participates in the Inter-ministerial Commission on determining annual quotas for migrant workers.

To protect themselves from exploitation, migrant workers initiate self-protecting instruments. Experts report about a recently organized **Trade Union of Migrants** in Karelia Republic. It is an inter-regional organization acting in the NWR region aimed at asserting labour migrants' rights and providing them with legal support. The Trade Union of Migrants is involved in broad information campaigns for migrant workers, organization of consulting offices, and the development of tolerance-oriented programs.

Another example is the **All-Russian Trade Union of Foreign Employees (MIGROS** – abbreviation for *Migranty Rossii = Migrants of the RF*) founded in 2004 as an association of legal migrant workers. It is interesting to note that labour migrants are associated not on a professional basis but on the basis of “unity of aliens” who feel the necessity to protect their rights in the situation where they are excluded from membership of national trade unions.

The appearance of legal migrants’ trade unions as an actor in labour migration process in the RF can be a good example for illegally employed foreign nationals: understanding that their rights can be effectively asserted by these institutions when they are employed legally would be an additional argument for choosing opportunities of legal employment.

4.3.6 Other

Private labour recruitment agencies are a new actor in tackling illegal employment in the RF. By providing migrant workers with a complex of services, from assistance in job seeking and renting of lodging, to medical services, vocational training, etc., private recruitment agencies promote legal employment opportunities. Due to their natural desire to expand their field of activities, recruitment agencies are allies of the state migration bodies in their efforts to reduce the sphere of informal employment. The **International Association ‘Labour Migration’ (IALM)**, which is a union of over 25 recruiting agencies in the RF, Ukraine, Tajikistan, and Kyrgyzstan, acts in close collaboration with the Federal Migration Service and the Federal State Employment Service to “normalize” the Russian labour market. The IALM is also involved in information dissemination for migrants and employers to promote the new government initiatives. ‘Migration bridges’ between the RF and origin countries initiated by IALM in cooperation with the ‘New Eurasia’ Foundation, Russian employers, and Ministries of Labour in Tajikistan, Kyrgyzstan, and Uzbekistan, are a sort of non-government project to supply interested Russian enterprises with labour and guarantee the social and human rights of migrant workers.

The **Media** takes an increasingly active part in the nation-wide discussion on migration issues in the RF. TV, newspapers, and the Internet are a strong force that can influence the attitude of the society towards migrants. Responsibility for the growing xenophobia in the RF is largely due to nationalistic-minded journalists and their target audience. At the same time, media can play a positive role in shifting mass perception towards tolerance and equal respect of human dignity, both of compatriots and newcomers. The Internet is a rich source of information for migrants. Thus, recently the nation-wide Internet portal with a symbolic domain name was set up: www.nelegalov.net. This is a Latin transcription of the Russian phrase: “No irregular migrants!” – “nelegalov” stands for *irregular migrants* and “.net” stands for *no*). It carries information about new migration laws and regulations and explains difficulties related to illegal employment and dangers coming from contacts with criminal traffickers in human beings. Similar initiatives appear in NWR. The FORUM law firm has created a website, www.spbforum.ru, to provide migrants in NWR with legal advice and consultations. The site contains a lot of useful information, contacts, and references. It welcomes any questions and comments on migration and employment issues. Surveys of irregular migrants prove that migrants suffer an information shortage that often pushes them to illegal schemes of employment. Over 70 per cent of irregular migrants declare their readiness to pay for reliable and updated practical information and assistance in legalization and employment.²⁵

4.3.7 Cooperation

The scale of irregular migration to the RF and illegal employment of foreign nationals makes this issue a nation-wide concern. Government and NGOs, trade unions and employers associations, as well as media are involved in the elaboration of better strategies to manage migration in-flow and reduce the informal labour market. The state has shaped ways of cooperation between the interested parties by organizing the **Tripartite Commission on Regulation of Labour Relations** (with participation of the Government, national trade union associations, and national employers’ associations) that makes de-

²⁵ see for example, IOM, 2004.

cisions in international labour migration management including elaboration of the new federal laws to be put in force on 15 January 2007.

Since 2004, President Putin has repeatedly stressed the need to transfer the duties that the Government is not able or not in the position to perform to civil society institutions including NGOs. In the sphere of migration, cooperation between government agencies, NGOs, and business (private recruitment agencies) has proved its effectiveness in filling the gap in the official migration infrastructure. The foundation of the commercial **Migrant Labour Exchange** in 2006 with branch offices in five regions of the RF, including Saint Petersburg and Leningradskaya Oblast, is a promising business project supported by the Government migration bodies. The purposes of the Migrant Labour Exchange are to select personnel in accordance with employers' requests, organize vocational training for migrants in countries of origin, namely Tajikistan, Uzbekistan, and Kyrgyzstan, construct hostels for migrants, and provide them with legal support and medical insurance.

In NWR there is a proper basis for cooperation between government, non-government, and business institutions. Official bodies collaborate with local associations of employers and trade unions to improve migration/employment regulations, determine labour import quotas for provinces, and discuss social policy improvements, etc. A good example is cooperation between the Trade Union of Migrants and official bodies on the basis of agreements with the Regional Departments of the Federal Migration Service and the Saint Petersburg Zakonodatel'noye Sobraniye (City Parliament).

4.4 Regional and international cooperation

The geopolitical location of the NWR provinces along the border with the EU calls for regional cooperation with the neighbouring European states. It is especially true for the Kaliningradskaya Oblast, which is a Russian exclave in the EU common territory. The aim of both the RF and the EU is to bar unregistered and illegal cross-border flows of migrants. Despite the phenomenon of so-called 'asymmetric borders', the RF takes responsibility for migrants who manage to pass from its territory into the EU: the Agreement on readmission between the RF and Lithuania has been in force for over two years. The Agreement on readmission between the RF and the European Union, agreed on 12 October 2005 during the EU-Russia Permanent Partnership Council (JHA), is not in force yet, since the provisions on the readmission of third-country nationals and stateless people will only become applicable after a transition period of three years. A special accelerated procedure will apply to persons apprehended in common border regions who it will be possible return within a few days. Although reasonable instruments for facilitating cross-border cooperation between the RF and European countries, these agreements could put Kaliningradskaya Oblast in a difficult position: according to readmission practices irregular migrants are to be returned to a country of departure *by the shortest route*, so Kaliningradskaya Oblast could face a wave of readmitted migrants.

The recognized method to reduce the potential of irregular labour migration is to invest in labour-intensive industries in countries of origin. This method has proved itself effective in the process of the eastward EU enlargement and now the RF is beginning to shift some of its manufacturing enterprises (e.g. shoe and clothes factories) to North China to benefit from cheaper labour and lessen the pressure of Chinese migration. Similarly, EU investments in the Russian and CIS economies could turn out to be not only profitable economic cooperation but also an instrument to absorb the unemployed population and reduce out-migration potential. Regional projects in labour migration between NWR provinces and Finland give good examples of how cooperation between neighbouring territories can work for mutual benefit (please refer to section 6.2).

In its attempts to tackle irregular migration and illegal employment of migrants the RF practices active international cooperation within the framework of the Commonwealth of Independent States and Organization for Eurasian Economic Cooperation.²⁶ As the overwhelming majority of illegally employed migrants in the RF originate from ex-USSR states, collaboration with countries of origin is most promising. The *CIS Agreement on cooperation in the field of labour migration and social protection of mi-*

²⁶ Eurasian Economic Cooperation (EurAsEC) is a regional structure founded in October 2000. Participating countries: Belarus, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan, and Uzbekistan.

grant workers was signed on 15 April 1994. Furthermore, the RF has signed bilateral agreements on labour migration with Ukraine (1993), Moldova (1993), Belarus (1993), Armenia (1994), Kyrgyzstan (1996), and Tajikistan (2005).

Since irregular migration in the post-Soviet space has been evaluated as a serious security issue for both countries of origin and destination, the CIS countries signed the *CIS Agreement on counteracting irregular migration* (6 March 1998). It was supplemented by a number of inter-ministerial agreements within the CIS, e.g. the Agreement between Ministries of Interior of the CIS states in counteracting criminality. In January 2000 the leaders of the CIS states signed the *Agreement on creation of a common database on irregular migrants and exchange of information*. However, since then the scale of irregular migration has increased, necessitating a search for new approaches to this issue. The *CIS Concept of cooperation in tackling irregular migration* signed on 16 September 2004 is focused on development and encouragement of regular forms of labour migration and opportunities for legal employment as an alternative to irregular migration, exploitation, and human trafficking practices. By its new migration regulations the RF has made a step to meet the wishes of its partners. The success of the new policy strongly depends on how the origin countries appreciate the RF's initiatives and encourage their citizens to follow the rules and choose regular channels to go to the RF, stay and work there legally, transfer their earnings, etc.

The RF has also bilateral agreements on labour migration with non-CIS states that are major labour exporters. Temporary labour migration between the RF and China is regulated by two inter-governmental agreements signed in 1992 and 2000. Presently, a new agreement between the Government of the RF and the Government of the China People's Republic on counteracting irregular migration and illegal employment of Chinese migrants in the territory of the RF is under consideration. Vietnam has been a traditional partner of the RF in labour flows since the Soviet period. Vietnamese workers are employed in Russian textile factories. However, irregular migrants from Vietnam find jobs in market trade and the service sector. In NWR they are often in transit aiming to reach Poland and to move further on to other EU countries.

4.5 Gaps and weaknesses in measures and cooperation

Despite the lengthy list of organizations and authorities engaged in international migration management described above, there is still an obvious lack of institutions in the RF that can be characterized as part of *official migration infrastructure*, i.e. the complex of government and non-government bodies that supply migrants with various kinds of services – informational, legal, social, medical, etc. If the state needs migrants, like the RF does, and wants them to be legally employed, it must provide them with a clear understanding of Russian migration legislation, work opportunities, the Labour Code, and the Tax Code together with protection of their interests by means of the law and employment contracts. For this, the official migration infrastructure must include migrant-oriented information centres, consultative offices, state and private recruitment agencies, vocational training, language training, and other services assigned to make better use of migrants' skills and integrate them in the receiving society.

When there is a lack of official migration infrastructure, migrants tend to rely on informal sources of information and support. As a result they often fall into the trap of human traffickers and unprincipled employers and find themselves in slavery-like conditions.

Thus, the effectiveness of the *CIS Agreement on cooperation in the field of labour migration and social protection of migrant workers* is rather low because its realization is narrowed by the exclusive participation of state institutions coordinated by the FMS International Labour Migration Department. The minor role of private recruitment agencies along with the underestimated role of regional departments of the FMS and the FSES are impeding "normalization" of labour imports. Besides, the Agreement signed in 1994 needs to be updated, taking into consideration the new realities of labour migration.

The new Russian legislation on labour migrants from the CIS states with a visa-free entry regime is missing some essential issues, e.g. it does not cover self-employed migrants. Since 2004 self-employment of foreign citizens (not legal persons) has been forbidden in the RF. Meanwhile there is

an obvious interest of migrants towards participation in this sector of the Russian economy and registered self-employed persons could be proper taxpayers. Presently, they are forced to choose roundabout ways and fall into the shadow sector.

5 PROTECTION OF MIGRANT WORKERS

5.1 Normative framework

Foreign nationals legally employed in the RF are protected by their work contracts and Russian legislation. The terms of work contracts signed by an employer and an employee normally contain a list of employers' responsibilities including payment of wages, pension deductions, vocational training, life insurance, medical insurance, and, in case of conflicts, the right of a migrant worker to protect his/her interests in court. The United Social Duty (ESN) paid by employers for every hired migrant worker in the amount defined by article 24 of the Tax Code of the RF includes assessments for all types of benefits and pensions and makes migrant workers equal to Russian nationals in their access to pensions and social benefits.

Migrant workers who are duly registered in the RF as temporary or permanent residents and who are employed not with a work contract but a civil contract and pay taxes have equal rights with contract workers in terms of medical aid, life insurance, and access to education.

Thus, according to the Federal Law "*On compulsory medical insurance in the Russian Federation*" (15 December 2001) migrant workers are covered by the compulsory medical insurance system equally with national workers.

The RF Federal Law "*On health insurance and employment injuries*" (24 July 1998) is applicable to migrant workers. In case of an industrial accident or employment injury a migrant worker is paid:

- a) a temporary disability benefit;
- b) a one-time insurance grant. The amount of the grant depends on the degree of health damage can reach a maximum of 46,900 rubles (about EUR 1,700) in 2006.²⁷ In case of death resulting from industrial accident the grant is calculated at 60 times the guaranteed wage minimum for the day of payment.²⁸
- c) monthly insurance payment calculated as a percentage of monthly salary and dependent on the degree of health damage.

In case the employer has been paying compulsory health insurance fees for a migrant worker²⁹ the above benefits are paid from the RF Federal Insurance Fund. If not, compensation of damage is paid in accordance with civil law norms.

Illegally employed migrant workers cannot be protected by Russian legislation in its entirety as they are in fact felons. They can be detained and punished in accordance with the Administrative Code for violating the rules of stay and work in the RF, deported under court sentence, and be deprived of the right to enter the RF for five years. At the same time, even irregular migrants cannot be deprived of their basic human rights. The *CIS Agreement on mutual medical aid to the citizens of participating states* was signed in Moscow on 27 March 1997. A year later, on 24 November 1998, the *Agreement between the RF, Belarus, Kazakhstan, and Kyrgyzstan on mutual granting of equal rights in access to urgent and first medical aid* was signed. On 21 July 1999 Tajikistan joined the Agreement. According to these agreements, first aid in urgent cases, life-threatening diseases, accidents, poisoning, childbirth, and acute cases related to pregnancy are to be granted without impediments and freely irre-

²⁷ According to the RF Federal Law of 22 December 2005.

²⁸ For example, on 1 October 2006 the amount of guaranteed wage minimum was defined as 1,100 rubles (slightly above EUR 30).

²⁹ An employer must do that in accordance with the RF Federal Law of 24 July 1998.

spective of availability of medical insurance policy. Expenses of first aid are covered from the budget of a receiving state.

5.2 Current measures

The present general trend for humanization of the Russian migration policy and migrant employment practices means, *inter alia*, a shift in understanding of migrants as humans first of all, irrespective of their legal status. The above-mentioned access to first medical aid irrespective of legal status is a promising step.

Another important step was made recently, in July 2006, in guaranteeing access to education for the children of migrants (minors) including those of irregular migrants. The Instruction of the Head of The Federal Service of Inspection in the Sphere of Education "*On children's right for education in the Russian Federation*" of 24 July 2006 orders primary and secondary educational institutions in the RF to accept children without them having to produce documents that confirm their citizenship and registration. This means that the previous vague rules that gave no definite position on migrants' children and left space for bribing is replaced by a clear procedure for migrants who are a reality of contemporary Russia. Maybe by this step Russian authorities have a long-term purpose to educate children who will be able to accept the language and culture of Russia and become respectful Russian citizens.

In order to attract regular migrants who deliberately and definitely make their choice in favour of legal employment, worthy labour, and taxpaying, the RF is to provide them with proper protection and respect. However, the official migration infrastructure that could facilitate legal employment opportunities is dramatically under-developed. In contrast, the labour trafficking business is flexible and well organized. Pushed by poverty and despair, migrants often deliberately prefer to resort to the 'help' of traffickers and agree to slavery-like labour relations.

Ethnic social networks of ex-Soviet nationals who are staying permanently in the RF provide further options for newly arriving migrants. Migrants' informal labour market in the RF is ethnically determined to a great extent. For example, migrants from Azerbaijan are concentrating in market trading while migrants from Armenia are primarily engaged in road construction and repair. Ukrainian migrants are in the construction and transport industries. Migrants from Uzbekistan and Tajikistan are in the service sector and construction of private houses. The 'internal labour markets' within ethnic communities operate thousands of workplaces, and migrants often prefer to rely on informal ethnic solidarity and undocumented employment in ethnic labour markets rather than on the official Russian labour migration infrastructure.

So, on the one hand, labour migrants to the RF are prevented from regular status and legal work by over-bureaucratic procedures for getting permissions; on the other hand, they deliberately resort to labour traffickers or ethnic communities for undocumented jobs in the informal sector. As a result, the rights and interests of irregular labour migrants are poorly protected. Table 7 is based on a survey conducted in the Moscow Oblast, however, it is typical for irregular migrants elsewhere in the RF. The disappointing results of the survey show that the majority of irregular migrants feel unprotected while in search for protection they rely on informal social networks rather than on official sources.

Ranking sources of protection of irregular migrant workers in the RF (results of interviews with illegally employed migrants from Tajikistan in Moscow Province, N=150; 2003)

Table 7: Ranking sources of protection of irregular migrant workers in the RF (results of interviews with illegally employed migrants from Tajikistan in Moscow Province, N=150; 2003)

Answers to the question: <i>In your opinion, who can effectively protect your interests and interests of other labour migrants from Tajikistan in the RF?</i>	%*
Nobody	50
My family, relatives, friends	19
Embassy of my country	18
Ethnic community	15
Russian human rights organizations	5
International human rights organizations	5
Militia or other law enforcement bodies	4

* Up to three answers could be chosen.

Source: I. Kozina et al, 2005

5.3 Regional and international cooperation

5.3.1 Consultative mechanisms

Regional and international cooperation in protection of migrant workers suggests common understanding of the human rights issue among the cooperating countries. This is the essence of inter-state consultations within the framework of various organizations like IOM, OSCE, CIS, EU, the Council of Europe, etc. For example, in the early 2000s there were repeated consultations between the Department for Migration of the Council of Europe, the Federal Migration Service, and the Ministry of Foreign Affairs of the RF on human rights in the context of migration trends in the RF. International conferences and workshops aimed at better understanding of the basic principles of the Council of Europe Migration Management Strategy – consistency, openness and transparency, clear aims and objectives, and easy-to-follow laws and norms – were held in the RF. The international conference “Prospects for labour migration in the RF and its regions: migrants’ rights in the context of economic and demographic development” was held in Saint Petersburg on 1-2 July 2004 with participation of experts from EU countries together with IOM labour migration specialists. Despite the fact that the RF has not signed the European Convention on Legal Status of Migrant Workers, discussions have obviously influenced the general shift and improvements of Russian national migration legislation towards liberalization and humanization.

At the regional level, consultations between bordering countries on the most relevant issues and elaboration of common projects closely related to the specific situation in a particular region can be an effective instrument to provide federal decision-makers with appropriate information about the needs of the provinces so that “region profiles” can be inserted into federal migration legislation. It is a very important resource to achieve more flexibility in migration management in the RF with its strongly centralized rule.

5.3.2 International organizations

Understanding the need to protect migrant workers and the inadmissibility of slavery-like practices is promoted by many international organizations, such as ILO, IOM, or the Council of Europe. Some of the ILO and UN Conventions on migrant workers are signed but not ratified by the RF, as is the case with the majority of receiving countries. Equality in social guarantees for migrants and nationals is likely to be the major stumbling block as the Russian social security system is considered insufficient even for national workers in terms of wage/pension levels, vocational training facilities, and social benefits. At the same time improvements in the Russian migration legislation are in line with statements of the international conventions in the field – freedom of movement of migrants over the territory of the RF; free access to the Russian labour market for citizens of the CIS states; organization of free consultation services for migrant workers; permission to remit earnings; punishment for organization of irregular migration and human trafficking, etc.

Although not a member of IOM, the RF accepts its initiatives in migration studies in the RF, promotion of internationally recognized legal mechanisms to tackle irregular migration and illegal employment of foreign nationals, support for migrant-oriented information campaigns, etc.

At the same time, the RF is developing international cooperation with major sending countries within the framework of the CIS, both on multilateral and bilateral bases (please refer to section 4.4). Concerned with the lack of protection of migrant workers in the RF the CIS states have initiated elaboration of the *CIS Convention on legal status of migrant workers*, which is designed to increase the responsibility of a receiving state, employers, and migrants to practice “civilized” norms of employment, exclude exploitation, and guarantee labour security and protection of human rights. The *CIS Convention on legal status of migrant workers* is likely to be adopted by the Council of the leaders of the CIS states in the very beginning of 2007 after the new migration legislation of the RF is put in force.

6 PROMOTION OF LEGAL EMPLOYMENT OPPORTUNITIES

6.1 Current measures and responsible authorities and organizations

After several years of insistent but ineffective struggle against irregular migration exclusively through police measures, the Ministry of Interior and the FMS have extended their set of instruments, shifting priority to promotion of legal employment opportunities for labour migrants from the CIS states – major countries of origin for irregular migrants in the RF. This shift was the result of the pressing attempts of the academic community and NGOs to bring the Russian migration authorities to the understanding that irregular migration and illegal employment of migrant workers can be most effectively tackled by regularization of irregular migrants, widening channels for legal employment, and oppression of the informal sector.

Initially, realization of the idea to revise the state policy in the field of temporary labour migration management began with introducing quotas for migrant workers in 2003. Every province of the RF interested in attracting foreign labour was to summarize the labour demand of local enterprises and prepare an annual requirement for labour imports. Regional requests are considered by the Federal Migration Service and the Federal State Employment Service and finally quotas are approved by the Russian Government Decree. Labour quotas are applied to countries with visa entry regime with the RF (Georgia, Turkmenistan, and non-CIS states).

Table 8 shows quotas for labour migrants in NWR in 2005 and 2006. As we see, the 2005 quotas were not filled in any of the concerned provinces, with a minimum of 31.2 per cent in Leningradskaya Oblast. This situation was even more typical in the previous years. In Kaliningradskaya Oblast in 2003 only 24 per cent of the labour quota was filled, in 2004, 43 per cent was filled. This is the result of a poor study of vacancies by local responsible authorities, an underestimation of local labour potential, and internal migration. Gradually, the mechanism of labour quotas elaboration and approval has been improved. Presently it is the major instrument for promoting legal employment opportunities in the RF for migrants from non-CIS states.

Table 8: NWR: Quotas for labour migrants from non-CIS states, 2005 and 2006

	Approved quota for 2005 persons	Number of migrant workers (from non-CIS) hired in 2005 persons	Realization of the 2005 quota (%)	Approved quota for 2006 persons
Saint Petersburg	7,000	5,337	76.2	10,000
Leningradskaya Oblast	1,160	362	31.2	1,300
Kaliningradskaya Oblast	3,000	2,365	78.8	3,500
Murmanskaya Oblast	300	228	76.0	365
Pskovskaya Oblast	260	157	60.4	300
Karelia Republic	276	210	76.1	200

Source: Data from the Federal Migration Service of the RF

As for CIS countries that have a visa-free entry regime with the RF, their citizens can be hired by Russian enterprises in accordance with bilateral agreements. In practice migrants from close neighbouring countries come freely and provoke the growth of the illegal segment of the labour market. To encourage legal employment practices among these people, they are to be regularized, i.e. get legal status for their stay in the RF. For that purpose, in 2005 the *Concept of regularization of irregular labour migrants from the CIS states, which have visa-free entry regime with the Russian Federation*, was worked out by the Expert Council of the RF Human Rights Commissioner and approved by the Federal Migration Service for the pilot small-scale regularization program in ten provinces of the RF including Saint Petersburg and Leningradskaya Oblast in NWR. The program was carried out in November-December 2006. The Concept was developed based on the experience of other countries in migrants' amnesties as well as the experts' estimates and results of sociological surveys of irregular migrants and employers that showed that three quarters of migrants and employers would prefer regular stay and legal work in case the appropriate regulations were provided by Russian legislation. Based on this data, the Concept offered irregular migrants an opportunity to regularize their status.

The regularization procedure within the pilot project was thoroughly simplified: the "urgent regularization team" consisting of representatives of the Federal Migration Service, Federal Service for Taxes and Duties, Federal State Employment Service, and Ministry of Health arrived directly at the enterprises that *voluntarily manifested their will to regularize the hired migrant workers* and within several days provided every migrant with valid migrant card, temporary residence permit (for the term of labour contract), and work permission.

To be regularized a migrant is to meet the following requirements:

- to be a citizen of a CIS state, which has a visa-free entry regime with the RF;
- to stay in the RF at the moment of regularization action for over 90 days, i.e. the permitted period of stay for citizens from the states with a visa-free entry regime;
- to have a paid job with an actual employer;
- to prove a capability to support him/her self and his/her family within the frames of the official living wage in the RF, without resorting to the help of the state;
- not to have non-cancelled convictions of offence conducted in the RF;
- not to be expelled or deported from the RF within the last three years before regularization;
- not to be sick with drug addiction and/or HIVS/AIDS.

To provide collaboration with employers, for the period of the pilot regularization campaign the employers who have manifested their voluntary desire to participate were released from penalties for undocumented hiring of migrant workers, i.e. it was a sort of amnesty for employers as well. In accordance with the simplified procedure they received permission to attract migrant workers officially. For employers participating in the pilot regularization campaign, the state duty was reduced from 3,000 rubles to a symbolic 200 rubles. In total, about 460 employers participated in the pilot project; 7,400 irregular migrants were regularized.

After the pilot project was completed the results were summarized and discussed at the meetings of representatives of the Federal Migration Service, Federal State Employment Service, Ministry of Justice, Ministry of Economic Development, and Ministry for Foreign Affairs, with participation of academics, NGOs, regional authorities from the provinces where regularization was carried out, international organizations, and media. The analysis of the results of the pilot project of regularization proved that for the nation-wide migrant amnesty the Concept of regularization must be strongly backed up with legal, financial, personnel, and information support. Additionally, regularization campaigns should be correlated with the economic interests of provinces where irregular migrants concentrate, with local labour market situations, and with housing market development.

The new procedures for hiring migrant workers from CIS states starting on 15 January 2007 definitely require regularization of those irregular migrants who are already in the territory of the RF. For nation-wide migrant amnesty, which is likely take place as a gradual process rather than as short-term

campaign, the major lessons of the 2005 pilot mini-regularization project will be of particular importance.

What is most important, the Federal Migration Service with its new migration policy acknowledges its responsibility for migrants coming to the RF. The Deputy-Director of the Federal Migration Service Vyacheslav Postavnin said in his interview:

By introducing new laws we are saying to migrants from the CIS states: 'Come openly, work legally, pay taxes and be lawful and law-abiding residents equal to Russian citizens... We expect to have economic benefits from their presence in the RF. From our part, we guarantee them respect and protection.'³⁰

The Deputy-Minister of Interior Alexander Tchekalin highlights the anti-corruption potential of the new legislation:

Migration bureaucrats were repeatedly blamed for despotism and corruption. The new regulations are aimed at improvement of the situation. Now we separate migrants from contacts with officers who are responsible for making decisions. By introducing the State Migration Registration System based on a generalized Migration Database, we take migrant inflows under our control in a new – more effective – way.³¹

Vladimir Lukin, the Human Rights Commissioner of the RF, argues that

The turn in the migration policy of the Russian Federation towards liberalization and humanization looks very promising. Though with a delay, the state is trying to introduce order and rationality in migration situation. It is very important to promote this trend, to make people well-informed about new initiatives, to explain them the strategic purposes of the state, to win their support. The Russian society is shifting in its ethnic structure. This needs rapt attention from the state: programs of integration of migrants, cultivation of tolerance in the society are to be compulsory elements of migration policy... Besides, the result of the new policy strongly depends on how it will be implemented.³²

Indeed, the near future will show how the positive potential of the new legislation is put in practice. To make migration management effective, the authorities are to have reliable and detailed data on the situation of local labour markets and this is an uneasy task in a country as vast as the RF. Protection of the interests of national workers from competition by migrants seems to be an open question. Equal rights of national and migrant workers when seeking jobs can seriously impede the growth of wages in certain industries and cause social tension. Additionally, there are no estimates of *internal* migration potential in the RF; this depreciates the estimations of the need for migrants in under-populated provinces. Lack of well-grounded research in this field can lessen the value of the declared respect of migrants' human rights and freedoms, particularly freedom of choice of a place of stay and work.

Despite these unresolved issues, the reaction of migrants from CIS countries who are staying in the RF regarding the new legislation is optimistic. Jamilya Begieva, the head of 'Ola-Too' Association of Kyrgyz people in the RF, says:

After many years of adapting themselves to uneasy life of irregular migrants in the RF Kyrgyz people can't believe that they will be able to walk along the streets of Moscow or Saint Petersburg free, without fear to be fined or detained. They have so many questions and doubts related to their future stay in the RF but they are all sure that in any case their position will change for better ...³³

Responsible authorities for implementation of the new migration/employment policy are the FMS, FSES, Federal Service for Taxation and Duties, and their regional departments. The Ministry of Interior

³⁰ From an interview of the author with Vyacheslav Postavnin on 3 November 2006.

³¹ <http://www.vremya.ru/news/1012366.shtml>.

³² From an interview of the author with Vladimir Lukin on 22 October 2006.

³³ From an interview of the author with Jamilya Begieva on 1 October 2006

through its regional and local departments is to reveal and stop infringers of the new legislation, both employers and employees, who will be severely punished with penalties, deportations, etc. The effectiveness of the new strategy can be guaranteed only by close cooperation between all interested actors: trade unions, employers associations, private recruitment agencies, and NGOs in the RF as well as ministries of labour and migration managing institutions in the countries of origin.

Regional departments of the Federal State Employment Service that are operating in all the provinces of NWR regulating local labour markets are a reliable mechanism to promote legal employment opportunities. Every regional FSES department has an Internet site with relevant information on labour legislation, the situation in the local labour market, available job vacancies, and practical advice for job-seekers on how to design a resume, how to participate in vocational re-training programs, etc. Presently, labour migrants are not likely to turn to these sites as either they are closely linked to a particular employer by their work permits or they are irregular migrants who cannot access legal employment. However, after 15 January 2007 they are likely to become frequent visitors to the sites in search of job opportunities and legal advice.

On the threshold of a radical shift in the labour import mechanism, business demonstrates its interest towards the organization of intermediary institutions legally connecting migrants and employers. The Russian Migrants' Labour Exchange (RMLE) is integrating the activities of private recruitment agencies and a unified database on vacancies and migrant labour supplies. One of five major branches of the RMLE is located in Saint Petersburg; it is focused on the NWR labour market.

It is reasonable to suppose that wider access of the labour force from CIS states to legal employment opportunities in the RF will not be an additional argument in favour of intolerance and aversion of local population towards migrants. First, migrant stock will hardly increase while the majority is expected to come out of the shadow. Second, legally employed labour migrants are more easily integrated into local society; they are not disgraced or offended so they have less reason to feel enmity towards the receiving society in return. On the contrary, regular migrants tend to believe they are an integral part of the receiving society.

However, due to decades of impunity in propagating xenophobia and stirring up ethnic tension, intolerance has put down roots in Russian society. Now, thorough efforts are needed to revitalize its inherent hospitality and kindness. Special tolerance-oriented programs are an integral part of the new state concept of migration policy³⁴ in its "Integration of migrants" Section. In this context, participation of IOM and other international organizations could be valuable.

6.2 Regional and international cooperation

6.2.1 Consultative mechanisms

In recent years the RF has demonstrated a trend towards sustainable economic development. Reconfiguration of the Russian economy with the expansion of the labour-intensive service and construction sectors in combination with an annual population decline of one million inevitably puts labour import issues on agenda. This makes the RF seek new practical mechanisms to supply Russian industries with workers possessing the appropriate skills and qualifications as an alternative to the current influx of irregular migrants whose skills are often wasted. In this context, bilateral, regional, and international cooperation are valuable tools for regulating labour migration processes for mutual benefit. E.g. the RF is the initiator of collective intergovernmental tools of migration management within the framework of the CIS and EurAsEC. Consultative mechanisms are realized at the inter-ministerial level: between ministries of interior of the participating states in combating irregular migration in the CIS space; between ministries of labour in promoting legal employment opportunities. Referring to transit migration issues, a promising option is the development of a dialog with countries of origin on bilateral and multilateral bases about readmission agreements, transit migrant management, protec-

³⁴ In October 2006 the new State Concept of migration policy has been considered by the Gosudarstvennaya Duma but was turned down for further revision.

tion of their rights and dignity when in transit, etc. Involvement of the European Union in these activities is important.

NWR is a specific region of the RF sharing a long common border with the EU. The concentration of irregular migrants in NWR provinces and the large-scale informal sector of the economy that provides them with illegal employment opportunities cannot leave the EU countries, especially neighboring Finland, Estonia, Latvia, Lithuania, and Poland, indifferent. Therefore, special regulations for cross-border movements of the citizens of the bordering provinces are quite understandable.

The Inter-regional Agreement between Eastern Finland and Karelia Republic on shaping the *Karelia Euroregion* was signed in 2000 and approved by Ministries of Foreign Affairs of both Finland and the RF. In the framework of this agreement the program "*Our Common Border 2001-2006*" was implemented. As a result of the program, Finnish investments in the Karelia Republic, primarily in timber cutting and processing, woodworking, and construction materials production, increased by ten times. In total, 42 Finnish companies and organizations are investing in Russian Karelia. About 50,000 workers are employed in enterprises with participation of Finnish capital. Experts report that the wage level in these enterprises is 12 per cent higher than the average wage level in the Republic.

Another Inter-Regional Project is "*Labour Movements between Finland and the RF*" focused on labour exchange between South East Finland and NWR, with special emphasis on Saint Petersburg and Leningradskaya Oblast. One of the principal purposes of the Project is to elaborate practical mechanisms for cooperation between the state employment services of the two countries to manage local labour markets and to close labour gaps by means of labour migration.

6.2.2 International organizations

Commonwealth of Independent States

The ex-USSR states are interested in development of the CIS common labour market that would make intra-regional migration an effective instrument for mutual development of national economies and the region as a whole. Coordination between government and non-government migration bodies of sending and receiving countries within the framework of the *CIS Concept of cooperation in tackling irregular migration*³⁵ has the ultimate aim to build up a transparent and manageable common labour market based on demographically mutual complementarity. Whether this aim will be achieved strongly depends on the position of the RF as a major receiving country. The present shift in Russian migration policy related to citizens of the CIS states demonstrates the RF's interest towards encouragement of legal forms of employment of CIS labour migrants in the RF as an alternative to illegal employment, exploitation, slave labour, and human trafficking.

Russian business and NGOs are participating in common CIS activities to promote legal employment opportunities for labour migrants. International Association 'Labour Migration' (IALM) and the "New Eurasia" Foundation supported by the FMS and Ministries of Labour of Tajikistan, Kyrgyzstan, and Uzbekistan have initiated so-called 'migration bridges' between Russian provinces facing labour deficits and origin countries. The "migration bridges" are designed to facilitate labour import/export by professional recruitment of appropriate personnel, assistance in legalization of migrants, organization of vocational training in accordance with the Russian enterprises demands, etc.

In the most recent years, the CIS origin states have demonstrated their interest towards encouragement of migrant remittances that have become an important factor in their economic development. When irregular, migrants prefer to deliver money earned in the RF to their families by non-official channels – through friends, relatives, or carried on their own – rather than by bank transfer or other official money remittance systems. According to the Federal Migration Service of the RF, migrants take away up to \$US 10 billion from the RF annually; three quarters of this amount is transferred non-officially but the official segment is growing rapidly. The Central Bank of the RF estimates the scale of migrant transfers via official financial channels from the RF in 2005 at about \$US 6 billion while in 2004 they were less than \$US 3 billion.

³⁵ Adopted at the CIS summit on 16 September 2004.

Countries of origin appreciate the RF's initiatives to regularize irregular labour migrants from the CIS states and encourage their citizens to follow the rules and choose regular channels to go to the RF, stay and work there, transfer their earnings, etc. Regular migrants are more disposed to rely on formal intermediaries so migrant remittances flows become more transparent for both sending and receiving states and safer for migrants when there are appropriate terms of bank service. The widening of official channels for migrant remittances and the development of incentives for labour migrants to transfer money legally is on the agenda of financial institutions of both sending and receiving countries in the CIS region on the threshold of large-scale regularization of migrant flows to the RF. Central banks of the countries in the region coordinate their activities in information services for migrant workers on official facilities for remittances.

7 CONCLUSION

Large-scale irregular migration and illegal employment of foreign nationals in the RF is mostly a result of restricted legislation and over-bureaucratic law-application practices. As a result, migrants are often pushed to shadow intermediaries including human traffickers and mostly find themselves in the informal sector of the economy with its exploitative practices. Corruption among authorities responsible for migration management and control has resulted in no real notion of how many migrants are employed in the RF. Estimates awkwardly differ from 4 to 15 million, usually with no basis.

Illegal employment of foreign nationals is a complex multi-level issue. Some migrants deliberately seek jobs in the informal sector while others are forced to hire out illegally due to over-complicated and time-consuming procedures for getting permission. Among employers there is also a distinction between criminal clandestine producers and those who resort to illegal labour recruiting practices to save time and money. In any case, illegal employment reduces tax collection, contributes to corruption, and damages the national labour market. However, understanding the different nature of illegal labour is a key to contend against it effectively.

The most disturbing issue for the RF is that the large-scale influx of cheap unpretentious and ready-for-any-job workers along with impunity for illegal labour practices have led Russian employers to engage in illegal employment practices. The possibility to economize on labour costs has been tempting "young" Russian business characterized by unscrupulousness, low "legal culture", and lack of traditions of respectability.

All this is to be taken into consideration when elaborating a strategy to combat illegal employment of migrants. With the revised legislation, the Russian Government will have a good instrument to reduce the informal labour market and cover labour shortages in the Russian regions. Practical implementation of the new policy strongly depends on the good will of relevant local authorities. Since the illegal employment issue is a field where *economic* and *criminal* aspects are contiguous, its oppression can be realized at least from two perspectives:

From the economic perspective, the major role belongs to regional FSES departments with their wide network of sub-regional employment centres. They have the most clear idea of the demand/supply balance in local labour markets and can most efficiently manage migrant labour flows within the administrative units in cooperation with employers, trade unions, and civil society institutions. The Migrant Labour Exchange with its branch office in Saint Petersburg responsible for NWR is another option to promote legal employment opportunities for migrants from CIS states. Possible collaboration between this commercial structure and the state employment services is to be studied and shaped. Additionally, the regional departments of the Federal Service for Taxes and Duties are to gain a key role in labour migration management by enforced control over taxpayers, both employers and migrant workers.

From the criminal perspective, the regional FMS departments along with the regional departments of the militia (GUVd) are responsible for detecting irregular migrants and illegal employers and employees. In accordance with the new legislation, which gives migrants wider legal employment opportunities, their illegality can no longer be "excused" by difficult-to-follow procedures and penalties will be severely toughened. Control, fines, detentions, and deportations are the major law-

enforcement instruments; however, there will be a growing emphasis on information campaigns promoting new regulations for migrants. The elimination of criminal industries and services can 'automatically' result in reduction of the scope for illegal employment. Anti-corruption measures are of particular importance in this context.

Promotion of legal employment opportunities and the optimization of the labour market needs a well-developed information and employment infrastructure. *In terms of information*, the development of a network of consultative centres for migrants is already on the agenda of the Federal Migration Service. Here is surely a space for international cooperation, e.g. in the Baltic region, for sharing experience, technical assistance, publishing pocket guidebooks for migrants, etc. *In terms of employment infrastructure*, the above-mentioned regional state employment services and the Migrant Labour Exchange could cooperate with labour leasing agencies specializing in the arrangement of short-term labour contracts. For the moment, labour leasing has an insignificant place in the Russian labour market, primarily in its informal sector. However, when based on the principles of the ILO Convention No. 181, labour leasing could increase the flexibility of the labour market and effectively counteract illegal employment. In this context, the experience of the EU countries that have practiced labour leasing for a long time would be extremely valuable for the RF. In Holland, for example, up to 80 per cent of workers are employed via leasing schemes.

To give incentives to employers to hire migrant workers legally, it is important to give them free and easy access to the legal sector of the migrants' labour market. This is especially true for small-scale business where illegal employment practices are most widespread. The major reason of offences against labour regulations among small-scale employers is lack of flexibility in legalization of labour relations between employers and employees. According to the Russian Labour Code, the model work contract is the same for small-scale and large-scale industries. It is clear, however, that the model work contract is too rigid for small farms, market trade, or domestic labour. Elaboration of flexible schemes of legal labour relations could effectively contribute towards the legalization of the labour market in the RF.

8 ANNEXES

8.1 ANNEX I: Bibliography

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8.2 Relevant Internet sites

- Federal Migration Service of Russia
<http://www.fmsrf.ru>
- Leningradskaya Oblast, official site
<http://www.lenobl.ru>
- Pskovskaya Oblast: Regional Department of the Federal State Employment Service
<http://www.depzan.psc.ru>
- Russian News (Novosti Rossii)
<http://www.regnum.ru/english/>
- Republic of Karelia: Regional Department of the Federal State Employment Service
<http://www.czrk.onego.ru>

8.3 ANNEX II: Relevant legislation

List of major laws and decrees:

- 2006-2012 State Program on providing support for voluntary resettlement of compatriots to the Russian Federation (adopted by the President Decree 22.06.2006)
- CIS Agreement "On Co-operation in the field of labour migration and social protection of migrant workers" (15.04.1994)
- CIS Concept of cooperation in tackling irregular migration (16.09.2004)

- Federal Law “On Amendments to the Federal Law on legal status of foreign citizens in the Russian Federation” (18.07.2006; to be put in force on 15.01.2007)
- Federal Law “On citizenship of the Russian Federation” (31.05.2002)
- Federal Law “On compulsory social insurance” (16.07.1999)
- Federal Law “On exit from the Russian Federation and entry to the Russian Federation (15.08.1996)
- Federal Law “On legal status of foreign citizens in the Russian Federation” (25.07.2002)
- Federal Law “On Registering foreign citizens and persons without citizenship in the Russian Federation” (18.07.2006; to be put in force on 15.01.2007)
- Government Decree “On migrant’s cards” (16.08.2004)
- President Decree “On attracting foreign labour force to the Russian Federation” (16.12.1993)

8.4 ANNEX III: List of interviewees

- **‘OLA-TOO’ Association of Kyrgyz people in the RF**, *Jamilya Begieva*, Chairman, Moscow.
- **All-Russian Migrants’ Rights Organisation “Forum of Migrants”**, *Lidia Grafova*, President, Moscow.
- **Association of Experts in International Labour Exchange**, *Andrey Kamenskiy*, President, Moscow.
- **European University at Saint Petersburg**, *Yulia Vymyatnina*, Deputy Dean of the Faculty of Economics.
- **Federal Migration Service of the Russian Federation**, *Natalya Vlasova*, Deputy Head of International Labour Migration Department, Moscow.
- **Federal Migration Service of the Russian Federation**, *Vyacheslav Postavnin*, Deputy-Director, Moscow.
- **Federal State Employment Service of the Russian Federation**, *Irina Malakha*, Head of the Labour Migration Department, Moscow.
- **Human Rights Commissioner of the Russian Federation**, *Vladimir Lukin*.
- **Immanuel Kant University**, *Larissa Yemelyanova*, Associate Professor, Department of Socio-economic Geography, Kaliningrad.
- **International Association “Labour Migration”**, *Vadim Yentyakov*, Chairman, Moscow.
- **Kyrgyz State Committee on Migration and Employment in the Russian Federation**, *Tajimamad Shabolovov*, Representative, Moscow.
- **Ministry of Foreign Affairs of the Russian Federation**, *Mikhail Lebedev*, Head of the Department on Humanitarian Co-operation and Human Rights, Moscow.
- **Ministry of Health and Social Development of the Russian Federation**, *Natalya Zharova*, Head of the Employment Policy Department, Moscow.
- **Murmansk University**, *Alexander Tchernov*, Associate Professor.
- **Regional Department of the Federal State Employment Service for Saint Petersburg**, *Alexander Sukhov*, Deputy-Head of the Sub-department for Cooperation with Local Employment Centers in the North-West Federal District.
- **Russian Academy of Sciences**, *Natalia Tchistyakova*, Senior Researcher at the Institute for Regional Economics, Saint Petersburg.

- **Russian Academy of Sciences**, *Yelena Tiuriukanova*, Senior Researcher, Institute for Socio-Economic & Population Issues, Moscow.
- **Saint Petersburg State University for Economics and Finance**, *Mikhail Klupt*, Professor.
- **UNHCR Office in the Russian Federation**, *Yuri Botnikov*, Legal Consultant, Moscow.

8.5 ANNEX IV: Contact information of responsible authorities and organizations

8.5.1 Federal Government authorities

- **Ministry of Interior** of the Russian Federation
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- **Labour Migration Department** of the Federal State Employment Service
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- **Ministry of Foreign Affairs** of the Russian Federation
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8.5.2 Regional and local authorities

- **Regional Department of the FMS for Saint Petersburg and Leningradskaya Oblast**
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- **Saint Petersburg Committee for Law, Order and Security**
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8.5.3 NGOs

- **Russian Red Cross in St. Petersburg**
11 Millionnaya Str., 191186 St. Petersburg, Russian Federation
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- **“Ochag” Organization for Migrants in Karelia Republic**
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- **“Baltiyskiy Soyuz” Charity Organization**
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- **“Dom” Fund for Assistance to Migrants**
Director: Olga Smitnitskaya
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- **“Victoria” Fund for Refugees and Forced Migrants**
Chairman: Zoya Telegina
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 Tel: +7 01141 34873
- **“Nadezhda” Fund for Refugees and Forced Migrants**
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 Tel: +7 01158 25246
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8.5.4 Employer associations

- **Employers Association in Saint-Petersburg**
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 Tel: +7 812 2761580; Fax: +7 812 2761792
- **Employers Association in Leningradskaya Oblast**
 Gatchina, Sobornaya str., 31, 188305 Leningradskaya oblast, Russian Federation
 Tel: +7 813 7113302; Fax: +7 813 7113303

- **Employers Association in Kaliningradskaya Oblast**
Komsomolskaya str., 2, 236000, Kaliningrad, Russian Federation
Tel: +7 011 2577822; Fax: +7 011 2577813
- **Employers Association in Murmanskaya Oblast**
Generala Zhurby str., 6, 183010 Murmansk, Russian Federation
Tel: +7 815 2486200; Fax: +7 815 2476503
- **Employers Association in Pskovskaya Oblast**
Bastionnaya str., 9/A, 180004 Pskov, Russian Federation
Tel/ Fax: +7 811 2224179
- **Employers Association in Karelia Republic**
Alexandra Nevskogo str., 56, office 1, 185003 Petrozavodsk, Karelia Republic, Russian Federation
Tel: +7 814 2772928, Fax: +7 814 2768671

8.5.5 Trade Unions

- **All-Russian Trade Union of Foreign Employees (MIGROS)**
Executive Director: Yuri Vyalov
Moscow, the Russian Federation
Tel: +7 495 2084263, +7 495 2084370, +7 495 9248800; Fax: +7 495 9246952
- **Federation of Trade Unions of Saint Petersburg and Leningradskaya Oblast**
Truda Square, 4, 190098 Saint-Petersburg, Russian Federation
- **Inter-regional Trade Union of Migrants**
Chairman: Viktor Maslennikov
Gogolya str., 29, 185035 Petrozavodsk, Karelia Republic, Russian Federation
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8.5.6 Other

- **International Association 'Labour Migration' (IALM)**
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VI. The EU Policy on Labour Immigration

Stefania Pasquetti

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International migration is high on the global policy agenda. There is a comprehensive debate going on among states and other actors with respect to a wide range of issues: immigration, integration and the linkages between migration and development. The EU is playing a leading and important role in this debate. Europe needs immigrants because its population is getting older and Europeans are not having enough children.

The European Commission has underlined on several occasions that if EU Member States want to meet international challenges put forward by globalization, they need to work together to harmonize the approach to the immigration phenomenon, including the legislation. In this way the EU will manage people movements better, whether they be migrants or asylum seekers. This will also allow the EU to ensure better the protection of human rights and to a number of fundamental principles such as equality, the rule of law, respect for diversity, values the EU is committed to. Partnership with countries of origin of immigrants is an extremely important part of the common strategy for managing migration and it has become an increasingly vital element in the EU relations with third countries.

Some data will help better understand the scope of the migratory phenomenon. At the start of 2005 the total population of the EU was almost 460 million: of these, over 26 million people were residing in a country other than their country of citizenship. Some 7 million were EU citizens residing in an EU country other than their own and 19 million were third country nationals residing in an EU Member State. The EU Member States with the highest number of third country nationals were Germany (5.2 million), Spain (2.7 million) and France (2.2 million). Around half of the third country nationals residing in Europe resided in one of these three Member States. As a percentage of the population, in two Baltic countries (Latvia and Estonia), the proportion of third-country nationals was around 20 per cent; Greece and Austria followed, with more than 7 per cent third-country national population, and Germany and Spain with slightly more than 6 per cent.

The figures on refusals at the border for 2005 for the EU-25 were distorted by the large numbers of people refused at the Spanish enclaves of Ceuta and Melilla. Thus, in 2005, out of 827,738 refusals for the whole almost 600,000 took place in Spanish borders (and most in the Ceuta and Melilla borders with Morocco). This also explains why the main country of origin of refused aliens is Morocco (72 per cent of all refused aliens in 2005). The other main countries of origin of refused aliens are all in Eastern Europe and the Balkans. Most EU countries have seen stable or slightly decreasing figures between 2002 and 2005. The number of removed aliens has remained rather stable between 2003 and 2005 (between 200,000 and 220,000, excepting the UK). The MS that removed more aliens in 2005 was Greece (51,079), followed by Spain (25,359) and Italy (24,001). Albanians (24 per cent), Romanians (13 per cent) and Moroccans (10 per cent) were the groups of third-country nationals more affected by removal measures.

The development of a common policy on labor immigration

The European Commission is progressively developing a set of rules covering legal immigration, in which the rights of the legally resident third country nationals are clearly stated and incremental in respect of the length of stay.

According to Article 63 (3) of the EC Treaty, the European Community has the competence to adopt measures on the entry and stay of third country nationals, as well as on measures defining the rights and conditions under which nationals of third countries, who are legally resident in a Member State, may reside in other Member States.

Four directives have been adopted so far: long term residents¹, family reunification², admission of students³ and of third country researchers⁴. Furthermore, EU Directives on issues such as occupational health and safety or working conditions are in principle applicable to all workers, irrespective of their nationality. The same goes for most of the articles of the European Charter on Fundamental Rights and for the EU anti-discrimination legislation.

Forecasts by Eurostat indicate that the decline in the working age for the EU-25 is expected by 2011: by 2050, the share of population in working age is expected to decrease by 52 million. These are forecasts and average figures, but clearly highlight the contribution immigration has and will have – together with the measures foreseen in the Lisbon Strategy – to sustain Europe's competitiveness and face the demographic challenge. The current situation and prospects of the EU labour market can thus be described as a 'need' scenario. Some Member States already experience substantial labour and skills shortages in certain sectors of their economy, which cannot be filled within the national labour markets. This phenomenon concerns the full range of qualifications - from unskilled workers to top academic professionals. The Commission believes that this situation needs to be addressed urgently and coherently. For this reason it has adopted a policy plan on legal migration on 21 December 2005.⁵

This communication deals with legal immigration in a comprehensive way, by presenting a wide range of actions to be put forward in the remaining period of The Hague Programme (2006-2009). Such actions will cover four equally important areas: conditions of admission and residence for economic migrants, information building and sharing, integration measures, and measures to be enacted in cooperation with the Countries of origin. It is important to stress that The Hague Programme explicitly underlines that the volume of admission of immigrants coming to the EU for employment must remain under the competence of the Member States.

As for the conditions of admission of third-country workers, the Commission is planning to gradually put forward five proposals for directives (2007-2009): one proposal for a general framework directive covering the rights of legally resident third-country workers once admitted in the EU (and before they are granted the long-term resident status), foreseen for 2007, and the other four proposals establishing the conditions of admission of highly skilled (2007) and seasonal workers (2008), intra-corporate transferees and remunerated trainees (2009). Work is presently underway so as to present two proposals for directives (general framework directive and directive on highly skilled workers) in September 2007.

Besides the above legislative measures, there is the intention of promoting return and circular migration, as well as the idea of improving the match of supply and demand of labour between the countries of origin and the EU through several means. The future Immigration Portal, the European Job Mobility Portal, the new 2007-2010 Guidelines for the EURES network and the European Researchers Mobility Portal are all fundamental tools to achieve this objective. Third countries will be provided with information on the legal possibilities for working in Europe, including through specific information campaigns. By fostering professional training, skills development programmes and language courses, potential migrants can enhance their chances of finding legal employment. For this purpose, specific migration centres could be established in partner countries, supported by EC funding. Such centres could also play a role in facilitating the management of seasonal workers, the exchanges of students and researchers and other forms of legal movement of people.

A complementary aspect of these policies is constituted by the fact that the EU has given increased priority to clamping down on illegal work done by third-country nationals in an irregular position, as underlined by the Commission's Communication of 19 July 2006 on "Policy priorities in the fight against illegal immigration of third-country nationals."⁶ As a matter of fact, the possibility of obtaining

¹ Council Directive 2003/109/EC, applicable as of 23 January 2006.

² Council Directive 2003/86/EC, applicable as of 3 October 2005.

³ Council Directive 2004/114/EC, applicable as of 12 January 2007.

⁴ Council Directive 2005/71/EC, applicable as of 12 October 2007.

⁵ COM(2005)669 final of 21 December 2005.

⁶ COM(2006)402 final.

work in the EU, even though the third-country worker does not have a legal status which permits this, is a key pull factor. The EU needs therefore to remove these incentives and make clear that the black economy will not be tolerated any more. Although the phenomenon of undeclared work is not limited to migrants, **new legislation on penalties against employers** of illegally resident third-country nationals will be proposed in spring 2007.

[Please note that the paper was written in the author's personal capacity as an immigration expert and does not engage or bound the European Commission in any possible way.]

VII. IOM's Approach to Labour Migration

Established in 1951, the IOM is the principal intergovernmental organization in the field of migration. It has 116 Member States and over 1,400 active projects, several of which are in the field of labour migration, in over 280 field locations in more than a hundred countries, carried out by IOM's 5,000 employees worldwide through an operational budget of more than a billion dollars annually. IOM is dedicated to promoting humane and orderly migration for the benefit of all. It does so by providing services and advice to governments and migrants and promoting international cooperation on migration issues. IOM works in four broad areas of migration management: migration and development, facilitating migration, regulating migration and addressing forced migration. Cross-cutting activities include the promotion of international migration law, policy debate and guidance, protection of migrants' rights, migration health and the gender dimension of migration. Labour migration is a critical cross-cutting issue.

IOM's purpose in labour migration is to facilitate the development of policies and programmes that can individually and mutually benefit the concerned governments, migrants and societies by:

- providing effective protection and support services to labour migrants and their families;
- fostering economic and social development; and
- promoting legal forms of labour mobility as an alternative to irregular migration.

With its global presence in both countries of emigration and immigration, IOM is well placed to bring together all parties to put in place labour migration mechanisms that balance the different interests.

IOM programmes in labour migration include:

- government capacity-building;
- pre-departure orientation for migrants, awareness raising and provision of information;
- facilitation of bilateral labour arrangements and the implementation of labour migration programmes;
- enhancement of the development impact of labour migration;
- assistance with inter-state dialogue and cooperation.

The programmes are carried out in partnership with various governments and international organizations.

Capacity-building in labour migration management

An increasing number of developing countries and countries with economies in transition seek to adopt policies, legislation and structures to promote the foreign employment of part of their workforce and generate remittances, while providing safeguards to protect their migrants. Some middle-income countries are also destination countries and are seeking ways to better manage their labour inflows. IOM helps strengthen the labour migration management capacity in such countries.

Pre-departure training and orientation of labour migrants and information

Many migrants face difficulties in the host countries due to lack of preparation before departure. IOM offers pre-departure orientation services to inform the migrants about their future living and working environment and assist in developing language training curriculum to facilitate migrant integration in the destination countries. IOM has focused on awareness raising of migrants on risks and realities associated with labour migration and on improving migrants' access to information on immigration and labour legislation.

Facilitating bilateral labour programmes

States requiring foreign labour are increasingly entering into bilateral labour agreements with partner states or developing special labour migration programmes. These programmes are designed to steer labour flows to specific areas of demand and reduce the need for irregular migration by providing

legal alternatives. IOM supports government efforts to put these elements into place and provides a full range of services to home and host countries and to individual migrants to this end.

Migration and development: A focus on remittances

The most direct link between migration and development is through remittances – the funds migrants send home. Recognizing that remittances are private and family funds, IOM’s purpose in the remittance area is to facilitate the development of policies and mechanisms that:

- improve remittance services to migrants;
- enhance the development impact of remittances.

A third area of interest, given the poor quality of data available on remittances, is:

- baseline and policy oriented research.

Regional dialogue

IOM promotes inter-state regional dialogue on migration, including labour migration, in partnership with other international and regional organizations as well as other pertinent stakeholders, with a view to sharing information, experiences and best practices on such questions as the protection and provision of services to vulnerable migrant workers, optimizing the benefits of organized or legal labour migration, enhancing capacity-building and promoting further dialogue between the countries involved. The Ministerial Consultations on Overseas Employment for Countries of Origin in Asia constitute an example of such activities promoted and undertaken by IOM.

VIII. Recommendations from the PIELAMI Project

International Organization for Migration

In this section a limited number of common recommendations are presented. Country-specific recommendations can be found in the working papers for Finland, Latvia, and North West Russia.

a) Cooperation on preventing illegal employment of migrant workers

- Cooperation at national, regional, and international levels needs to involve a wide range of authorities, unions, employer associations, and other relevant agencies in order to properly reflect the complex nature of the topic. Furthermore it should be formalized or standardized at the operational level to avoid the situation where cooperation only occurs on the basis of personal contacts.
- States should cooperate by sharing experience, providing technical assistance, and undertaking joint initiatives such as efforts to provide information material to migrants.
- Efforts should be made to reduce the legal and operational restrictions preventing expedited exchange of information between governmental agencies at national, regional, and international levels.
- Cooperation at the national level would be eased by the identification/establishment of a coordinating body.

b) Preventive measures against illegal employment of migrant workers

- Information and outreach to migrant workers and potential migrant workers should be expanded. Information about available employment opportunities, working conditions, and important considerations related to labour migration should be provided in countries of origin through partner organizations or embassies and consulates. Additional means for outreach include the development of migrant information centres, the distribution of multilingual information material through different media, etc.
- The process for employing migrant workers should be transparent and as free as possible from administrative constraints for both employers and employees. States should consider opening more legal avenues for migrant workers to gain access to labour markets abroad.
- According to the sanctions available in the legislative framework of respective countries, efforts should be made to apply the most severe sanctions available to the perpetrator, which are usually of a financial nature. This may act as a deterrent to prevent the illegal employment of migrant workers.
- Preventive measures should be targeted at reducing the informal/shadow labour market as a whole and not just practices related to the illegal employment of migrant workers, for example anti-corruption measures, increased site inspections, etc.
- Consideration should be paid to the licensing and supervision of privately operated labour recruitment offices.
- Consideration should be paid to the registration and supervision of foreign companies operating abroad that employ migrant workers.
- Control mechanisms should be strengthened, for example through increased monitoring, and on-site inspections, and ID-cards for construction workers.
- Sanctions against illegal employment should be primarily targeted at employers, not employees.

c) Protection of migrant workers

- States should extend the rights afforded to national workers to migrant workers, for example minimum wages levels, access to the justice system, the health system, etc.
- Provide for well-balanced legislation that prioritizes human rights dimension of illegal employment.
- More focus should be placed on the protection of the rights of migrant workers, for example through provision of relevant information, services, and support, on the one hand, to encourage them to seek legal employment opportunities and, on the other hand, to report maltreatment.
- More efforts should be placed on the checking of contracts for migrant workers to ensure they meet the appropriate employment standards.
- States should sign and ratify the conventions protecting migrant workers: The Migration for Employment Convention, 1949 (Revised) (No. 97); The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), (as well as to take account of their accompanying Recommendations); and The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention, ICRMW), 1990.
- Measures should be taken to combat intolerance, discrimination, and xenophobia and to facilitate the integration of migrant workers in host societies.

d) Promotion of legal employment for migrant workers

- States should undertake initiatives to ascertain the demand/supply balance in local labour markets in order to efficiently manage migrant labour flows in cooperation with employers, trade unions, and civil society institutions.

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