

REPORT
on the Free Movement of Workers
in Finland in 2010-2011

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Introduction

In Finland the general attitude towards foreigners continued to harden and the demands for tougher immigration policy strengthen during the second half of 2010 and the first half of 2011. In their campaigns for the parliamentary elections, which were held in April 2011, some of the candidates of the 'True Finns' Party' (*Perussuomalaiset*), which is a nationalist populist party, expressed very strong anti-immigration and anti-Islam sentiments, although this was not the official policy of the Party. In the elections, the True Finns became the third largest party with 19.1 % of the votes and 39 seats, while the Coalition Party won 44 seats and the Social Democrats 42 seats. The support of the True Finns increased remarkably compared with the previous elections, in which they had gained only five seats at the Parliament. The critical attitude towards immigration and the demand for a tougher immigration policy voiced by some of the candidates is regarded as one of the explanations for the success of the True Finns: some of the candidates with the hardest views got elected to the Parliament. However, despite being the greatest winner of the elections in the sense that its support increased considerably while all the other old parties lost support, the True Finns' Party did not get to the Government. The primary reason for this was the Party's EU policy, and in particular its denial to support the EU member states with financial problems, which would have been a precondition for being part of the government formed by the Coalition Party.

It seems that the general hardening of the attitudes towards foreigners has not had any major impact on the treatment and position of EU workers. Incidents of direct discrimination against EU workers come up only very rarely. There are, however, indications of that posted workers are more exposed to discrimination than directly employed persons. It is not uncommon that posted workers are paid less than the directly employed employees; they are not paid supplementary payments such as overtime pay; they are not insured; and no occupational health care is arranged. However, incidents of discrimination against posted workers are taken to courts only very rarely.

Implementation of the legislation on free movement of workers covers the activities of several ministries and other bodies, whose work impacts on the rights of EU workers working in Finland. The Ministry of Interior is responsible for the legislation concerning EU citizen's entry, residence and removal. The National Police Board, which operates under the Ministry of the Interior, gives general directions and guidelines concerning operational police activities, including registration of the EU citizens' right of residence and the issuance of family members' residence cards, which belong to the responsibility of the local police. The police or the border control authorities take action to refuse an EU citizen's entry to Finland in cases where the residence has lasted for less than three months and the individual concerned has not registered her right of residence or obtained a family member's residence card. If the residence has lasted for longer than three months, the responsibility to take decisions on removal is on the Finnish Immigration Service. The Finnish Immigration Service is also competent to take decisions on expelling EU citizens who have registered their right of residence, and on prohibition of entry. The Finnish Social Security Institute takes decisions on social security coverage in individual cases, as well as on issuance of social security benefits. The municipalities are responsible *inter alia* for means-tested minimum social assistance that guarantees the minimum subsistence, for public health care, as well as for school-

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ing and other public services. The Tax Administration is responsible for taxation, and the National Board of Education for the recognition of diplomas.

The areas in which positive developments took place in 2010-2011 or where there do not appear to be substantial problems for EU workers in the Finland include:

- * Treatment of family members – the Finnish Parliament adopted in May 2010 an act amending the Aliens Act that abolished the requirement of previous lawful residence regarding third country national family members of EU citizens and Finnish citizens who have used their right to free movement. The amended Act entered into force on the 1st of July 2010.
- * Access to employment at the private sector – equal treatment of EU citizens as regards access to employment is guaranteed by general legislation on equality and non-discrimination. Furthermore, trade union membership is open for all workers regardless of their nationality. There does not appear to be wide spread discrimination against EU nationals in the labour market. The position of posted workers is, though, in this regard worse than that of directly employed workers, and discrimination against such workers takes place.
- * Access to employment at the public sector – as the main rule, EU nationals are only excluded from public service functions where there is a need for special allegiance and that are therefore reserved only for Finnish nationals. However, in certain sectors, such as in the foreign service and Ministry for Defence, all functions are reserved for Finnish nationals regardless of the tasks to be performed and whether they actually involve exercising of powers conferred by public law and safeguarding general interests. In the absence of specific rules on this, professional experience and seniority obtained in another EU state shall be taken into account for the purposes of access to the public sector as well as for benefits and promotion in an equal manner as experience and seniority acquired in Finland. It is unclear to what extent the rather demanding language requirements create problems as regards access to public posts.

The main problem areas for EU nationals exercising Treaty rights in Finland in 2010 and the first half of 2011 have remained rather consistent with those of preceding years:

- * Although the national legislation transposing the Directive 2004/38/EC is by and large in line with the Directive, there are certain discrepancies in this regard. For instance, the prohibition to impose restrictions on free movement on economic grounds as laid down in article 27 of the Citizenship Directive is not explicitly transposed to the Finnish Aliens Act. Furthermore, the form of removal from Finland is dependent on whether the person concerned has registered her right of residence or not. In the former case the form of removal is deportation whereas in the latter refusal of entry, regardless of for how long the individual has *de facto* resided in Finland and whether or not she meets the requirements for the right of residence. The formal procedural safeguards are stronger in the context of deportation than in the context of refusal of entry.
- * Job-seekers coming to Finland from the other member states may encounter practical problems because they do not, as the main rule, get a Finnish identity number. For instance, banks often require a Finnish identity number in order to open an account.
- * Although no judicial decisions on this issue were found, the discrepancy between the residence based and work based criteria for social security coverage seem to create some problems. There have, for instance, been incidents where workers insured as workers within the meaning of Regulation 1408/71-883/04 and therefore entitled to claim bene-

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fits in Finland, but who work in Finland for such a short period that they do not meet the criteria for residence based social security coverage, have faced practical difficulties when trying to get medical care from the public health care system, although they would be entitled to that.

- * The teams playing in the Finnish Basket Ball League and in the Finnish Volley Ball League continued to limit the number of foreign players in the playing line-up. EU players were included in the foreign players' quotas.

Chapter I: The worker: Entry, residence, departure and remedies

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

No significant developments were identified in this regard in 2010-2011.

The national provisions transposing the relevant articles of the Citizenship Directive on EU citizens' and their family members' entry to, residence in, and departure from the country are contained in Chapter 10 of the Finnish Aliens Act (*Ulkomaalaislaki* 301/2004) as amended by the Act Amending the Aliens Act 360/2007.¹

Article 7(1 a) of the Citizenship Directive is transposed to the Finnish legislation through section 158a (1)(1) of the Aliens Act.

Section 158a

The right to reside for longer than three months

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

- 1) she is engaged in an economic activity as a paid employee or a self-employed person;

The Government Bill 205/2006 concerning transposition of the Citizenship Directive² clarifies that it must be presumed that workers and self-employed persons earn their living from their economic activities. The authorities are not allowed to require any proof of the sufficiency of the worker's income. It is, furthermore, reminded in the Bill that pursuant to article 14.4 of the Citizenship Directive, an employee, a self-employed person, or a jobseeker cannot be removed from the country even if she would constitute a burden on the Finnish social assistance system.

The Government Bill 205/2006 states that when applying section 158a of the Aliens Act, the crucial question is whether the person concerned can be regarded as a worker. The Bill clarifies that the individual's employment has to be real and not merely ostensible. Furthermore, the employee must get remuneration for her work. The work can be part-time or low-paid. Its purpose must not, however, be to circumvent immigration legislation. The Bill does not clarify what is meant by circumvention of immigration legislation in this context, and there are no administrative guidelines or judicial practice concerning this issue. The Bill merely refers to case 139/85 *R. H. Kempf vs. Staatssecretaris van Justitie*. It is further stressed in the Bill that an individual who asks for registration of her right of residence must establish proof of her to be noted that the Aliens Act defines the fact that the EU citizen does not constitute a danger employment before her right of residence can be registered.

It is to public order or security as a precondition for her entry and residence. Pursuant to section 156 of the Aliens Act,

1 Unofficial English translation of the Aliens Act can be found at <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf>.

2 Hallituksen esitys ulkomaalaislain muuttamisesta HE 205/2006 vp. The explanatory texts contained in Government Bills are not legally binding. They do, however, offer guidance in interpreting the legislation and this guidance is commonly followed in practice both by administrative authorities and the courts of law.

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Section 156 (360/2007)

Public order and security

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

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

Section 159

Registration of a Union citizen's right of residence

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

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

The Government Bill 205/2006 clarifies that a Union citizen has to register her right of residence within three months of her entry, and that the registration can be done at any point of time during these three months. A precondition for the registration is that the residence lasts at least for three months. This means that the right of residence cannot be registered if the individual intends to reside in Finland for a shorter period than three months. After registration of the right of residence, the person concerned is enrolled in the population data system of her home municipality and entered into the Finnish residence based social security system provided that she meets the preconditions for that.

Section 159a of the Aliens Act transposes article 8 of the Citizenship Directive and defines what information and proof an EU citizen has to submit when she asks for registration of her right of residence.

Section 159a

Proof required for the registration of the right of residence

When seeking to obtain the certificate for registration, the applicant has to present a valid identity card or a passport and:

- 1) if the applicant is an employee, a confirmation of engagement from the employer or a certificate of employment;
 - 2) if the applicant is a self-employed person, proof concerning the self-employed activity;
- [...]

The Government Bill 205/2006 emphasises that the authorities are not allowed to request the applicant to submit any other documents, certificates, or other proof than those mentioned in this provision.

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

Section 160

Retaining the status as worker or self-employed person

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

- 1) is temporarily unable to work as a result of an illness or accident;
- 2) is, after having been employed for more than one year, in involuntary unemployment and is registered as a job-seeker with the employment office;

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- 3) is, after completing a fixed-term employment contract for duration shorter than one year, or after having become involuntarily unemployed during the first twelve months of the employment, in involuntary unemployment and is registered as a job-seeker with the employment office; in this case she retains the status as a worker for six months; or
- 4) starts vocational training that is related to her previous employment, or she is in involuntary unemployment and starts other vocational training.

Section 168a of the Aliens Act transposes article 14 (4) of the Citizenship Directive.

Section 168a

Removing from the country a worker or a person seeking employment

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

It is thus stated in the Aliens Act that workers and jobseekers may be removed from Finland only on grounds of public order or security or public health. It is, though, noteworthy that the prohibition to impose restrictions on free movement on economic grounds as laid down in article 27 of the Citizenship Directive is not explicitly transposed to the Finnish Aliens Act. In this respect there is thus a clear discrepancy between the Act and the Directive.

Section 163 of the Act lays down conditions for the right to permanent residence of individuals who are no longer involved in economic activities. This provision transposes article 17 of the Citizenship Directive.

Section 163

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

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

- 1) has, upon termination of her employment, reached the age entitling her to old-age pension and worked or been engaged in self-employed activity in Finland for at least the 12 months immediately preceding the termination of her employment, and has resided in Finland continuously for at least three years; if a self-employed person is not entitled to old age pension, the age condition shall be deemed to have been met once the person concerned has reached the age of 60.
- 2) has terminated employment on grounds of permanent incapacity to work after living in Finland continuously for two years; or
- 3) after working and living in Finland continuously for three years, has moved to work in another EU Member State while still living in Finland and regularly returning to Finland daily or at least once a week.

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

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

The requirements concerning the length of residence and employment laid down in subsection 1(1), or the length of residence in subsection 1(2) do not apply if the worker's or self-employed person's

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

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

If an employee or a self-employed person who has not yet acquired the right to permanent residence under subsection 1 or 2 dies while still engaged in working life, her family members residing with her in Finland have the right to stay in Finland permanently if:

- 1) the employee or self-employed person had lived in Finland continuously for two years before her death;
- 2) the employee's or self-employed person's death was due to an employment accident or occupational disease; or
- 3) the spouse of the deceased employee or self-employed person has lost her Finnish citizenship upon marriage to the employee or self-employed person.

As regards article 24(2) of the Citizenship Directive, it is to be noted that workers, self-employed persons, and persons who retain such status, as well as members of their families, are entitled to social assistance since their entry to Finland. Such persons are also entitled to maintenance aid for students provided that they meet the preconditions for that.

2. SITUATION OF JOBSEEKERS

No significant developments were identified in this regard in 2010-2011.

Under section 158(3) of the Aliens Act, an EU citizen who looks for employment in Finland is entitled to reside in the country for a reasonable time beyond three months without registering her right of residence. The precondition for this is that the individual continuously looks for employment and has real chances of getting employed. Neither the Aliens Act, nor the Government Bill concerning the transposition of the Citizenship Directive, nor any administrative guidelines, however, define what is to be regarded as reasonable time in this regard. Neither does the legislation, its drafting history, or any administrative guidelines clarify under which conditions an individual shall be regarded to have a genuine chance of getting employment in Finland. No published judicial decisions clarifying these issues were found.

According to sections 167, 168, and 168a of the Aliens Act, a jobseeker can be removed from Finland only if she constitutes jeopardy to public order or security or to public health, but not on any other grounds. Hence, a job-seeker may not be removed from Finland even though she would constitute a burden on the Finnish social security system.

The services offered by employment offices may be divided in three categories. Firstly, certain services, such as information services, are provided to everyone asking for them. In order to get such services, the individual concerned does not even have to register herself as a job-seeker at the employment office. Secondly, certain employment services are provided only to persons who register as a job-seeker at the employment office. A job-seeker who comes to Finland from another member state may register at the employment office and hence gain access to this type of services. Registering one's right of residence is not a precondition for registering oneself as a job-seeker at the employment office. Thirdly, certain employment services, such as labour market training, are under the main rule made conditional upon having a home municipality in Finland, as well as on registering oneself as a job-seeker at the employment office. An EU citizen gets home municipality in Finland after she has registered her right of residence. It is to be noted that job-seekers may not register their

right of residence on the basis of job-seeking. Hence, if the job-seeker does not meet the preconditions for registering her right of residence e.g. as an economically inactive person, she shall, as the main rule, not get a home municipality in Finland and therefore not gain access to employment services that are provided only to residents.

Job-seekers coming to Finland from the other member states may encounter various practical problems because they don't always get a Finnish identity number. Under the main rule, an identity number is given only to persons who reside in Finland in a non-temporary manner, for instance, as workers or students, who have registered their right of residence, and who have either temporary or permanent home municipality in Finland. The legislation does, however, not preclude granting of an identity number exceptionally also in other cases, provided that there are special grounds for that.³ Hence, it would be possible to give a Finnish identity number also to a job-seeker coming from another EU state provided that the person concerned is able to state weighty grounds for why this would be necessary. The practices of the registration authorities, however, vary in this regard.

If a job-seeker does not have a Finnish identity number, she may encounter practical problems, for instance, when trying to open a bank account. The practices of the banks seem, though, to vary in this regard. Some banks accept also other proof of the customer's identity than the Finnish identity number while other banks require a Finnish identity number in order to open an account. An identity number is required also e.g. in order to lend books from the public libraries, to get consumption credits, to buy things on hire-purchase, as well as to get some other comparable public and private services.

3. OTHER ISSUES OF CONCERN

No significant developments were identified in this regard in 2010-2011.

There seem to be some discrepancies between the Finnish legislation and the Citizenship Directive as regards the restrictions on freedom of movement. Section 167 of the Aliens Act lays down grounds for refusing EU citizens' and their family members' entry to Finland and section 168 for deporting them. Refusal of entry may take place either at the frontier when the person is entering Finland, or after she has *de facto* entered the country, but before her right of residence has been registered or she has been issued with a residence card. Refusal of entry may, thus, take place months after the EU citizen or her family member has entered Finland and settled in the country regardless of whether she meets the preconditions for the right of residence. Once an individual has registered her right of residence or obtained a residence card, she shall, under the Aliens Act, be removed from Finland through deportation. The form of removal is thus dependent on the registration of the right of residence or issuance of a residence card, and not on the existence of the right of residence as such.

The legal protection granted to individuals is stronger in the context of deportation than in the context of refusal of entry. For instance, section 168b of the Aliens Act that transposes article 28 of the Citizenship Directive is formally applicable when taking decisions on deportation but not on refusal of entry. Section 168b lays down an explicit obligation for the authorities to carry out an overall consideration and to take account of factors, such as the dura-

3 Laki väestötietojärjestelmästä ja Väestörekisterikeskuksen varmennepalveluista 661/2009, 9 § (Act on population registration system and the certification services offered by the Population Register Centre).

tion of the EU citizen's or her family member's residence in Finland, her age, state of health, and family and economic situation, and how well she has become integrated into Finnish society and culture. There is no express obligation under the Aliens Act to perform this same overall consideration when removing from Finland a person who has not registered her right of residence or obtained residence card, no matter for how long she has actually resided in the country. Section 5 of the Aliens Act, pursuant to which the application of the Aliens Act may not restrict foreigners' rights any more than necessary, is, though, applicable also in cases of refusal of entry. This provision doesn't, however, detail the elements that have to be taken into account when assessing the proportionality of the measure to be taken.

It is also noteworthy that a deportation decision can be enforced only after it has become final, whereas a decision on refusal of entry may, under circumstances defined in section 172 of the Aliens Act, be enforced even before that.⁴

According to section 167(4) of the Aliens Act, a person who has been excluded from Finland on grounds of public order or public security may be prevented from entering Finland on the grounds of this exclusion decision; no matter for how long time ago the exclusion decision was given, there is no obligation to re-examine the circumstances and to assess whether the individual continues to pose a real and serious risk to the fundamental interests of the society. The person concerned may apply for lifting of the exclusion decision. Lodging of such application does, however, not prevent the enforcement of the decision on refusal of entry. Furthermore, the Aliens Act does not establish a procedure for applying for lifting of exclusion decisions and taking decisions on such applications.

4. FREE MOVEMENT OF ROMA WORKERS

The treatment of members of the Roma minority originating from Bulgaria and Romania has raised some debate in Finland over the past couple of years. Initiatives have been taken to prohibit camping in areas not designed for that, and begging in public places. These initiatives have, however, been criticized for being targeted at a particular ethnic group, namely Roma, and therefore discriminatory. No decisions on this issue have yet been taken or legislation given. The Government Bill to the Parliament proposing legislative changes that would have offered to the authorities more efficient tools to interfere in camping and begging expired when the former Parliament dissolved before the parliamentary elections. No new legislative proposals regarding this issue have been given.

The authorities seem to be rather well aware of the rights of Bulgarian and Romanian nationals as EU citizens entitled to free of movement. For instance, no large scale expulsion measures have been taken.

⁴ According to section 172(1) of the Aliens Act: 'A decision on refusal of entry may be enforced immediately regardless of any appeal unless otherwise ordered by an administrative court if the person is refused entry under section 167(1) or 169(1), and if the matter is justifiably urgent.' Under section 167(1) of the Aliens Act, EU citizens and their family members may be refused entry into Finland if they don't meet the preconditions for entry, and under section 169(1) if they are considered a danger to public order or security or public health.

Chapter II: Members of the family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

Section 154 of the Aliens Act defines who is to be regarded as EU citizens' family members. This same definition of family is applied in cases involving Finnish citizens who have used their right to free movement by moving to another member state and thereafter returning to Finland. Under section 154 of the Aliens Act:

Section 154 (360/2007)

EU citizens' family members

The following persons are considered family members of an EU citizen:

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

If the EU citizen living in Finland is a minor, his or her guardian is considered a family member.

In the application of this Chapter, persons living continuously in a marriage-like relationship in the same household regardless of their sex are comparable to a married couple if they have lived in the same household for at least two years. In the application of this Chapter, the relationship between them is comparable to a marriage. However, the requirement of living together for at least two years does not apply if the persons living in the same household have a child in their joint custody or if there are other weighty reasons for it.

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

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

According to section 153(3) of the Aliens Act as amended by the Act 432/2010, the provisions on free movement apply to EU citizens who move to Finland or reside in Finland, and to their family members who accompany them or join them later. Under section 153(4) of the Act, the provisions on free movement apply equally to the family members of Finnish citizens who have used their right to free movement. The scope of the provisions on free movement was previously limited only to those family members who had accompanied their EU citizen family member or joined her by moving to Finland from another member state where they had resided together lawfully and in a non-temporary manner. The requirement of previous lawful residence was, however, abolished from the Aliens Act as a reaction to the *Metock* judgment by the Act 432/2010, which entered into force on the 1st of July 2010.

As regards the treatment of third country national family members of Finnish citizens, the Government Bill 77/2009 states that it is in accordance with the purpose of the Citizenship Directive to apply the rules on free movement only when the family relationship is connected with the Finnish citizen's residence in another member state. Therefore, the rules on free movement are applicable only if the third country national family member had lived with the Finnish citizen in the state where the Finnish citizen practiced her freedom of

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movement, or if the persons had at least met each other, or their relationship had otherwise started, while the Finnish citizen resided in the other member state although, for instance, the marriage was concluded only after returning to Finland. The Bill further stresses that the Directive shall not be applied in cases involving family members who have had no connections whatsoever with each other before the Finnish citizen's returning to Finland. The Bill clarifies that Finnish citizens who have at some point used their right to freedom of movement and resided on this ground in another member state would therefore not gain a continuous and lifelong right to be united with their family members with whom their relationship starts after returning to and settling in Finland. The Bill does not specify any further requirements for the intra-community link that is required in order for the case to fall within the ambit of free movement. It is, for instance, not specified under which circumstances family members of economically non-active Finnish citizens who have resided in another member state would come within the scope of the Directive. It is unclear for how long the residence in the other member state should have lasted in such cases in order to be regarded as a genuine intra-community link.

Section 37 of the Aliens Act lays down a definition of family that is applied in cases that do not fall within the ambit of free movement of EU citizens and their family members. Under this provision,

When applying this Act, the spouse of a person residing in Finland, and unmarried children under 18 years of age over whom the person residing in Finland or his or her spouse had guardianship are considered family members. If the person residing in Finland is a minor, his or her guardian is considered a family member. A person of the same sex in a nationally registered partnership is also considered a family member.

Persons living continuously in a marriage-like relationship within the same household regardless of their sex are comparable to a married couple. The requirement is that they have lived together for at least two years. This is not required if the persons have a child in their joint custody or if there is some other weighty reason for it.

This notion of family is thus applied *inter alia* in cases involving EU citizens who do not meet the preconditions for free movement (e.g. the income requirement in case of economically inactive individuals), as well as in cases involving Finnish citizens where there is no intra-community linkage and the situation does therefore not fall within the ambit of free movement. Previously, when the requirement of previous lawful residence was still applied in the context of free movement, this notion of family was applied also in cases where the family member of an EU citizen (or a Finnish citizen having used the right to free movement) did not meet this requirement. The general notion of family is narrower than that applied in the context of free movement. The former, for instance, covers only unmarried children up to 18 years of age, whereas the latter covers children up to 21 years of age.

Section 50 of the Aliens Act concerns issuing of residence permits to family members of Finnish citizens. Under this provision

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

Relatives other than family members of a Finnish citizen living in Finland are issued with a continuous residence permit if refusing a residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the

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Finnish citizen living in Finland. Such other relatives must remain abroad while the application is processed.

If a Finnish citizen has used the right of movement laid down in the Directive 2004/38/EC of the European Parliament and of the Council amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (*Free Movement Directive*), by moving to another Member State or by residing in another Member State and the family member has accompanied or joined him or her, provisions in Chapter 10 apply to the entry and residence of the family member.

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

Hence, in cases where there is no intra-community linkage and where the Citizenship Directive is therefore not applicable, the family members of Finnish citizens have to apply for a residence permit. The residence permit procedure is more complicated than the procedure for registration of the right of residence or applying for an EU citizen's family member's residence card in that in the residence permit procedure the grounds for granting a permit are examined more thoroughly than in the other two procedures that are summary. It should, though, be noted that once an individual meets the requirements for obtaining a family member's residence permit the authorities are under obligation to issue the permit. No discretion is allowed in this regard. Furthermore, no income-requirement is applied in cases involving Finnish citizen's family members.

Under the main rule the first family member's residence permit is issued with the validity period of only one year. Thereafter the permit is renewable upon application. A family member's residence card is valid for five years. It is also to be noted that persons who base their right of residence on the Citizenship Directive enjoy enhanced protection against expulsion compared with those residing in Finland by virtue of a residence permit. Furthermore, only those third country national family members of Finnish citizens (or EU nationals) who come within the scope of free movement of EU citizens are given grounds for negative decisions on their visa applications and are, in case of a negative decision, allowed to appeal to an administrative court. In other situations the authorities are under no obligation to give grounds for negative visa decisions and such decisions are not subject to appeal.

Even despite of the differences between the treatment of those family members of Finnish citizens who come within the scope of free movement and those remaining outside of it, the issue of reverse discrimination has not raised any considerable debate in Finland.

2. ENTRY AND RESIDENCE RIGHTS

As was observed above, section 153(3) of the Aliens Act, which laid down the requirement of previous lawful residence in another EU member state as a precondition for an EU citizen's family member's residence in Finland, was amended so that this requirement is no longer applied. The amended wording of 153(3) of the Aliens Act, which entered into force on 1 July 2010, now reflects the wording of the Citizenship Directive. Under the amended provision:

Chapter 10 [of the Aliens Act that contains provisions on free movement] shall be applied to an EU citizen who moves to Finland or resides in Finland, as well as to family members of such person, who accompany their EU citizen family member or join her later.

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The Government Bill for amending the Aliens Act (HE 77/2009 vp) clarifies that under the amended provision, the provisions on free movement apply to the family members of EU citizens when the family enters Finland from another member state, as well as in cases where the family members enter Finland directly from a third country and where the family relationship is established after the persons concerned had already arrived in Finland. Section 158 of the Aliens Act concerns EU citizens' and their family members' short-term residence in Finland. Pursuant to this provision,

Section 158 (360/2007)

EU citizens' short-term residence

(1) EU citizens may reside in Finland without registering their right of residence for a maximum of three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

(2) The provisions of subsection 1 also apply to family members of EU citizens who are not EU citizens and who hold a valid passport.

Section 158a of the Aliens Act concerns the right to reside in Finland for more than three months. Pursuant to this provision,

Section 158a (432/2010)

Right to reside in the country for more than three months

(1) EU citizens may reside in Finland for more than three months if they:

- 1) are engaged in economic activity as paid employees or self-employed persons;
- 2) have for themselves and their family members sufficient funds and, if necessary, health insurance so that, during their time of residence, they do not become a burden on Finland's social security system by resorting repeatedly to social assistance provided in the Act on Social Assistance or other comparable benefits or in some other similar manner;
- 3) are enrolled at an accredited educational institution in Finland for the principal purpose of following a course of study and they have, for themselves and their family members, sufficient funds for their residence and, if necessary, health insurance, so that, during their time of residence, they do not become a burden on Finland's social security system by resorting repeatedly to social assistance provided in the Act on Social Assistance or other comparable benefits or in some other similar manner;
- 4) are family members of an EU citizen meeting the requirements laid down in subsection 1(1)-(3).

(2) The right of residence laid down in subsection 1 above also applies to family members of an EU citizen who are not themselves EU citizens, if the EU citizen meets the requirements laid down in subsection 1(1)-(3).

Section 161 of the Aliens Act concerns residence cards of third country national family members.

Section 161 (360/2007)

Residence card

(1) Family members of EU citizens who are not EU citizens are, on application, issued with a residence card of a family member of an EU citizen, if the sponsor meets the requirements laid down in section 157 or 158a.

(2) A residence card is issued to family members planning to stay in Finland for more than three months.

Section 161a of the Aliens Act concerns the application of residence cards. Pursuant to this provision,

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Section 161a (360/2007)

Applying for a residence card

- (1) The application for a residence card of a family member of an EU citizen must be filed within three months of the date of entry.
- (2) The following must be presented in connection with the application for a residence card:
 - 1) a valid passport;
 - 2) a document attesting to the existence of a marriage or a registered partnership;
 - 3) the registration certificate of the EU citizen whom the applicant is accompanying or joining;
 - 4) in cases referred to in section 154(1)(2) or 154(1)(3), a document attesting to a family relationship;
 - 5) in cases referred to in section 154(3), proof of existence of a durable relationship with the EU citizen in question;
 - 6) in cases referred to in section 154(4), a document issued by an authority in the country of origin or the country of departure certifying that the other family members are dependants of an EU citizen or members of the same household or proof of the existence of serious health grounds which absolutely require the personal care of the family member by the EU citizen.

Section 161b of the Aliens Act concerns the issuance of residence cards. Pursuant to this provision,

Section 161b (360/2007)

Issuing a residence card

The residence card of a family member of an EU citizen must be issued within six months of the submission of the application. A certificate of application for the residence card must be issued immediately.

Section 161c of the Act concerns validity of residence cards.

Section 161c (360/2007)

Validity of the residence card

- (1) The residence card for a family member of an EU citizen is issued for five years or, if the envisaged period of residence is less than five years, for the envisaged period of residence.
- (2) When considering the validity of the residence card, consideration is not given to temporary absences not exceeding six months a year, or to longer absences to undertake compulsory military service or to one absence of a maximum of twelve consecutive months for important reasons such as pregnancy or childbirth, serious illness, study or vocational training, or a posting in another EU Member State or a third country.

Section 161d of the Act lays down the preconditions for retaining the right of residence by family members in the event of death or departure from Finland.

Section 161d (360/2007)

Retaining the right of residence by family members in the event of death or departure from Finland

- (1) An EU citizen's death or departure from the country does not affect the right of residence of his or her family members who are EU citizens. However, before being granted a right of permanent residence, the family member must meet the requirements laid down in section 158a(1).
- (2) EU citizens' family members who are not EU citizens and who have resided in Finland as family members for at least one year before the death of the EU citizen do not lose their right of residence at the death of the EU citizen. Before family members are granted the right of permanent residence, they are subject to the requirement that they are employees or self-employed, or that they have, for themselves and their family members, sufficient funds so that they or their family members do not become a burden on the social assistance system of Finland, and comprehensive health insurance coverage in Finland, or that they are members of the family, already constituted in Finland, of an EU citizen meeting these requirements. Such family members retain their right of residence solely on personal grounds.

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(3) When an EU citizen dies or leaves the country, his or her children or the parent who has actual custody of the children do not, irrespective of nationality, lose their right of residence before the children have completed their studies, if the children reside in Finland and are enrolled at an educational institution for the purpose of studying there.

Section 161f lays down the preconditions for retaining the right of residence in the event of divorce.

Section 161e (360/2007)

Retaining the right of residence of family members in the event of divorce

(1) A marriage of an EU citizen ending in divorce does not affect the right of residence of a family member of the EU citizen, if the family member is an EU citizen. However, before being granted the right of permanent residence, the family member must meet the requirements laid down in section 158a(1).

(2) Family members of an EU citizen who themselves are not EU citizens do not lose their right of residence in the event of divorce if:

- 1) the marriage has lasted at least three years, including one year in Finland;
- 2) by agreement between the spouses or a court decision, the spouse who is not an EU citizen has custody of the children of the EU citizen;
- 3) it is warranted by particularly difficult circumstances such as violence in the marriage; or
- 4) by agreement between the spouses or by a court decision, the spouse who is not an EU citizen has a right of access to a minor, and the court has ruled that the access must be in Finland.

(3) Before family members referred to in subsection 2 who are not EU citizens are granted the right of permanent residence, they are subject to the requirement that they are employees or self-employed, or that they have, for themselves and their family members, sufficient funds so that they or their family members do not become a burden on the social assistance system of Finland, and comprehensive health insurance coverage in Finland, or that they are members of the family, already constituted in Finland, of an EU citizen meeting these requirements. Such family members retain their right of residence solely on personal grounds.

Section 161f of the Aliens Act concerns retention of the right of residence.

Section 161f (360/2007)

Retaining the right of residence

(1) EU citizens and their family members have the right to short-time residence laid down in section 158 if they do not, by resorting repeatedly to social assistance provided in the Act on Social Assistance or other comparable benefits or in other similar manner, become an unreasonable burden on Finland's social security system during their residence.

(2) EU citizens and their family members have the right to stay in Finland for more than three months, as laid down in section 158a, 161d or 161e, if they meet the requirements laid down in these sections.

(3) In specific cases, if there are reasonable grounds to suspect that an EU citizen or his or her family member does not meet the requirements laid down in section 158a, 161d or 161e, the fulfillment of the requirements may be looked into.

Section 161g lays down the preconditions for permanent residence.

Section 161g (360/2007)

Right of permanent residence

(1) EU citizens who have resided legally in Finland for a continuous period of five years have the right to permanent residence. The right is not subject to the requirements for short-term residence or residence for more than three months.

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(2) The provisions in subsection 1 also apply to family members of an EU citizen who are not EU citizens and who have legally resided in Finland with the EU citizen for a continuous period of five years.

(3) Continuity of residence is not affected by temporary absences not exceeding six months a year, or longer absences to undertake compulsory military service, or one absence of a maximum of twelve consecutive months for important reasons such as pregnancy or childbirth, serious illness, study or vocational training, or a posting in another EU Member State or a third country.

Section 161h concerns the issuance of a document certifying the right of permanent residence and section 162 a permanent residence card.

Section 161h (360/2007)

Document certifying the right of permanent residence of EU citizens

(1) EU citizens who have the right to permanent residence are, on application, issued with a document certifying permanent residence.

(2) The document must be issued as soon as possible after the period of residence has been verified.

Section 162 (360/2007)

Permanent residence card

(1) Family members of an EU citizen who are not EU citizens and who have the right to permanent residence are, on application, issued with a permanent residence card within six months of filing the application.

(2) The application for a permanent residence card must be filed before the expiry of the validity of the residence card.

(3) Interruptions to residence not exceeding a maximum of two consecutive years do not affect the validity of the permanent residence card.

3. IMPLICATIONS OF THE *METOCK* JUDGMENT

Section 153 of the Finnish Aliens Act was amended as a reaction to the *Metock* judgment so that the requirement of previous lawful residence is no longer applied. The amended provision entered into force on 1 July 2010.

According to information received from the Legal Department of the Ministry for Foreign Affairs, the visa authorities have since the 5th of April 2010 applied Chapter III of the Visa Handbook 2010, which is taken to reflect the *Metock* judgment correctly. Hence, the requirement of previous lawful residence is no longer applied as a precondition for being treated as an EU citizen's family member in the context of visa procedure.

4. ABUSE OF RIGHTS, *I.E* MARRIAGES OF CONVENIENCES AND FRAUD

Section 172a of the Aliens Act is applicable in case of marriage of convenience. Pursuant to this provision, any rights conferred in Chapter 10 of the Aliens Act containing the rules on free movement of EU citizens may be

refused, terminated or withdrawn, if they have been obtained by knowingly providing false information about the applicant's identity or other relevant facts, or by concealing such information, or by other abuse of rights, such as marriages of convenience for the purpose of obtaining rights under this Chapter.

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When applying this provision in practice, the police follows the instructions laid down in the Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States COM(2009) 313 final.

5. ACCESS TO WORK

According to section 164 of the Aliens Act, persons whose right of residence is based on chapter 10 of the Aliens Act laying down the conditions for free movement of EU citizens and their family members have unrestricted right to gainful employment and self-employment without a work permit. Furthermore, EU citizens' family members whose right of residence is based on chapter 10 of the Aliens Act have access to unemployment services.

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

Family members of jobseekers are entitled to free movement provided that they and the sponsor meet the general preconditions for free movement. As the right of job seekers' family members' residence is based on Chapter 10 of the Aliens Act and on EU free movement legislation, in principle they also have access to employment. No specific information and *e.g.* case law touching upon this issue were found.

Chapter III: Access to employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1 Equal treatment in access to employment (e.g. assistance of employment agencies).

No significant developments were noted in 2010-2011 regarding equal treatment in access to employment.

Equal treatment of EU citizens as regards access to employment is guaranteed by general legislation on equality and non-discrimination.

Section 2 of chapter 2 of the Act on Employment Contracts lays down prohibition of discrimination and an obligation for equal treatment. An employer who breaches this obligation may be ordered to pay to the victim compensation. The amount of the compensation depends on the severity of the infringement but it may not exceed 15 000e.

Act on Employment Contracts (Työsopimuslaki 55/2001), Chapter 2, 2 §
Non-discrimination and Equality of Treatment

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

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

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

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

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

The Criminal Code criminalises discrimination at work. The punishment for this crime is fine or prison sentence for maximum duration of six months.

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

Employer or her representative, who when announcing a vacant job, hiring new workers, or during the employment without a weighty acceptable reason places an applicant or an employee in a worse position than others on the ground of her

1) race, national or ethnic origin, citizenship, colour, language, sex, age, family relationship, sexual orientation, heredity, disability, or state of health; or

2) religion, social opinion, political activities or activities in trade union, or on other comparable ground,

shall be convicted for discrimination at work to fine or prison sentence for a maximum duration of six months.

No judicial practice on the issue of discrimination as regards access to employment was found.

EU citizens and their family members are entitled to public employment services, including assistance of employment agencies and other measures laid down in the Act on the Public Employment Services (Laki julkisesta työvoimapaalvelusta 1295/2002, English text can be found at <http://finlex.fi>) under the same conditions as Finnish nationals.

1.2 Language requirements

No significant developments took place on 2010-2011 regarding language requirements at the private sector.

In general, there are no regulatory language requirements at the private sector. In practice it is, however, rather common to require that employees command Finnish or Swedish and in some cases both. According to a recent survey published by the Confederation of Finnish Industries (Elinkeinoelämän keskusliitto), over the recent years the relative importance of the knowledge of Swedish language has decreased, though, and the importance of other languages such as Russian, German, Spanish and Portuguese increased.⁵

Although it is in practice rather common to require knowledge of one or both of the national languages, there are certain low-skilled and high-skilled jobs where this requirement is not applied. For example, IT-companies, such as Nokia, and some other big companies use as their working language English and therefore don't require command of Finnish from all of their employees.

Studies concerning integration of immigrants from third countries indicate that the lack of knowledge of the national languages is one of the most significant impediments for their access to the Finnish labour market. Due to the weakening of the employment situation, as well as hardening of the general attitudes towards migration, no positive developments are discernible in this regard.

The Occupational Safety and Health Authority screens job announcements. If the Authority comes across requirements concerning particular citizenship or disproportionately high language skills, it may issue to the employer a reprimand. No statistical information on the number of such reprimands is available.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

2.1 Nationality condition for access to positions in the public sector

No significant developments have taken place regarding nationality condition for access to positions in the public sector in the second half of 2010 and the first half of 2011.

Most public posts were opened for persons who do not have Finnish citizenship already in 1989. There are, however, certain exceptions to this main rule.

According to section 25 and 26 of the Finnish Constitution, only a Finnish citizen may be elected as a Member of Parliament. Furthermore, according to section 54 of the Constitu-

⁵ http://www.ek.fi/www/fi/tutkimukset_julkaisut/2010/6_ksa/Tyoelamassa_tarvitaan_yha_useampia_kielia.pdf.

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tion, the President of the Republic shall be a native-born Finnish citizen. According to section 60 of the Constitution, the Ministers shall be Finnish citizens.

Pursuant to subsection 1 of section 125 of the Constitution 'it may be enacted in an Act of Parliament that only Finnish citizens are eligible for appointment to certain public offices or duties'. According to the Committee Report 1997:13 concerning the Finnish Constitution, Finnish citizenship may be required only in exceptional cases. Therefore, under the main rule, the public sector is open also for persons who are not Finnish citizens.

Sub-section 1 of section 7 of the Act on Public Posts (Valtion virkamieslaki 750/1994) contains an exhaustive list of public posts to which Finnish citizenship is required. The Government Proposal to the Parliament for the Act on Public Posts (Hallituksen esitys Eduskunnalle valtion virkamieslaiksi ja laiksi valtion virkaehtosopimuslain muuttamisesta HE 291/1993 vp) notes that the requirements flowing from the EEA Treaty were taken into account when this provision was drafted and that it is in line with them.

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

Only a Finnish citizen may be appointed to the following posts:

- 1) Chancellor of Justice, Deputy Chancellor of Justice, and Chief Secretary, Assistant Chief Secretary and department head at the Office of the Chancellor of Justice;
- 2) post of the Secretary of State, Chief Secretary of the Secretary of State, head of government office, department head of government office, office manager, and other comparable or higher post;
- 3) post at the foreign service;
- 4) post of judge;
- 5) post of head of civil service department excluding rectors of universities;
- 6) post of the head of rescue services and preparedness at district administration;
- 7) post that includes tasks of public prosecutor or distrainer;
- 8) post of police within the meaning of the Act on Police (493/1995);
- 9) post, whose holder is a member of a prison board;
- 10) post at the Ministry of Defence and armed forces as well as Border Guard Detachment;
- 11) post other than police officer at Security Police;
- 12) post at the customs to which appertains right to arrest as well as post at the customs to which appertains duties concerning supervising and securing the territorial integrity of Finland or duties concerning investigation and supervision of crimes;
- 13) posts of the immediate subordinates of the Head of the Finnish Transport Agency and the Finnish Transport Safety Agency.

Hence, the foreign service, the Ministry of Defence and the armed forces, as well as the Border Guard Detachment, are, as sectors, excluded from persons who are not Finnish citizens, whereas in other situations the exclusion is done on the basis of the function in question.

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

The Act on Public Posts 11 §

Public authorities have to treat civil servants equally so that no one is without an acceptable reason treated differently compared with other persons on the grounds of birth, ethnic origin, nationality, sex, sexual orientation, religion, conviction, disability, age, political activities or activities in trade union or other comparable reason. The Act on Equality contains provisions on the definition of discrimination, the prohibition of counter acts, and the rules concerning the burden of proof in cases concerning discrimination.

No information on any practical problems or case law concerning this issue has been found.

2.2 Language requirements

The issue of language requirements for posts at the public sector is regulated through the Language Act (Kielilaki 423/2003) and the Act on Language Proficiency Required from Personnel of Public Authorities (Laki julkisyhteisöjen henkilöstöltä vaadittavasta kielitaidosta 424/2003), in particular sections 6 § and 14 §, and through special legislation. No legislative reforms regarding language requirements for public sector posts took place in 2010 or the first half of 2011.

The requirements concerning language proficiency are rather rigid and they may therefore constitute an impediment for the access of citizens of the other EU States to the Finnish public sector. The requirements concerning linguistic competence are bound to the qualification requirement (for example university degree) and not, for instance, to the tasks in question, which would be a more flexible approach. Furthermore, the requirement for higher posts is a specified level of command of both of the national languages, Finnish and Swedish. For instance, under section 6 of the Act on language proficiency, for public posts for which the qualification requirement is a university degree, the required level of language proficiency in the majority language is excellent oral and written skills and in minority language satisfactory oral and written skills.

The means by which an applicant for a post can establish that she has reached the required level of language proficiency are national language tests and certificate showing that the person concerned has completed her education and passed a maturity test at a Finnish university in the given language. According to section 14 of the Act on language proficiency, the Board on Language Exams (*Kielitutkintolautakunta*) may upon application issue a certificate on excellent command of Finnish or Swedish language to a person who can show that she has reached the required language proficiency by other means than those specified in the Language Decree. Hence, the Board on Language Exams may upon application decide that, for instance, language studies completed abroad may be equated with official Finnish exams.

The general legislation on languages does not apply to the Evangelic Lutheran Church, and to the Orthodox Church. These institutions have language policies specific for them.

2.3 Recognition of professional experience for access to the public sector

As the main rule, when a position becomes open or is created, each ministry or agency organizes the recruitment of new personnel and determines its own recruitment methods. There are no specific rules on how professional experience and seniority obtained in another EU member state should be taken into account for the purposes of access to the public sector in Finland. From the general prohibition of discrimination follows that relevant professional experience and seniority acquired in another member state should be taken into account in a similar manner as corresponding experience and seniority acquired in Finland. No information was found on how this principle is followed in practice and to what extent professional experience or seniority acquired in another member state are actually recognised in Finland. No judicial practice on this issue was found either.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

No relevant information was found.

Chapter IV: Equality of treatment on the basis of nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Working conditions in the public sector

Over the past ten years there has been going on a reform of the pay-system at the public sector in Finland. The pay-system is specific for each government agency, but common principles guide the system. Pay comprises of a job-specific pay component that is based on the complexity of the job in question, and of an individual pay component that is based on the performance and competence of the employee. The individual pay component can account for a maximum of 50% of the job-specific pay component. Each government agency applies its own appraisal system to evaluate job complexity and personal performance. Job complexity is normally determined on the basis of factors such as the required level of qualification, knowledge, skills, and responsibility. Job performance is generally assessed according to professional competence, degree of productivity, and collaboration skills. Each employee's job complexity and personal job performance is reviewed in annual meetings between the employee and her supervisor.

No specific rules were found on how foreign diplomas as well as professional experience, skills, and seniority acquired in another member state should be taken into account when assessing the individual pay component. In the absence of such special rules, it follows from the principle of non-discrimination that these factors shall be taken into account in a similar manner as corresponding diplomas, experience, and seniority acquired in Finland. No information on how the system functions in practice in cases involving employees from the other EU member states was found. No information on practical problems or relevant judicial decisions concerning this issue was found either.

From the principle of non-discrimination follows also that any diplomas or professional experience acquired in another member state should be taken into account in an equal manner as diplomas and experience acquired in Finland in the context of promotion and other career perspectives. It should be noted that apart from certain exceptions, the Finnish civil service is a post-based system and hence, the employee seeking promotion has to change posts.

All civil servants and employees regardless of their nationality enjoy trade union rights, including the right to join a trade union.

Working conditions in the private sector

Discrimination of EU citizens at the labour market is prohibited through the general legislation on equality and non-discrimination. Employment legislation and collective bargain agreements define the minimum conditions for employment and apply to all workers regardless of their nationality and whether or not they are members of trade unions. Membership of trade unions is open to all workers regardless of their nationality.

No case law concerning discrimination against EU citizens in the Finnish labour market was found. According to the occupational health and safety authorities, incidents of discrim-

ination against citizens of the old member states are rather rare. Situation of citizens of the new member states is in this respect worse. The authorities have come across incidents of discrimination both against workers employed directly by Finnish employers *e.g.* as cleaners, as well as against posted workers working *inter alia* in the house building and shipyard industry. In cases involving posted workers discrimination tends to be more severe than in cases involving directly employed workers. Posted workers are at times paid less than the Finnish employees or even below the minimum wages; the workers are not paid supplementary payments such as overtime pay; the workers are not insured; and no occupational health care is arranged. Incidents of discrimination go to courts only very rarely. This is so either because the police and the prosecutor regard the offences as minor or because the victims of discrimination are not prepared to claim their rights.

2. SOCIAL AND TAX ADVANTAGES

2.1 *General situation as laid down in Art. 7 (2) Regulation 1612/68*

Prohibition of discrimination on the basis of nationality is guaranteed by means of general legislation on non-discrimination and legislation defining the personal scope of various services, benefits and *e.g.* taxation. The personal scope of such legislation is intended to be formulated so that EU workers are entitled to various benefits and services on equal grounds with Finnish citizens. The legislation does not contain an explicit rule prohibiting discrimination of EU citizens in these sectors.

The Regulation 1612/68 is taken to cover all social services such as children's day care, public schools, as well as services for aged persons. Such services have, therefore, to be offered without discrimination to EU workers working in Finland as well as to such persons' family members.

As regards taxation, if the employment of a foreign worker who is employed by a Finnish employer lasts for a maximum of six months, the employer collects tax at the source on salary. The amount of this tax is 35% of the salary. Before counting and collecting the tax, the employer makes a reduction of 510e/month or, if the employment lasts for shorter than one month, 17e/day. Besides tax, the employer withholds also employee pension insurance payments, accident insurance payments and certain other payments that amount to approximately 7% of the salary. If the pay received from Finland constitutes 75% or more of the total annual gross income of the person concerned she can claim a progressive taxation instead of the 35% tax. If the employment lasts for shorter than six months but the employer is not Finnish, the tax is not paid to Finland but instead to the country of origin.

If the employment in Finland lasts for longer than six months, the employee will pay tax on the wages in Finland under the same conditions as Finnish tax-payers. In this case it does not make a difference whether the employer is Finnish or foreign. Besides tax, the employer will also withhold insurance and social security payments that amount to approximately 7% of the pay. Such payments are, however, not withheld from the salary of posted workers.

The Finnish income taxes on wages are the progressively figured state tax, the municipal tax, and the church tax for the members of the national churches. The employee is entitled to claim tax deductions for work-related costs and for payments of interest on a loan that she has taken to finance her permanent owner-occupied home. This applies also to home that is located abroad. Premiums for obligatory pension and unemployment insurance are deducti-

ble. Subject to certain restrictions, it is also possible to deduct voluntary pension insurance contributions paid in another EU state.

2.1 Specific issue: the situation of jobseekers

Pursuant to section 14 of the Act on Social Assistance (laki toimeentulotuesta 1412/1997), regardless of the individual's legal status, everyone staying in Finland either temporarily or permanently is entitled to social assistance if she has acute need for that. Social assistance is a last resort form of income security. The municipalities pay this means-tested assistance if the person concerned is not able to cover her acute expenses by other means. Hence, also job-seekers coming from the other EU states who need financial assistance to cover their most basic needs, shall be granted this form of assistance.

An EU citizen job-seeker who has taken a degree in Finland and who can be regarded to have links with the Finnish labour market may claim for labour market subsidy the purpose of which is to support the person concerned while she is trying to find employment.

Chapter V: Other obstacles to free movement of workers

The application of the new Regulations 883/2004 and 987/2009 on the co-ordination of the social security schemes of the EU member states is anticipated to raise issues of interpretation *inter alia* in as it concerns the determination of the applicable legislation in cases where an individual works simultaneously in two member states.

Chapter VI: Specific Issues

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES)

It is estimated that the number of frontier workers either living or working in Finland is rather low. The question of frontier workers actualises in Finland mainly in the northern parts of the country at the frontier between Finland and Sweden and Finland and Norway, and in the southern part between Finland and Estonia.

Free movement of labour within the area of the Nordic countries, including the treatment of frontier workers, is based on a web of treaties concluded among the states concerned. Special arrangements apply to the treatment of frontier workers regarding social security and unemployment issues, pensions, and taxation. The purpose of these arrangements is to allocate the responsibility among the states concerned and to avoid dual taxation and other such problems and hurdles. No information was found on any practical problems in this field or case law concerning the arrangements.

As regards frontier workers from other than the Nordic member states, no information was found on any specific framework for their treatment.

C-212/05 Hartmann

According to information received from the Finnish Social Insurance Institute, circumstances like that in *Hartmann* case are not likely to actualize in Finland. All employees who are entered into the Finnish employee pension insurance system are regarded as workers within the meaning of the Regulation 1408/71. This applies also to civil servants. Workers entered into the system are entitled to home care allowance provided that they meet the preconditions for that. This allowance is paid regardless of the worker's or her family member's country of residence. See, however, the section on young workers below.

2. SPORTSMEN/SPORTSWOMEN

The teams playing in the Finnish Basket Ball League applied in the season 2010-2011 a 'gentlemen's agreement' that limited the number of foreign players in the playing line-up to three players. All players who were not Finnish citizens were included in the foreign players' quota. The agreement on the quota was concluded among the teams themselves without the Finnish Basketball Association to be formally a party to it. No information was found on whether there were any sanctions for breaching the agreement.

In the Finnish Volley Ball League, the rule on foreign player's quota was included in the written Rules of the League. Under paragraph 15 of the Rules, the playing line-up may include only three foreign players.⁶ EU-players are included in the foreign players' quota and hence, their number is also limited. According to the rules, the foreign player's quota shall be applied also in the season 2011-2012 and possibly also 2012-2013.

In the Finnish Ice-Hockey League foreign players' quotas were applied, but since the season 2009-2010, players from the other EU member states and from the states with which

6 Lentopallon SM-liigan sarjamääräykset sarjakaudelle 2010 – 2011, kohta 15.

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EU has concluded agreements that prohibit discrimination of labour are no longer included in them. Hence, the number of EU-players in the playing line-up is no longer limited. In the Finnish Handball League, too, foreign player's quotas concerning the playing line-up are applied, but EU citizens and other comparable persons are not included in them.

The Competition Regulation adopted by the Football Association of Finland contains rules on quotas for foreign players. According to these rules, the playing line-up of each team may include no more than three foreign players. Players who come from the UEFA-countries or from countries with which EU has concluded agreement prohibiting discrimination of labour are not included in this quota.

3. THE MARITIME SECTOR

The Finnish labour legislation and collective bargain agreements are applicable to all persons working at ships flying under the Finnish flag regardless of the nationality of the persons in question or her trade union membership. No information on incidents of discrimination in this type of cases was found.

4. RESEARCHERS/ARTISTS

The treatment of foreign researchers depends on the circumstances of the case. If a researcher has an employment contract with a Finnish university or research centre, she is treated as a worker within the meaning of EU law and therefore entitled to equal treatment with other workers. If a researcher has an employment contract with a foreign university and works in a Finnish university as a visiting scholar, she is treated as a posted worker. If, however, a researcher has a scholarship and not an employment contract, she is not regarded as a worker. If such researcher's work in Finland continues for longer than four months, and if the amount of her scholarship corresponds to minimum salary, she may be enrolled in the national health insurance scheme. If the researcher's work continues for more than two years, she may be regarded as a permanent resident. In that case she is entitled to full social security coverage. All foreign researchers are entitled to certain public services, such as public day care and schooling for children, under the same conditions as permanent residents regardless of the duration of their stay in Finland.

Research funding allocated by the Academy of Finland, which is the prime funding agency for basic research in Finland, does not apply nationality conditions when allocating research funding. In fact, research projects employing also foreign researchers working in Finland are promoted.

The treatment of artists, too, depends on the circumstances of the case. A freelance artist may enrol in the self-employed person's pension scheme. If she does that, she shall be treated as a self-employed worker.

No information on any incidents of discrimination on the basis of nationality against researchers or artists was found

5. ACCESS TO STUDY GRANTS

According to section 1(3) of chapter 1 of the Act on Study Grants (*Opintotukilaki* 65/1994, <http://www.finlex.fi/fi/laki/ajantasa/1994/19940065?search%5Btype%5D=pika&search%5Bpika%5D=opintotuki%2A#a7.5.2004-345>), citizens of the other EU States and their family members, whose right of residence has been registered or who have been issued with a residence card, and who reside in Finland regularly, are granted study grants for the purpose of studying in Finland. A precondition for this is that the ground for the individual's residence in Finland is other than studying.

Finnish citizens who have had their home municipality in Finland for the minimum of two years during the five years preceding the beginning of the studies, as well as EU citizens and their family members, who have gained the permanent right of residence in Finland, and who have had their home municipality in Finland for the minimum of two years during the five years preceding the beginning of the studies, shall be granted study grants for the purposes of studying outside Finland. The precondition for this is that the individual's residence outside Finland may be regarded as temporary.

6. YOUNG WORKERS

In Finland, there are various types of financial and other measures that seek to stimulate young persons' access to the labour market. These measures include workshops that offer opportunities for practical training; salary support, i.e. a commitment from the employment office to pay a share of a young worker's salary; and labour market training. Some of the measures are run and/or financed by the public sector, whereas others, such as many of the workshops, by private actors such as various NGOs. Many of the projects run by private organisations are funded by the Finland's Slot Machine Association (*Raha-automaattiyhdistys*, RAY) that has an exclusive right in Finland to operate slot machines and casino table games and to run a casino, through which it raises funds to support Finnish health and welfare organisations.

Different criteria apply to the access to different types of stimulations measures. As the main rule, all the measures are open for all young workers regardless of their nationality, provided that they meet the particular criteria for the given measure. For some measures, such as workshops and salary support, *de facto* residence in Finland is often required in practice.

EU citizens who meet the criteria for free movement may register themselves as job-seekers at employment office and thereafter gain access to most of the employment services, including the drafting of a personal employment plan. As part of the personal employment plan, the individual may get from the employment office a commitment for salary support. In order to get a commitment for salary support, an EU citizen is not required to have registered her right of residence in Finland or to have a permanent home municipality in the country. *De facto* residence in Finland is, however, sometimes required in practice, as the persons concerned must be available for the Finnish labour market. The requirement on availability for the Finnish labour market is laid down in Section 8 of Chapter 1 of the Act on Public Employment Services (*Laki julkisesta työvoimapaalvelusta* 1295/2002) as a precondition for

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the application of this Act, as well as in Section 3 of Chapter 2 of the Act on Unemployment Security (Työttömyysturvalaki 1290/2002).⁷ The practices of the regional employment offices seem to be discrepant in how this requirement is applied in practice: some require *de facto* residence in Finland, while others do not. No judicial decisions on this issue were found.

The precondition for some forms of employment services and benefits, such as labour market subsidy, is that the person concerned is enrolled at the Finnish social security system. The precondition for this is *inter alia* that the individual has registered her right of residence and her residence in Finland is regarded as permanent or alternatively, that she is an EU worker or a family member of such person.

⁷ Pursuant to Section 3 of Chapter 2 of the Act on Unemployment Security as a person not available for labour market is meant *inter alia* a person who is not available for labour market because of a trip abroad, military service, or other comparable ground. Apparently certain labour offices regard residence in another country than Finland as an 'other comparable ground'.

Chapter VII: Application of transitional measures

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

No transitional measures are applied in Finland.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

No transitional measures are applied in Finland.

Chapter VIII: Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFUE AND REGULATION 1612/68

There are two alternative set of criteria for defining who is entitled to social security coverage in Finland. The first set of criteria is based on residence. The Act on scope of application of social security legislation (Soveltamisalaki 1573/1993) and the related social security legislation lay down the criteria for assessing who is to be regarded as a resident for the purpose of social security coverage. The second set of criteria is based on work. Those who are to be regarded as workers within the meaning of the Regulation 1408/71 are eligible for social security even though they would not meet the residence-based criteria. Family members of workers are entitled to benefits covered by the Regulation 1408/71 regardless of their country of residence.

A worker or a self-employed person who is insured according to the employee pension scheme has a right to entitlements, such as work pension, unemployment pension, and accident insurance, as well as public health care, home care subsidy, and maintenance allowance since the moment when the employment starts. Regarding certain benefits, the precondition for eligibility is that the employment or the self-employed activity lasts in Finland at least for four months. This ‘four months rule’ covers national health insurance, child care subsidy, accruing credits towards national pension and survivor’s pension, rehabilitation benefits, and unemployment allowances under the Act on unemployment allowances (Työttömyysturvalaki 1290/2002). If the employment is estimated to last at least for four months, the person concerned is entitled to these benefits since the moment when the employment or the self-employed activity starts. If the employment contract is either permanent or temporary but made for longer than two years, the worker is regarded as a permanent resident for the purpose of social security coverage. Those who are regarded as permanent residence are, in addition to the aforementioned benefits, entitled also to *e.g.* special benefits for disabled persons, maternity benefit, and general housing allowance.

The Regulation 1612/68 covers all social services such as children’s day care and public schools as well as services for aged persons. Such services shall be granted without discrimination to workers and their families.

In practice there may be situations where an individual is not entitled to benefits covered by the Regulation 1408/71-883/04 because she is not regarded as a worker within the meaning of the Regulation, for instance due to the short duration of the employment, or even though she would be regarded as a worker, she does not meet the preconditions, such as the ‘four months rule’, for acquiring particular types of benefits. In such cases the question arises whether the person concerned and her family members should still be entitled to the benefits in question on the grounds of the Regulation 1612/98 on the basis that withdrawing the benefits would amount to discrimination. No judicial decisions on this issue were found. It has been argued by the Social Insurance Institute that the judgment in C-213/05 *Geven* can be taken to offer support for the view that if the employment in Finland would be so minor as regards its duration and the weekly working hours that the person in question would not qualify as a worker for the purposes of the Regulation 1408/71-883/04, she is not entitled to claim benefits under Regulation 1612/68, either.

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS

No information on the relationship between rules of the Citizenship Directive and Regulation 1612/68 for frontier workers was found.

3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS

3.1 Integration measures

According to the Act on integration of immigrants and reception of asylum seekers (Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanotosta 493/1999) EU citizens, as well as their family members and other relatives who meet the preconditions laid down in this Act, are entitled to integration measures. Participation to such measures is, though, not compulsory.

Integration measures include *inter alia* personal integration plans. According to the Act on integration, an immigrant who has moved to Finland after the 1st of May 1997, who has been entered in the population data system of her home municipality, and who is eligible for labour market subsidy and/or social assistance, is entitled to a personal integration plan. Sub-sistence during the plan period is secured with integration assistance.

The maximum plan period for a personal integration plan is three years. The plan is drawn up by the immigrant herself, the employment consultant, and where necessary a representative of the municipality where the individual lives. The integration plan includes an agreement on the measures taken to help the immigrant to enter into the Finnish society and working life. Such measures include courses in Finnish or Swedish languages and an assessment on how the qualifications or degrees that the individual has taken outside Finland can be made to meet the requirements set by Finnish working life and what kind of supplementary training may possibly be needed.

The Parliament adopted in 2010 the Act on Promotion of Integration (Laki kotoutumisen edistämistä 1386/2010), which will abolish the Act on Integration. The new Act, which enters into force on 1 September 2011, includes provisions on voluntary integration measures and applies also to EU citizens.

3.2 Immigration policies for third-country nationals and the Union preference principle

Before the Directorate of Immigration may issue a third country national with a residence permit for the purpose of working in Finland, the employment office has to consider whether there already is at the labour market labour that would be suitable for the work in question and, furthermore, to ensure that the issuance of the permit would not prevent a person at the labour market from finding employment. Finnish citizens and citizens of the other member states as well as third country nationals residing lawfully in Finland are regarded as persons already at the labour market and therefore accorded priority over workers coming from third countries.

3.3 Return of nationals to new EU Member States

The return of nationals from Finland to new EU Member States has not taken place in any significant numbers. No particular information on this issue was found.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

Parliamentary Ombudsman and Chancellor of Justice exercise oversight to ensure that public authorities and officials as well as private bodies that perform public functions observe the law and fulfil their statutory duties. Complaints for violation by the Finnish authorities of community law on free movement may be lodged to the Ombudsman and to the Chancellor of Justice.

The Parliamentary Ombudsman gave on 27.8.2010 a decision to a complaint concerning the right to vote in the elections of the European Parliament. The complaint had been lodged by a Finnish citizen who had previously resided in Spain, where she had been enrolled in the register of persons entitled to vote in Spain in the elections of the European Parliament. The complainant had not known that in order to be eligible to vote in Finland after returning there, she should have resigned from the register in Spain. Due to this, the applicant was not entitled to vote in Finland. The Ombudsman held that although the right to vote is a political right of fundamental significance, the applicant's treatment, which was based on law, did not constitute a violation of her rights, even though she had not been able to vote. The Ombudsman, however, instructed the Population Register Centre of Finland to develop methods to more effectively inform individuals' of their rights and measures that they will have to take in order to fully use them.

Ombudsman for Minorities has the task of advancing the status and legal protection of ethnic minorities and foreigners, as well as equality and non-discrimination. The Ombudsman can be contacted in cases involving discrimination on the grounds of nationality and ethnic origin.

Occupational Health and Safety Authority supervises access to employment and working conditions. For this purpose the Authority may, for instance, conduct inspections at working sites. Furthermore, the Authority screens job announcements in order to find out whether any prohibited requirements, such as particular citizenship or disproportionately high language skills, are applied and may issue to the employer a reprimand if such requirements are used. Employees who experience discrimination or other problems pertaining to working conditions may contact the Authority. Normally, however, the first step to be taken in cases involving discrimination or other such problems is to contact the *shop steward or industrial safety delegate* at the place of work, or the *trade union*. It is to be noted that membership in trade union is not restricted to Finnish nationals but open for all workers regardless of their nationality.

5. SEMINARS, REPORTS AND ARTICLES

No information on seminars, reports and articles was found.