

**Council of Europe**  
**Conseil de l'Europe**



Strasbourg, 9 October 1996

CDMG (96) 18

**EUROPEAN COMMITTEE ON MIGRATION  
(CDMG)**

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**Temporary migration for employment and training purposes**

Strasbourg 1996

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## FOREWORD

Already in 1991, at their Conference in Vienna the European Ministers on the movement of persons from Central and Eastern European countries referred, in their Final Communiqué, to the possibility of extending the opportunities for training and employment in foreign countries for fixed periods. They mentioned in particular employment on contract as part of economic co-operation projects and employment of workers for short periods.

Many see short-term labour migration as a means of providing assistance to the new member States of the Council of Europe during a period of economic transition and as a way of reducing the immigration pressure on Western Europe while avoiding any increase in settlement migration.

These views still prevail and they have been confirmed by current trends in migration: permanent emigration from Central and Eastern European countries turned out to be lower than foreseen. On the other hand, there has been an increase in short-term labour migration.

With these considerations in mind, in 1993 the European Committee on Migration (CDMG) started a project on short-term migration. The bilateral agreements and other arrangements existing in the field of short-term migration have been examined and their advantages and disadvantages for the various actors in the temporary migration process have been analysed. This task has been carried out by a consultant, Dr. Heinz Werner, who drew up a report on "Temporary migration for employment and training purposes and relevant international agreements".

One of the crucial questions in the management of short-term migratory movements is the legal protection granted to the temporary migrant worker, whose position implies a certain precariousness, in particular in the relationship with his employer.

The principles of legal security for temporary migrants and of solidarity between emigration and immigration countries were also referred to by the Ministers at their Vienna Conference in 1991. This has led the CDMG to adopt guidelines for the legal protection of short-term migrant workers. These guidelines are meant to inspire the treatment of short-term migrants in the member States of the Council of Europe and therefore constitute a valuable step towards a necessary harmonisation of migration policy on a European scale.

The work on short-term migration was carried out on behalf of the CDMG by the Select Committee of Experts on Short-term Migration. I should like to take this opportunity of expressing the gratitude of the CDMG to the Chair of the Select Committee, Mr. Henri de Lary de Latour, to all its members, and to the consultant, for their valuable work whose results are presented in this publication.

Emil Ludwig Samuels  
Chair of the European Committee on Migration

# INTRODUCTION

## I. Origins of the project

During the Conference of Ministers on the Movement of Persons from Central and Eastern European Countries held in Vienna on 24 and 25 January 1991, the Ministers concerned of the member states of the Council of Europe and of all the states of central and eastern Europe, of Australia, Canada and the United States, recommended the harmonisation of national policies on migration flows, by fostering short-term movements of persons such as "youth exchanges" and "providing opportunities for training and employment... such as employment on contract as part of economic co-operation projects and employment of workers for short periods on condition that they enjoy the protection guaranteed under labour and social legislation".

While "welcoming the fact that, as a consequence of fundamental political changes, it is becoming possible to travel freely throughout Europe", the Ministers also stated that "at the present time, the situation in most of the countries concerned does not allow an increase in immigration on a permanent basis".

At its third meeting, held in January 1992, the Group of senior officials responsible for the follow-up to the Conference ("Vienna Group"), conscious that short-term migration could be a means of helping Central and Eastern European countries in their effort to restructure their economies, encouraged the CDMG to consider the progress which might be made in the field of short-term migration, bilateral agreements on fixed-term employment or training possibilities and the conclusion of further agreements. The Group also argued that increasing the scope for short-term migration could help to reduce migratory pressure.

In 1991, the Consultative Committee of the European Convention on the Legal Status of Migrant Workers (T-MG) had also undertaken a study on the question of adopting a legal instrument for the protection of short-term migrants, which was transmitted to the CDMG for consultation. The CDMG preferred to await the results of the present activity on short-term migration before giving its opinion on the advantages of adopting such an instrument.

The CDMG therefore took up the suggestion made by the Vienna Group and exchanged views on short-term migration in Europe on the basis of documents submitted by a number of delegations. It considered that the growing political and legal interest in this kind of migratory trend shown by both migrants' countries of origin and their host countries justified an in-depth examination of the conclusion and implementation of bilateral agreements covering short-term employment or training for migrants. Aware of the insecure situation of short-term migrants, the CDMG devoted particular attention to their legal protection. At its 27th meeting, the CDMG therefore adopted the terms of reference of the Select Committee of Experts responsible for detailed implementation of the Project on short-term migration in Europe, which aims:

- \* to collect information about existing bilateral agreements and other arrangements providing for various forms of short-term migration between European countries for purposes of employment or training;
- \* to review the advantages and disadvantages of different types of agreements and arrangements and to consider whether they are achieving their objectives;
- \* to consider the scope for further development of such migration, taking account of the interests of all the States concerned;
- \* to draw up guidelines for the legal protection of short-term migrants and for the practical implementation of arrangements for short-term migration;

## **II. Implementation committee**

The Project on short-term migration in Europe implemented between 1993 and 1995 was included in the intergovernmental programme of activities of the Council of Europe as decided by the Committee of Ministers. It has been carried out by the Select Committee of Experts on Short-Term Migration (MG-R-MT, hereafter referred to as "the Committee"), under the direction of the European Committee on Migration (CDMG), the main intergovernmental body of the Council of Europe dealing with migration issues.

The Committee brought together seven experts appointed by the governments of Bulgaria, France, Germany, Italy, the Netherlands, Poland and Switzerland and chosen for their experience in negotiating and applying bilateral agreements and arrangements in the field of short-term migration. Russia, as a non-member state, was invited to take part in the work as an observer, as were the following organisations: the Commission of the European Communities, the International Labour Office (ILO), the International Organisation for Migration (IOM) and the Organisation for Economic Co-operation and Development (OECD).

## **III. Methods and practical achievements**

As far as working methods are concerned, the Committee decided to structure the project in several phases, in the first of which data would be collected and existing laws described. The second phase involved analysing the various problems arising when the bilateral agreements in force are implemented. The interests of all involved in migration were borne in mind: migrant workers, firms, countries of origin and host countries. Finally, guidelines for the legal protection of short-term migrant workers were based on the results of the previous stages.

At the outset, a consultant, Mr Heinz Werner, was asked to draw up a list of all the agreements made on short-term migration, based on a questionnaire addressed to governments. His report also included a table showing the advantages and drawbacks of the agreements, based on interviews with the officials concerned from a small number of representative countries.

The Committee examined and commented on the various parts of the report in the course of its activity, and these were finally brought together in a single document by the consultant.

The Committee held hearings with the representative of the European Trade Union Confederation (the Union of Industrial and Employers' Confederations of Europe had also been invited but was unable to attend) and with the representative of the International Labour Office, in order to benefit from the expertise of this organisation and to avoid any possible duplication.

On the basis of a list of information to be clarified within the context of short-term migration, the Committee proceeded to an in depth exchange of views, taking into account the main differences in political interests.

Acknowledging that only by ensuring respect for a number of basic principles for the treatment of short-term migrants can 'social dumping' be avoided, and wanting to act in the interest of as many as possible of those involved in short-term migration, the Committee drew up guidelines on the legal protection of migrant workers.

## **TEMPORARY MIGRATION - AGREEMENTS PROVIDING FOR SHORT-TERM MIGRATION FOR EMPLOYMENT AND TRAINING PURPOSES.**

### **1. Background of the report**

With the opening up of the borders with the central and eastern European states a new migration situation has arisen. People are not only entering the industrialised countries of Europe from southern developing countries, but also from Central and Eastern Europe. This pressure to migrate arises because the economic development levels and thus the incomes in these countries are quite different from those of the western European industrialised countries. In the course of the restructuring process from the command economy to the market economy dislocations of workers and high unemployment are to be expected. This will also increase the migration pressure.

There are already considerable numbers of foreign workers with their dependents in the industrialised countries of Europe (annex, table 1). A large number of them entered 20 - 40 years ago. Despite the long stay, integration into labour market and society has often not been achieved.

For a variety of reasons, the European industrialised countries will, for some time to come, not be interested in permanent immigration on a large scale like that which took place in the 1960s and in the early 1970s. The migratory pressure, however, remains enormous. On the other hand the frontiers cannot be hermetically sealed. Undesirable illegal immigration and employment would be the consequence. For this reason, it is argued, legal possibilities for temporary immigration should be created in order to channel migration.

Thus, while at the Vienna Conference on the movement of persons from Central and Eastern European countries (January 1991), Ministers noted that "at the present time, the situation in most of the countries concerned does not allow an increase in immigration on a permanent basis", they drew attention to the value of "arrangements between interested parties providing opportunities for training and employment for fixed periods, such as employment on contract as part of economic co-operation projects and employment of workers for short periods on condition that they enjoy the protection guaranteed under labour and social legislation."<sup>1</sup>

Aware of the importance of short-term migration as one means of assisting Central and Eastern European countries in their efforts to restructure their economies, the Group of Senior Officials responsible for the follow-up to the Conference ("Vienna Group") encouraged the European Committee on Migration of the Council of Europe (CDMG) to study the question of the temporary admission of workers coming from these countries. In order to employ this measure in the most profitable way and to prevent an uncontrolled influx of short-term migrants, regulation through bilateral agreements is needed.<sup>2</sup> Thus, Western Europe hoped to ease migratory pressure and prevent

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<sup>1</sup> Council of Europe (1993): Document MGR-MT (93) 7: Terms of reference of the Committee and description of Project III.4, p. 4. Also the Commission of the European Communities and the Council of the European Union take restrictive positions concerning permanent legal immigration for economic reasons. Both would not exclude temporary employment. The Council of the European Union writes: "Admission for temporary employment may ... be considered only as a very narrow exception". (Annex to Draft Resolution on limitations on admissions of third-country nationals to the Member States for employment, Document 7139/1/94 Rev 1 ASIM 104, Brussels 1994). The Commission of the European Communities notes in its Communication on Immigration and Asylum Policies that "there are good reasons to refrain from applying restrictive policies in case of temporary work schemes, especially those developed under the root causes approach, provided that this does not amount to "job rotation" and admission of seasonal and frontier workers, categories which would need to be precisely defined" (Commission of the European Communities (1994): Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, Document COM(94) 23 final, Brussels, p. 22)

<sup>2</sup> Some experts, however, have doubts about the concept of short-term migration as such, while others point to difficulties which can arise in the application of existing agreements (Council of Europe Document MGR-MT (93) 6, p. 2)

disorderly or clandestine immigration. And Eastern Europe wished to exercise its newly acquired freedom of movement, for economic or training purposes, and felt a need for cooperation in the transition to democracy and a market economy, of which migration was considered an important component.

The Group of Senior Officials responsible for the follow-up to the Vienna Conference suggested that the CDMG might "carry out a detailed review of progress in this field, including the conclusion of further arrangements". For these reasons CDMG has carried out work on a project of which the main aims are:

- to collect information about existing bilateral agreements and other arrangements providing for various forms of short-term migration between European countries for purposes of employment or training;
- to review the advantages and disadvantages of different types of agreements and arrangements, and to consider whether they are achieving their objectives;
- to consider the scope for further development of such migration, taking account of the interests of all the States concerned;
- to draw up guidelines for the legal protection of short-term migrants and for the practical implementation of arrangements for short-term migration.

The present report deals with temporary migration and mainly covers the first two points. In order to better understand the process of migration, its outcome, its consequences and its impact on the current attitude toward new immigration in Western European countries a brief historical outline of post-war labour migration is given. It is followed by a chapter on the determinants of labour migration and a typology of migratory movements so that the "temporary migration" type can be integrated into the overall pattern of migration movements in Europe. After that, the advantages and disadvantages of short-term migration for the host country and country of origin are listed. To determine the order of magnitude and to assess the situation in the various member countries of the Council of Europe an overview of the existing bilateral agreements on short-term migration for employment and/or for the improvement of vocational knowledge and skills is presented and commented on. It should be mentioned here that legal temporary migration may also take place outside bilateral agreements. The final chapter summarizes the results and touches upon some problems which have arisen so far.

The overview of the bilateral agreements is based on a survey carried out in the countries of the Council of Europe. The questionnaire is attached. The information obtained via the replies to the questionnaire was supplemented through talks with experts in the host countries and the countries of origin on the problems of practical application of the bilateral agreements on short-term migration. The following countries were selected for the talks: France, the Federal Republic of Germany, Switzerland, the Czech Republic and Poland. With regard to the type and scope of temporary migration these countries were included as they are representative of the agreements existing in actual practice.

## **2. Historical overview of post-war European labour migration**

During the 1950s and 1960s Western European nations started recruiting workers from southern Europe and northern Africa. Economic recovery and rapid industrialisation propelled migrants to the booming countries of Western Europe. Italians went to Germany, Spaniards to France. During the 1950s and early 1960s, there was little concern about the long-term consequences of these labour migrations because the migrants were expected to return to their countries of origin. Survey after survey showed the "firm intent" of the foreign workers to return home with their savings after some years of gainful employment.

Between 1960 and 1973, the number of migrant workers in Western Europe jumped from 2 million to 7 million, and the total foreign population rose from 4 million to 12 million. Instead of coming from nearby Italy and Spain, more migrants in the early 1970s arrived from culturally and geographically more distant nations such as Turkey or Morocco.

In 1973/74, the industrialised countries halted further recruitment from non-EC nations such as Turkey, Yugoslavia or Spain.<sup>3</sup> Rising unemployment in the wake of the oil price rises had induced the immigration countries to introduce such a recruitment stop, which, in principle, is still in force.

With increasing duration of stay many migrants settled and were joined by members of their families, a process which was intensified by the decisions made in the mid-1970s to stop recruiting new workers abroad. Thus the foreign workers preferred to stay. The migrant workforce stabilised at around 5 million over the next decade. However, the total foreign population kept on rising due to family reunion, which - in general - was not refused. There are still about 5 million migrant workers in European nations recruiting foreign workers, whereas the total migrant population reached 14 million in 1990.<sup>4</sup> According to ILO estimates the number of non-nationals all over Europe (excluding ex-USSR/Yugoslavia) reached 20 million in 1993, among them 8 million economically active.<sup>5</sup>

Migration has become a global phenomenon. All European industrial countries are now also immigration countries. The distinction between emigration and immigration country becomes increasingly blurred.<sup>6</sup> Some "typical" emigration countries, such as Italy, Spain, or Greece, are already drawing large numbers from the labour forces of countries in northern Africa and Asia.

After enacting the recruitment ban in the wake of the oil crisis and the subsequent deteriorating labour market situation, the European industrial states started looking for effective means to control immigration. Family reunion migration was still permitted, but recruitment of new foreign workers was made difficult by allowing in only certain categories of workers, by introducing annual quotas, or by imposing penalties or fines on employers who hired illegal aliens.

Nevertheless migrants continued to arrive illegally. Policies towards these continued flows of illegal migrants diverged. Some countries like France, Spain and recently Italy "legalized" many of the illegal migrants who found regular jobs. It was assumed that migrants who had been living and working in a country for years - even illegally - had developed an equity stake and that it would be difficult to deport them. Other countries such as Germany and Switzerland refused to adopt legalization programmes because they feared, by doing so, more migrants would be encouraged to come and wait for another amnesty.

With the door for new labour migration more or less closed, a legal way to enter was via the asylum procedure. The number of new asylum seekers in European OECD countries soared from 116 000 annually in 1981 to more than 700 000 in 1992. About two thirds of them went to Germany.

European industrial nations are now embarked on a quest for control over new immigration. The Commission of the European Communities notes that "policies on admission for employment have been restrictive since the mid-70's and this has not changed in the past few years. If anything, these policies have become more restrictive".<sup>7</sup> "Admission policies will generally have to remain of a restrictive

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<sup>3</sup> For the six founding members of the European Economic Community (EEC) - France, the Federal Republic of Germany, Italy, Belgium, the Netherlands, and Luxembourg - the regulation on the free movement of labour was introduced in 1968. In 1973, the United Kingdom, Ireland, and Denmark joined, followed by Greece in 1981 and Spain and Portugal in 1986. The EEC later developed into the European Communities (EC) and in 1993 with the ratification of the Maastricht Treaty into the European Union (EU).

<sup>4</sup> For migration facts and figures see OECD: SOPEMI - Trends in international migration, -Annual Reports, Paris

<sup>5</sup> International Labour Organisation, International Organization for Migration, United Nations High Commissioner for Refugees (1994): Migrants, refugees and international cooperation - A joint contribution to the International Conference on Population and Development - ICPD 1994, Geneva, p. 2. Note that non-nationals do not include the naturalised former foreign citizens. Naturalisation rates vary considerably from country to country. See OECD: SOPEMI Annual Reports.

<sup>6</sup> Compare the "Global economic migration table" in: Stalker, Peter (1994): The work of strangers: A survey of international labour migration, International Labour Office, Geneva, pp. 275-282

<sup>7</sup> Commission of the European Communities (1994): Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, Brussels, p. 9



nature in the short term".<sup>8</sup> This restrictive attitude concerning new in-migration derives from:

- \* integration problems of the foreign population: despite long stays, integration into the labour market and society has often not been achieved.<sup>9</sup> Unemployment among the foreign labour force is considerably higher, often three to four times higher than for nationals, especially for young foreigners.

- \* permanent stay of the "temporary" migrants: Europe learned that "there is nothing more permanent than temporary workers, or that immigration policy cannot be made only on the basis of short-term labour market considerations".<sup>10</sup>

- \* deteriorating labour market situation: since the oil crisis in 1973/74, unemployment rose in all European countries. It hovered around 2% for the EC-countries in 1970, rose to 6% in 1980 and reached a peak of 10.5% in 1993.

- \* changing demand for labour: twenty years ago unskilled or semi-skilled migrant workers were filling up the great shortages at the lower end of the labour market. Now the number of vacancies for the least qualified workers is much lower; unemployment among them is disproportionately high. Skilled workers are in demand.<sup>11</sup>

### **3. Why do workers migrate?**

An economically motivated potential for migration arises when varying levels of economic development exist between countries. More specifically, we can identify push factors in the emigration countries and pull factors in the immigration countries. Pull factors are the prospects of higher pay and the availability of jobs in the respective destination country. Push factors can be lack of employment prospects, unemployment or low income in the home country. If both respective factors are present in two countries, there is a basic potential for migration. Before migration actually can take place further conditions have to be met: transparency/information and the lifting of barriers. The workers willing to move must be informed about the conditions in the receiving country, and this country must be accessible in terms of distance and legal entry (illegal migration left aside). In general, the ensuing flows are regulated by legislative and/or administrative procedures such as type of work permit or residence permit (seasonal, annual, etc.), which limit access and duration of stay. Apart from legal restrictions, cultural and language differences play an important role and act as barriers to international mobility.

The emigration push does not solely depend on the absolute difference between income levels in the country of origin and the target country. The relative level of pay in the country of origin is important as well. If the income is above the poverty line and reaches a socially acceptable level, the income threshold to emigrate is bound to be high, that is, the absolute earnings differential must be considerable to cause labour to move. Otherwise people tend to stay. This phenomenon of less migration has occurred in the course of European integration, although the legal barriers to migration have been abolished (free movement of labour).<sup>12</sup> With increasing industrialization in the peripheral countries in the course of the integration process of the European Community - which has now developed into the European Union - economic development and pay improved. Although there are still considerable income differentials between EC countries, a "socially acceptable" income can be obtained in most EC

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<sup>8</sup> Commission of the European Communities (1994): Communication .. cit. op. p. 21

<sup>9</sup> Werner, Heinz (1993): Integration of foreign workers into the labour market - France, Germany, the Netherlands and Sweden, World Employment Working Papers, International Labour Office, Geneva

<sup>10</sup> Martin, Philip (1993): The migration issue, in: King, Russell (1993): The new geography of European migration, London, p. 2

<sup>11</sup> OECD (1994): The OECD jobs study, Evidence and Explanations, Part II: The adjustment potential of the labour market, Paris, pp. 126 and 127

<sup>12</sup> Cf. Werner, Heinz (1994): Regional economic integration and migration: The European case, in: The Annals of The American Academy of Political and Social Sciences, Volume 534, July 1994, pp. 147-164

countries. Thus an incentive to migrate to another EC country may only arise in specific sectors or skill levels (e.g. for specialists, managers, technicians).

The above considerations may also become relevant in the context of East-West migration. We can expect that significant numbers of people will move from Eastern Europe in search of work and higher income if they become free to do so. But if the restructuring process gains momentum and positive growth rates materialise, a move of wages towards a "socially acceptable" level of income may get under way in those countries and diminish the pressure to migrate.

Demand-pull and supply-push factors can be compared to battery poles: both are necessary to get started. In the case of international migration, once the mobility process started, also networks affect the level and direction of migration.<sup>13</sup> Although each migratory movement has its specific historical patterns, it is possible to generalize on the way migrations evolve. For example it may be observed that most migrations have started with young, economically active people (often mainly men). They want to stay for a limited period and save enough money in a higher-wage economy to improve conditions at home, by buying land, building a house, setting up a business etc. After having spent some time in the receiving country, a proportion of these "primary migrants" return home, but others prolong their stay. Social networks develop among them. More migrants arrive, with contacts in the already established community of previous immigrants who form those networks. Friends and relatives already there can provide information, often jobs and housing for the newcomers. A push-pull model alone cannot explain why a certain group of migrants goes to one country rather than another. For example, why have most Algerians migrated to France and not Germany, while the opposite applies to Turks ? Many researchers suggest that migratory movements arise from the existence of (a) prior links between sending and receiving countries and (b) of networks.

The pattern of the process of migration can be summarised in a four-stage model:<sup>14</sup>

Stage 1: temporary labour migration of young workers, remittance of earnings and continued orientation to the homeland;

Stage 2: prolonging of stay and the development of social networks based on kinship or common area of origin or the need for mutual help in the new environment.

Stage 3: family reunion, growing consciousness of long-term settlement, increasing orientation towards the receiving country, and emergence of ethnic communities with their own institutions (associations, shops, cafés, agencies, professions).

Stage 4: permanent settlement which, depending on the policies of the government and the behaviour of the population of the receiving country, leads either to secure legal status and eventual citizenship, or to political exclusion, socio-economic marginalization and the formation of permanent ethnic minorities.

This model of the migratory process applies to the large-scale post-war migrations from the Mediterranean basin to Western Europe. It is less appropriate to refugee movement or to temporary migrations of skilled personnel for example. Nonetheless the model has analytical value for these groups too, since both movements are often at the beginning of migratory chains which lead to family reunion and community formation.

Discussion of the long-term effects of immigration on society concentrates on the fourth stage of the migratory process: that of permanent settlement. This stage can have significantly different outcomes, depending on the actions of the state and population of the receiving society. At one extreme, openness to settlement, granting of citizenship and gradual acceptance of cultural diversity may allow the formation of ethnic communities, which can be seen as part of a multicultural society. At the other extreme, denial of the reality of settlement, refusal of citizenship and rejection of cultural diversity may lead to the formation of ethnic minorities, whose presence is widely regarded as undesirable and

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<sup>13</sup>The role of networks in shaping migration is convincingly described in: Gurak, Douglas T.; Caces, F. (1992): Migration networks and the shaping of migration systems, in: Kritiz, Mary, M.; Lim, Lean Lin; Zlotnik, Hania (1992): International migrations systems, Clarendon Press, Oxford, pp. 150-176

<sup>14</sup>Cf. Castles, Stephen; Miller, Mark (1994): The age of migration, Macmillan London, pp. 25 et seq.

divisive. In this case the ethnic minorities remain segregated and marginalized and not integrated into the labour market and society of the receiving country.

It is particularly the latter concern that leaves the Western European industrial countries hesitant toward new immigration. Temporary migration, it is argued, would avoid those long-term effects, could channel migration according to the labour market needs and provide benefits for both the sending and receiving country. These arguments will be discussed in more detail later on in the report.

#### **4. Classifying migration movements**

Immigration into the countries of Europe is extremely manifold and complex. A generalisation is difficult. There are several possible ways of classifying economic migration.<sup>15</sup> One can classify migration movements by referring to the policy perspectives of sending (emigration) or receiving (immigration) countries or, alternatively, by reference to individual migrants' intentions. Problems of classification arise because receiving countries that pursue temporary labour-import policies may permit migrants to claim permanent status, or because so-called settlement countries run temporary worker schemes in parallel or because individuals can change their minds and frequently do so. As a result, the traditional distinctions become blurred and different types of migration occur simultaneously in one country.

Therefore, it is more realistic to categorize economic migrants by the substance and form of their move and to give typical examples of countries that receive them, rather than to depict, for example, one country for permanent immigration and another for temporary inflows of highly qualified workers. The following classification is proposed.<sup>16</sup>

Migration for education: Migration for education does not, strictly speaking, involve economically active persons but it is included here because the motivation is ultimately economic. This kind of migration involves academics and higher education students and frequently occurs among countries at similar levels of development and with similar cultural background. But there is also a steady stream of

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<sup>15</sup>Recent examples can be found in: Appleyard, Reginald (1991): International Migration: Challenges for the nineties, International Organization for Migration, Geneva, p. 22; Salt, John (1993): Current and future international migration trends in Europe, Council of Europe, Strasbourg, p. 10; Stalker, Peter (1994): The work of strangers: A survey of international labour migration, International Labour Office, Geneva, p. 4; International Labour Organisation, International Organization for Migration, United Nations High Commissioner for Refugees (1994): Migrants, refugees and international cooperation - A joint contribution to the International Conference on Population and Development - ICPD 1994, Geneva, pp. 3-5

<sup>16</sup>The classification is based on: International Labour Organization, International Organization for Migration, United Nations High Commissioner for Refugees (1994): Migrants, refugees and international cooperation - A joint contribution to the International Conference on Population and Development - ICPD 1994, Geneva, pp. 3-5.

The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families distinguishes two categories under migration for professional or business purposes:

(1) "specified employment worker" refers to a migrant worker:

\* who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

\* Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skills; or

\* Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

(2) In addition, the UN Convention somewhat loosely defines a "project-tied worker" as someone who is admitted to a State of employment for a defined period of work solely on a specific project being carried out in that State by his or her employer.

students from developing countries to the industrialized nations.

Migration for training: This type forms a numerically small part of international migration but economically it can be highly beneficial. Occupational trainees spend several months or years at a private or public enterprise in a more advanced country to acquire new skills or to familiarize themselves with modern technologies. It takes place in many instances through business channels.

Migration for professional or business purposes: This type concerns mostly people with higher levels of education or training whose skills transfer easily from one country to another. Tens of thousands of professional, technical or managerial workers plus business people of all kinds travel daily among countries, providing services and employment. Some stay for months or years while a few settle permanently. In addition to individual professionals or business people who move of their own volition, many managers and technicians move across borders within transnational enterprises (inter-company transfers). Professionals who move

within transnational enterprises or under the auspices of consultancy firms or who are self-employed frequently carry out a specific assignment or perform a specific service. Economically, movements of high-skilled professional, managerial and technical workers reflect the global nature of modern business. Socially they constitute an "invisible" group of immigrants in Europe, middle class, well off, in many senses international citizens. Most countries place few or no barriers to their entry.<sup>17</sup>

Contract migration: Contract workers are admitted on the understanding that they will work for a limited period. Contract migration in various shapes occurs throughout the world whenever (mostly) unskilled or semi-skilled labour is admitted for employment purposes:

(1) Contemporary contract migration first took place on a large scale when workers from lesser developed Mediterranean countries moved north in the 1960s and early 1970s. They arrived on the basis of temporary work permits and work contracts with time limits but which were often renewable and finally gave way to unrestricted duration of employment.

Individual contract migration spread to all European countries and subsequently left 17 million registered foreigners on the soil of Western Europe. Most of them now hold permanent residence permits.<sup>18</sup>

(2) Seasonal migration for employment is a subform of international contract migration. Seasonal workers are commonly employed in tourist-dependent industries, such as hotel and catering, but the majority work in agriculture.

(3) Project-tied migration occurs when a migrant worker is admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer. Project-tied work is frequent in the construction industry but not by any means limited to it. In practice it is not always clear how to distinguish between project-tied migration and other forms of contract migration: contractors or subcontractors need not always be tied to specific projects. They may be performing ordinary work such as maintaining roads or buildings which is not part of a project under gestation. In this case, contract migration would be more the appropriate designation.

Migration for settlement: This type concerns people who enter a country to live there permanently. In the past they have headed for countries like the United States, Canada and Australia, for example, and many continue to do so. In Europe no country sets out to attract new permanent settlers. However, permanent settlement migration occurs indirectly, as a development of previous temporary migrations, mainly through family reunion. Permanent settlement migration in recent years has also been associated with specific ethnic groups, "returning" to a homeland where they have been granted an automatic right of settlement, e.g. the German "Aussiedler".

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<sup>17</sup>Salt, John (1993): Current and future international migration trends in Europe, Council of Europe, Strasbourg, p. 10

<sup>18</sup>The greatest numbers of contract workers nowadays are to be found in the Middle East. In 1990 there were thought to be up to 6 millions - mostly from other Arab states and from Asia. The majority are unskilled or semi-skilled. Their contracts of work are sometimes renewable, sometimes not.

Illegal migration: Irregular migration involves illegal entry, stay or economic activity on the part of a non-national. Although irregular migration can occur under any of the regular categories mentioned above, it is virtually negligible in the case of migration for training or education. It is also rare among professionals, technicians, managers, researchers or business people, partly because they are forced to interact with legally established bodies and procedures. Most illegal immigrants in fact enter the host country legally and then become illegal by overstaying, usually by taking employment.<sup>19</sup> Visitors or contract workers may stay on after the expiration of the authorization and continue or take up paid employment. Difficulties or waiting periods of family reunification procedures also give rise to irregular entry or overstaying and subsequent economic activity in the secondary labour market with its precarious and low-paid jobs. The phenomenon is widespread. Western Europe had nearly 3 million illegal non-nationals in 1990, according to an estimate by the ILO.<sup>20</sup>

Asylum seekers and refugees: These are people who have left their country to escape danger. They may be individuals or families who base their requests for asylum on political persecution. Once their appeal for asylum has been accepted many take up permanent residence in their new countries. In recent years the term economic refugee has been used increasingly to refer to those seeking to escape extreme poverty at home. Most of them are refused permanent stay but sometimes tolerated to remain in the country or they stay on illegally. Among the 3 million illegal migrants in Western Europe it is estimated that about 650 000 are asylum seekers whose request for refugee status was refused but who stayed on without permission.<sup>21</sup>

How can temporary migration be integrated into this classification scheme?

First of all, there is no uniform definition of what can be understood by "temporary". Second, temporary migration may occur among the different types of economic migration mentioned above. Third, the duration of stay may vary according to the type of migration. Moreover, a clear-cut distinction between temporary and permanent stay is often not possible because in the course of the migration and integration process a temporary work permit may be extended and a short-term stay may finally develop into a permanent one. Even migrants who originally intended to settle permanently may change their mind and leave. Migration literature does not provide much help on how to delineate temporary migration.

The major characteristic of temporary work is that it is limited in time and cannot be a preliminary step for a foreign worker to settle permanently in the host country. This implies:

- \* a temporary worker must always have a fixed-term contract of employment, specifying the authorized occupation, the geographical area in which the activity may be carried out and the employer. This means that foreign temporary workers may not freely change their employer, activity or area;
- \* temporary workers must leave the country on expiry of their contract;
- \* the facilities for family reunion do not apply to them.

In general - depending on the type of short-term migrant - a labour market check precedes the granting of the work permit. The employer files an application with the national employment agency. The application form includes the proposed employment contract. Wages and other conditions of work must be standard (equal treatment) to avoid wage or social dumping. The public employment service checks if a national or resident foreign worker can be found for the job.

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<sup>19</sup>Salt, John (1993): Current and future international migration trends in Europe, Council of Europe, Strasbourg, p. 10

<sup>20</sup>Stalker, Peter (1994): The work of strangers: A survey of international labour migration, International Labour Office, Geneva, p. 4

<sup>21</sup>International Labour Organisation, International Organization for Migration, United Nations High Commissioner for Refugees (1994): Migrants, refugees and international cooperation - A joint contribution to the International Conference on Population and Development - ICPD 1994, Geneva, p. 5



The following types of short-term migration can be distinguished:

- (1) Temporary work permits to special categories of migrants such as professionals and business people or persons with special skills or occupations.<sup>22</sup>
- (2) seasonal workers
- (3) project-tied contract workers
- (4) occupational trainees

For the purposes of this report and in the context of East-West migration we concentrate on temporary migration for employment and training purposes which is covered by bilateral agreements. This is in line with the mandate given by CMDG and includes the following categories of migrants:

Seasonal workers are migrant workers whose work by its character is dependent on the rhythm of the seasons and is performed only during part of the year. They are employed on the basis of a contract for a specified period and for a specific job.

Project-tied contract workers are migrant workers admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by their (foreign) employer.

Occupational trainees are migrant workers admitted to the territory of the State of employment for a strictly limited period for the purpose of improving language skills and occupational qualifications before returning to their own countries to pursue their careers. In principle, the period of stay does not exceed 18 months.

A common feature of all of the categories just mentioned is that the time limit of the stay fixed by a contract or an agreement. A second characteristic is the open or tacit understanding that family reunion is not envisaged or even not allowed (except under visa regulation).

## **5. Why temporary labour migration?**

Despite growing interdependence, receiving countries still want to zealously exercise the right to control their labour market by deciding who may enter their territory and under what conditions. Unlike other global flows, the spatial mobility of people has not only economic but also humanitarian, political and cultural implications that often bring domestic and international interests into conflict. While attempting to regulate and restrict the inflow of unskilled workers, governments generally wish to maintain relatively open borders and easy access to the flows considered to be in the national interest, in particular those persons entering for business, investment, tourism, technical assistance or education.<sup>23</sup> For practical economic reasons it is useful, even necessary, to admit temporary workers, especially for foreign companies which wish to bring in managerial or specialized staff. Temporary

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<sup>22</sup>New temporary work permits are in general only issued to certain categories of migrants, whose temporary employment is in the interest of the receiving country and is compatible with the prevailing labour market situation. Those categories include professionals and business people who are seconded by their company or provide a high-skilled service. Another category concerns people with specific skills and occupations which cannot be found on the domestic labour market or whose employment is otherwise in the national interest. Among these groups can be found - and varying from country to country - diverse occupations such as artists, scientists, entertainers, sportspersons, au pairs, fashion models etc. Under certain conditions temporary work contracts may be extended. With increasing length of stay allowed the residence status "consolidates" and the foreign worker may obtain a permanent work permit and the right to permanent residence.

The regulations governing temporary work contracts vary considerably from country to country. Two recent OECD documents provide an array of that variety. Cf. OECD (1994): The temporary employment of foreigners in France and the United Kingdom, Document DEELSA/ELSA/WP2 (94) 3, Paris, and Temporary migration to the United States in relation to the labour market, Document DEELSA/ELSA/WP2 (94) 4, Paris

<sup>23</sup> Lim, Lean Lin (1994): Growing economic interdependence and its implications for international migration, in: United Nations: Population Distribution and Migration (Draft prepared for the International Conference on Population and Development, Cairo, 5 - 14 September 1994), New York, p. 351

employment affords greater operational flexibility and may alleviate temporary shortages of national labour. More generally, exchanges of managers and workers seeking to acquire or perfect professional skills are implicit in the principles of economic openness and aid to developing countries. As already mentioned, most countries place few or no barriers to the entry of migrants for professional or business purposes. The situation is different concerning the migrants not fitting into this category.

Since the recruitment ban in 1973/74 the efforts with regard to the national immigration policies of the Western European countries have been concentrated rather on the restriction and control of access of foreign workers. This is due, as already mentioned, to the integration difficulties for foreigners/ethnic groups from earlier periods of immigration and rising unemployment in the countries in question.

With the increasing duration of residence, integration efforts are necessary for foreigners in order to avoid their marginalisation and segregation. The basis for integration is legal equality and the equal access to social security. Foreign workers often belong to the disadvantaged groups in the labour market. It is necessary to include them in the target groups of the labour market policy just like the indigenous workforce. They should be able to participate in training schemes such as further training and retraining or in job creation schemes or in subsidised employment under the same conditions as national workers. Because of their particular deficits, e.g. the language, specific schemes are necessary for this group of persons. In times of economic recession, however, it is difficult to make specially tailored schemes for foreigners acceptable to the native population. The financial means are scarce, the native population itself has to struggle with employment difficulties.

None of the European industrialised countries is currently interested in a new wave of permanent immigrants. A massive inflow of foreign workers and their dependents as in the 60s and 70s with the resultant costs for social welfare, education and housing is not desired. Apart from that, the labour market situation has changed in comparison with those times:

- (1) unemployment is high and will remain high for the foreseeable future.
- (2) The qualification requirements have shifted from unskilled to skilled activities.

Because of the global demographic and economic differences there is a considerable immigration pressure on the industrialised European countries. This situation is reinforced by the restructuring process in the reform countries in Central and Eastern Europe in the course of which labour is being made redundant. In order to assist this restructuring process, the proposal has been made that, besides the transfer of know-how and the elimination of obstacles to trade, short-term migration of labour should be permitted. Besides the argument to the effect that this would contribute to the economic development of the countries of origin, further arguments are put forward:

Legal short-term migration can reduce illegal employment. If, in case of high immigration pressure and with borders which cannot be hermetically sealed, there is no legal possibility of employment, there will be illegal immigration and illegal employment with undesirable side effects such as marginalisation/segregation and the exploitation of the illegally employed foreign workers. But temporary employment of foreign workers may also act as a gateway to illegal employment, e.g. by staying on after expiry of the work permit.

In the case of short-term immigration the family does not normally join the foreign worker. Thus the receiving country can avoid the medium-term and long-term integration costs which would arise from family unification. These costs include education, social welfare or housing. On the other hand, the benefits from employment of the foreign workers are obtained immediately. Moreover, in the case of temporary employment there is better control of the number of foreign employees: either by the short-term nature of the contracts or by fixing or changing access conditions e.g. by tying the number of work permits issued to the unemployment rate or by increasing or lowering the quotas.

It should be noted however, that the economic implications of immigration are still being disputed

among the experts,<sup>24</sup> as is the impact of demographic development on economic growth. Depending on the basic conditions and type of migrants, immigration aimed at a permanent stay can be quite positive for the economy and the labour market of the receiving country. Immigrants are generally flexible, regionally mobile and as a rule they tend to begin life anew with great drive. They often accept low incomes and modest housing standards to establish their own businesses. The positive effect of immigration on the receiving country is likely to be greater the higher the percentage of skilled and/or younger economically active immigrants and during periods of high economic growth when immigration provides labour for business expansion and enhances demand for goods and services as immigrants settle into communities and begin paying taxes and spending in the local economy. The American labour economist Simon writes: "When there is no constraint upon immigration, immigrants improve the situation of native workers by smoothing out employment over the business cycle. This is especially true of temporary (including illegal) immigrants, because they go and come in response to the job situation".<sup>25</sup>

In times of high unemployment it will, however, become difficult to justify a permanent influx of new immigrants vis-à-vis the indigenous population. But temporary admission to the labour market appears to be acceptable under certain conditions.

From what has been said so far a number of reasons emerge in favour of the short-term immigration of foreign workers. Migration should be organized in such a way that both the countries of origin and the host countries benefit without incurring the medium-term and long-term problems associated with permanent migration. In the following an attempt is being made to list the interests of those involved in temporary immigration, to describe the scope for fixed-term migration and to discuss difficulties arising in actual practice.

## **6. Table of interests of the parties involved - or the advantage and disadvantages of temporary labour migration**

### **6.1 Interests of the receiving country**

(1) Meeting manpower requirements: Manpower supply bottlenecks of a seasonal, cyclical, regional, sectoral or qualification type can be alleviated. Recourse is taken to the labour pool available in other countries in accordance with the situation in the domestic labour market. The numbers admitted and the skills' structure of the foreign workers can flexibly be adjusted to the prevailing labour market situation. Foreign workers can easily be assigned regionally, to where the demand occurs. They are more mobile as they do not yet have a permanent residence in the host country. Due to the current, generally unfavourable economic situation the industrialised countries of Western Europe are more interested in meeting sectoral (e.g. building industry) or seasonal (agricultural, tourism) demand peaks. This can be achieved by means of fixed-term contracts of employment.<sup>26</sup>

(2) Benefits from the work performed while avoiding social follow-up costs: Benefits arise out of lower labour costs due to cheaper or better qualified foreign labour (e.g. no social security

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<sup>24</sup>A succinct overview of the current immigration debate in the United States, which is also relevant to the European countries, can be found in: Cooper, Mary H. (1994): Immigration reform: The issues, in: American Studies Newsletter, No. 32, January 1994, United States Information Service, pp. 20 - 26

<sup>25</sup>Simon, L. Julian (1989): The economic consequences of immigration, Cambridge (Mass.), p. 251

<sup>26</sup>Higher skilled personnel for professional and business purposes who move within multi-national company channels from one country to another (secondment) fill temporary skill requirements. As already noted, they are in general admitted. They should be mentioned here, but are not further taken into consideration for the purpose of this report.



contributions as in the case of project-tied workers). This increases efficiency and strengthens the competitive position of the economy. Furthermore, the receiving country and/or the company located there benefit without consequential social costs being incurred for the firm or the society of the receiving country. Such consequential costs arise, for example, when use is made of the social system in the country of employment.

(3) Reducing illegal migration: With a high migration pressure between countries of high wage differentials and with permeable borders (neighboring countries, availability of means of transport, tourism etc.) immigration cannot be banned. Irregular immigration will still occur. Illegal immigration implies risk of exploitation and marginalisation of the foreign worker because of wage dumping and unfair competition between foreign and national workers. By opening the gate to short-term migration, illegal employment with its undesirable effects can be reduced. The various forms of temporary migration constitute a means to channel migration and to relieve the pressure for migration from the potential emigration country.

(4) Supporting the restructuring process in the reform countries in Central and Eastern Europe: It is important for the immigration countries to contribute to the economic development of the reform countries in order to maintain political stability and ease the pressure to migrate in the long run. The restructuring process can be supported through temporary migration in three ways. First, temporary employment abroad reduces the high unemployment and thus contributes to easing labour market tensions. Nevertheless, a word of caution is needed here. We know from migration research that neither the poorest nor the richest move, but frequently those of intermediate social status and those from areas which are undergoing economic and social change.<sup>27</sup> And they are often not the least qualified in the country of origin. They are enterprising and dynamic and often not among the ranks of the unemployed. Thus the effect of alleviating the labour market may not be that big. In addition, the numbers admitted as temporary workers will remain too small to have a sizable impact on the level of unemployment. Second, the migrant worker gets - at least temporarily - the opportunity to earn an income. The remittances contribute to the economic and political stability of those countries and thus support the difficult process of restructuring. Third, the migrant learns new skills which might be useful upon return to his home country.

(5) Flexible adjustment to prevailing labour market needs: The receiving country is interested in adjusting the numbers admitted and the skills required of the foreign workers according to the labour market situation. This can be achieved by prior examination of the job market (can a domestic worker be found for the job of the foreign applicant?) or by changing the total numbers of foreign workers admitted (quota).

(6) "Labour market compatibility": Displacement of local labour by foreign labour is politically undesirable and may lead to hostile reactions on the part of the national population, the trade unions or the firms which cannot employ foreign workers. To avoid competition with local labour for the same

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<sup>27</sup> Castles, Stephen; Miller, Mark J. (1993), cit. op. p. 21

Restructuring and successful economic development in less developed countries can increase migration in the short and medium term. This phenomenon has been called the "migration paradox" in migration literature. The restructuring process is accompanied by dislocations of workers. The same rural modernisation that increases agricultural productivity, for example, contributes to disintegration of social networks and economic relationships. Rapid growth may produce saturated labour markets in certain sectors or urban areas and inequitable income distribution develops. Thus mobility and migration pressures are fuelled. Improvements in communication and transportation, and the emergence and consolidation of social networks in sending and receiving areas accompany development and encourage population displacements (internal and external). Cf. OECD (1994): Migration and Development, Paris, p. 299; Teitelbaum, Michael (1993): Effects of economic development on emigration pressures in sending countries, in: OECD (1993): The changing course of international migration, Paris, p. 162; Report of the US Commission for the Study of International Migration and Cooperative Economic Development (1990): Unauthorized migration: An economic development response, Washington, p. E-2

job, access by foreign temporary workers may be tied to an examination of the job situation. Anyway, due to the short-term nature of the work contract, possible substitution effects between domestic and foreign workers will only be temporary.

## 6.2 Interests of the country of origin

(1) Alleviating a tight labour market situation: the restructuring process of the Central and Eastern European reform countries will produce high unemployment. A system of unemployment benefit is only now being developed. The available funds will not suffice to ensure adequate social cushioning during unemployment. In such a situation of insufficient job opportunities, temporary employment abroad can mean escape from unemployment and a reduction of unemployment in the home country. However, it depends on the kind of manpower that leaves the country. As already mentioned, we know from migration research that in general the younger, more dynamic manpower is most interested in employment abroad.<sup>28</sup> In the case of permanent emigration the loss of this type of labour can have a detrimental effect on the country of origin. But with short-term emigration a brain drain is less to be feared.

In situations of rising unemployment and falling living standards as recently witnessed in countries of Eastern Europe labour outflows can provide some relief and can serve as temporary valve against mass discontent. But the contribution of emigration to alleviating labour market problems is likely to be limited. First, the numbers admitted as temporary workers will remain too small to make a veritable dent in large-scale unemployment. Second, labour migration is a selective process. As already mentioned, neither the poorest nor the least educated tend to leave, but in general the younger, more dynamic workers. When recruitment is controlled by employers of the receiving country, the search for the most qualified is unavoidable. Third, those who leave often have jobs at home, although these jobs may be low-paying or with limited future prospects. Thus, it is not the unemployed who are prone to leave, but the employed. As a consequence, the effect on unemployment will remain limited.

The overall labour market effect from temporary migration may be small, however, it should be noted, that, for the individual worker and the family left behind, it can mean an escape from poverty and a substantial improvement in living standards.

(2) Remittances: Foreign exchange is necessary for the purchase of goods to develop industrialisation. Due to the transfer of earned income the flows of foreign currency can be strengthened. However, it also depends on how the earnings are used: what goods are bought, domestic goods or imported ones? Are they consumer goods or capital goods? Are the savings used to set up a business etc.? In any case, the influx of foreign exchange resulting from the transfer of earnings plays an important role for the balance of payments of the country of origin.

There is a long debate in migration literature on the economic effects of remittances, for example, the question of whether, and to what extent, the transfers are spent on consumption or used for productive investment. Remittances obviously boost the earnings of the migrants' families, and since - unlike government-to-government aid - these transfers go directly to the final recipients, they can significantly promote welfare at the household level. A series of studies have shown that "where the macro-economic environment is stable and other conditions are conducive, remittances can raise the level of domestic investment".<sup>29</sup>

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<sup>28</sup>"A consistent finding is that those most prone to emigrate are neither the poorest nor least educated but are among the most aspiring and energetic members of their communities. They generally have jobs at home when they decide to leave, although these jobs are often low-paying and with little potential for advancement. They chose to go abroad to improve their economic well-being".(Report of the US Commission for the Study of International Migration and Cooperative Economic Development (1990): Unauthorized migration: An economic development response, Washington, p. 9)

<sup>29</sup> Ghosh, Bimal (1994): Economic migration and the sending countries, Manuscript prepared for the 15th Conference of the Belgian-Dutch Association for Post-Keynesian Economics on "Labour Migration", University of Antwerp, November 4, 1994, p. 15

(3) Acquisition of vocational skills and know-how, including language skills: It is important for the home country to obtain knowledge and skills which can be used after the migrant workers' returning home. The reform countries have an economic structure which has not developed from the competitive relationships of a market economy. Range of products, methods of production, quality requirements and sales methods were different from those of the market economies. By means of temporary employment in a western country the foreign workers get familiarised with production techniques, customer-oriented behaviour in sales and marketing, with people of different cultural backgrounds and foreign languages. The knowledge and skills acquired in the host country can be used to promote the economic development of the country of origin.

But results of migration research obtained so far suggest that the use back home of skills acquired in the host country should not be overestimated. It must be stated that the possibilities of acquiring vocational skills and knowledge depend to a large degree on the specific circumstances. One-sided specialisation, restriction to only unpleasant jobs or segregation from native workers at the workplace can greatly limit the acquisition of vocational skills. Moreover, it is not certain whether the skills and knowledge acquired can be used in this form at a later date in the country of origin.

In certain circumstances, a collision of interests between the host country and the country of origin can arise. The companies in the receiving country are primarily interested in readily available and inexpensive labour. Long induction-training periods or additional training elements are not profitable. Thus - also because of the migrants do not usually have a very sound command of the language - only learning by doing will be involved, that is, on-the-job training. These jobs are simple or very specialised jobs which in general do not yield additional benefit in terms of skill for the country the worker returns to.

(4) Support for the restructuring processes of reform: All the points previously mentioned (easing of labour market pressure, earning and transferring of income, acquisition of skills) may contribute to economic development and thus to political stability.

(5) Control of the outflows: The country of origin will also be interested in keeping a check on the temporary emigration of its nationals. This can best be done if migration is carried out in co-operation with the host country in the form of agreements. The check on the type and level of emigration concerns the interests of the country of origin for two reasons: on the one hand these agreements are to secure the social welfare of the migrants by laying down the terms of employment (equal treatment of nationals and foreigners with regard to wages, working hours and other working conditions). A collision of interests between the country of origin and the host country can arise: the country of emigration will, for example, be interested in arranging for the unemployed to go abroad in order to relieve the strain on the labour market. However, the unemployed in the country of origin do not necessarily have the qualifications which are desired in the country of immigration. On the other hand, the country of emigration does not want well qualified labour already employed and needed in their own country to leave. The problems involved in this collision of interests are, however, eased by the fact that it is a short-term absence and that, in any case, important foreign currency influxes are maintained.

(6) Planning certainty: The emigration country wants planning certainty and agreements without complicated clauses. Therefore, the agreements should not be subject to frequent alterations. The country providing employment will prefer a procedure which can react flexibly to changes in the labour market situation, for example, in order to be able to curb immigration in the event of a deterioration of the labour market situation.

(7) Prevention of the emigration of skilled and highly skilled manpower: controlled temporary immigration aims at preventing the most qualified workers from leaving the country permanently. From migration research it is known that the dynamic, usually young and often highly qualified manpower is the most likely to try its chances abroad. Permanent or lengthy absence of this manpower is a loss for the country of origin since such enterprising and skilled manpower is also needed for the development of the home country or the implementation of restructuring.

### **6.3. Interests of the migrant worker**

- (1) **Higher wages:** With large differences in income between countries, the earnable income surely plays the most important motive for emigration. The income achieved can be used for consumer goods or for capital expenditure, e.g. for the establishment of one's own business. The latter possibility could be additionally promoted, e.g. in the form of advice, favourable loans or tax relief.
- (2) **Acquisition of knowledge and skills:** Even if the determining motive for employment abroad is better earnings, learning of vocational abilities and skills, including knowledge of the language, may play an important role. This will be the case for subsequent jobs in subsidiaries of companies in the country providing temporary employment, or jobs for which the stay abroad has a vocationally enriching effect (e.g. in gastronomy, fashion, art) or self-employment after the return home. In the latter case the experience gained and the business relations established may be an asset for running one's own business.
- (3) **Improvement of individual labour market opportunities:** the knowledge and skills acquired abroad can help to improve labour market opportunities for the individual after his return to his home country. The income earned abroad can, moreover, provide a basis for setting up one's own business and becoming self-employed.
- (4) **Protection from exploitation:** The migrant worker needs protection from exploitation as he/she is in a weak position. Remuneration far below the usual local pay level, worse or more dangerous working conditions in comparison with the indigenous workforce, excessively long working hours, lack of social security etc. should not be permitted. For the protection of migrant workers, a number of conventions have been concluded by international organisations such as the International Labour Organisation or the Council of Europe. However, they are only binding on the countries which have ratified them. For example, the ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and Promotion of Equality of Opportunity and Treatment of Migrant Workers has so far not been ratified by the majority of European countries. The 1990 comprehensive UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been ratified by only two countries - Egypt and Morocco - to date.<sup>30</sup> Moreover, certain forms of short-term employment are excluded from the scope of conventions. The ILO Convention No. 97 (revised 1949) concerns equality of treatment for migrant workers in certain respects. It has been ratified by many countries. But, for example, the European Convention on the Legal Status of Migrant Workers (Council of Europe) does not apply to persons undergoing vocational training, seasonal employees or project workers.

### **6.4. Interests of the companies in the receiving country**

- (1) **Enhancement of profitability:** The company in a market economy wants to increase its profitability. This can be achieved by the intake of cheaper or better qualified foreign workers. However, this can quickly lead to conflicts. In times of an unfavourable labour market situation, competition can arise between local and foreign labour.
- (2) **Equal access to foreign workers:** All the companies should have equal access to the employment of foreign workers. Otherwise conflicts can develop between companies which can recruit (cheaper) foreign labour and those that cannot.
- (3) **Fast utilisation of labour:** In the case of short-term employment, the company is interested in the complete and fastest possible utilisation of labour. Induction training periods or the teaching of knowledge and skills which demand more than just learning on the job incur additional work and thus expense. This can result in a conflict of interests between what the foreign worker wants and what is intended in the agreement between the country of origin and the host country.

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<sup>30</sup> ILO, IOM, UNHCR (1994): Migrants, ... cit. op. p. 13

## **6.5. Some further considerations on temporary employment of foreign workers**

Fixed-term contracts for employment purposes are not without problems:

(1) Social and health problems for the migrant worker: the foreign worker must live separately from his family. As his stay is restricted he will try to earn as much money as possible and at the same time cut costs. He can only do this by working overtime, accepting more difficult working conditions, living in cramped, cheap accommodation, and so on. The consequences can be health risks, social segregation and isolation. Due to the precarious situation (no alternative to the present employment) the foreign employee with a fixed-term contract of employment can easily be put under pressure to accept unfavourable working conditions or unfavourable working hours.

(2) Wage dumping and competition with domestic workers: for a number of reasons it is difficult to check what wages are actually paid. As the wage differences between country of origin and host country are considerable and as the migrant worker finds himself in a precarious situation, he/she is frequently prepared to work also below the usual local wages. It is important for him/her to have a job where wages are high in comparison with his country of origin. The wages finally accepted can be far below the collectively agreed or usual local wages of the country providing employment. The danger of wage dumping and unfair competition between companies which employ such manpower and those which do not may be the consequence. Furthermore, competition with national workers can easily arise. This danger is particularly great in times of recession accompanied by high

unemployment. Because of competition and falling sales companies will try to rationalise and cut costs. They will do this by recruiting cheaper foreign employees working on a contract for services basis if this possibility exists.

(3) Repeated induction training costs in the case of rotation: contracts of employment for limited periods may provide a means of flexible adjustment to the requirements of the labour market, but in practice difficulties arise. After a certain time, the foreign employee is integrated into the production process and familiarised with the requirements of his job. After that his contract expires. The employer is not interested in letting trained staff go and replacing them by new members which in turn have to be given new induction training. This takes time and incurs costs. Therefore pressure will arise from the employer's side to be able to continue to employ the foreign manpower already trained.

(4) Level of training: the shorter the stay and the more rigorously the rotation principle is enforced, the more the employer will be interested in labour at the lowest possible wages and not in the provision of skills or qualifications. Therefore, the tendency will exist to take on employees only for work which can be quickly learned and which requires few qualifications. Know-how and knowledge transfer will then be kept within narrow limits.

To sum up, it can be stated that the advantages of temporary employment of foreign workers are accompanied by important disadvantages. From an economic point of view and due to the rotation principle, consequential social costs are not incurred in the receiving country as would be the case for permanent immigration. However, the cost of induction training arises anew whenever trained staff leaves after the expiry of the contract. The shorter the duration of the contract, the lower the companies will keep the induction training costs. Low induction training costs are, however, only possible if foreign workers have already specialised in the work required or if the jobs require low skills with only short training. However, in this case the training effect for the foreign worker will remain low.

Furthermore, temporary employment of foreign workers tends to lead to further employment: the companies are interested in keeping trained workers and will try to get contracts extended. Temporary employment can also act as a bridge-head for illegal employment. Potential emigrants become aware of the differences between home country and country of employment, contacts for employment possibilities can be made and work can be obtained - on an illegal basis.

## **7. Bilateral agreements providing for short-term migration between European countries**

To get an idea of the spread, the scope, the content and the implications of bilateral agreements for the purpose of employment or training a survey was carried out in the member countries of the Council of Europe. In line with the mandate given by the European Committee on Migration the survey focussed on three types of temporary immigration: seasonal workers, project-tied workers and short-term migration for training purposes.

### **7.1. Bilateral agreements concerning seasonal workers**

In a number of member countries of the Council of Europe there is the possibility of employment for a period of less than one year. This type of employment is mostly seasonal, but not necessarily so. In Switzerland, for example, in addition to seasonal employment, a work permit can be issued for short-term employment of up to four months.

The possibility of seasonal employment is often already provided for in the general system of the work permit law (e.g. France, Spain, Sweden, Switzerland) and not tied to a particular bilateral agreement between two countries. However, there are also bilateral agreements which govern employment of foreign seasonal workers.

Agreements on short-term employment of less than one year (seasonal employment) have existed between a number of countries, sometimes for decades. In this way economic sectors in particular with seasonal manpower requirements (such as the building sector, hotel and catering industry as well as agriculture) tap manpower resources which are not available or not sufficiently available in their own country's labour market. For the seasonal workers the advantage can be seen in an improvement of his/her family's income.

As already mentioned, short-term employment of foreign workers need not depend on the existence of a bilateral agreement. In some cases this is, however, desirable, for example, whenever co-operation between the labour market authorities is required. If, for example, only labour with a certain qualification is needed, a selection must be made in order to be able to achieve placement of the required workers. A further reason is when migration is to be controlled and channelled. This then has to take place on the basis of mutual understanding between the two countries.

Thus, for example, agreements may provide for immigration quotas, the handling of the selection and placement procedure, the care of foreign workers or regular co-ordination meetings. Furthermore agreements may seem opportune for political reasons, for example to underscore friendly relations. Some seasonal work agreements and many training agreements have probably arisen from such considerations. The same applies, by the way, to the project worker agreements which the Federal Republic of Germany has concluded with a number of Central and Eastern European countries.

Seasonal employment within the framework of bilateral agreements is characterized by:

\* Stay limited to 3 months (for example Germany), 6 months (for example France) or 9 months (for example Spain or Switzerland). Seasonal employment is widespread in Switzerland. It is permitted for up to 9 months a year. After four consecutive years the seasonal work permit can be changed into a so-called annual residence permit.<sup>31</sup> Seasonal employment in Sweden is restricted to the period from May 15 to October 15 to ensure that the activity is of a seasonally-related nature;

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<sup>31</sup> This entitlement to change after four years of seasonal work into an annual residence permit has led in Switzerland to a controversy concerning the economic consequences of this ruling: as the new intake of foreign workers is subject to strict quotas by cantons, in the absence of other possibilities access via seasonal employment is chosen. After four years the seasonal and economic sector restrictions are dispensed with. The seasonal worker can now take on a whole year job in a different economic sector although companies in these sectors might need foreign labour with different qualifications. As a new intake of labour is not available because of the strict quota regulation the companies have to fall back on the earlier seasonal workers (who can now stay for one-year periods) who are already available in the country.



- \* Seasonal work permits may be limited to employment in particular industrial sectors such as agriculture or tourism;
- \* As a rule the work permit is only issued if no national manpower is available for the work required;
- \* The agreements are, in general, not based on reciprocity. The receiving country is interested in cheap and quickly available labour;
- \* The procedure to fill a seasonal job can be handled in two ways. The domestic company may first establish direct contact with the foreign worker and then request the foreign employee known to it by name through the employment services. Alternatively, the company can contact the employment services and state the number and qualifications of the workers required. The employment services of the receiving country and country of origin get in touch with each other and try to fill the vacancies;
- \* As a rule, payment of collectively agreed wages, or of the usual local wages, is laid down. A similar ruling applies to the bearing of the cost of board and lodging and possibly of the cost of travel;

Bilateral agreements for the employment of seasonal workers exist between the following countries:

France and Morocco (1963), Tunisia (1963), former Yugoslavia (1965 and 1986) and Poland (1992). The maximum duration of stay is 6 months. In 1992 5181 Moroccans, 803 Tunisians, 8214 Poles and 107 workers from former Yugoslavia were in employment as seasonal workers in France.

Switzerland and Spain (1961) and Italy (1964). The maximum duration of the stay amounts to 9 months. Although no sectoral restriction has been laid down, employment in practice is restricted to only a few sectors: construction industry, hotel and catering industry, agriculture. In 1992, there were nearly 8,000 Spanish and 10,800 Italian seasonal workers in Switzerland.

There is also an agreement for the employment of Portuguese seasonal workers. An interesting training scheme is run in Portugal for returned seasonal workers who were employed in Swiss construction industry. After two seasons of employment in Switzerland (approximately 16 months) they have the possibility of following a training course in Portugal during the off-season in winter time.

Since early 1991 it has been possible for foreign workers from non-EC states to work in Germany for up to 3 months in any one year. For this purpose the Federal Republic of Germany has made procedural agreements with the employment services of Croatia,

Poland, Romania, Slovakia, the Czech Republic, Hungary and Bulgaria (for the latter country only occupations in the hotel and catering industry) for placement in short-term employment (seasonal workers). The agreements were concluded in the early 90s.

The numbers of placements developed as follows: (1991) 128,688; (1992) 212,442; (1993) 181 037. For a breakdown by country please refer to the annex.

The vast majority, approx. 98%, was made up of so-called requests by name by the companies. This shows that in general contact between the foreign worker and the domestic firm was already established before the company applied for a work permit.

Originally there were no regional or sectoral restrictions concerning the employment of seasonal workers. Due to extensive use of this type of short-term employment and the deteriorating situation of the German economy in the meanwhile, restrictions have been introduced: as from the second quarter of 1993 the employment office has to check for 4 weeks whether a German employee can be found or not. From May 1993 onwards, a placement fee of DM 100 per foreign seasonal worker is to be paid. From September 1993 on, the 3-month-contracts of employment are restricted to typical seasonal work in agriculture, forestry, hotel and tourism, manufacturing of agricultural products and saw-mills. This means in particular that requests for manpower by the construction industry will not be met by providing project workers.<sup>32</sup>

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<sup>32</sup> In connection with the preceding reduction of the quotas of project workers requests for foreign seasonal workers have increased. Foreign sub-contractors established companies according to German law in order to be able to employ seasonal labour.

## **7.2. Bilateral agreements concerning project workers**

The agreements on the temporary employment of project workers are a relatively new form of bilateral agreement. It should be mentioned that, in principle, it is legally possible for foreign companies to perform services with their own staff within the framework of a larger project of a domestic company. However this is made possible only under very limited circumstances.

Foreign project workers are seconded for a certain time in order to perform a service with their company abroad. To this end the foreign company concludes a contract with a domestic company for the performance of a specified work (contract of service). The foreign firm works as a sub-contractor for a domestic company with a contingent of its own labour.

In bilateral governmental agreements the framework conditions are laid down, such as maximum duration of the stay of the project workers, maximum numbers (quotas) to be employed each year, consideration of the labour market situation when fixing the annual quotas or the handling of the procedure between the authorities. In principle, the wage and working conditions of the receiving country apply. However, wages are paid by the foreign sub-contractor who also bears the cost of social security for the project workers.

Such agreements exist above all between the Federal Republic of Germany and a number of Central and Eastern European countries.

Due to the large numbers and the scope of these agreements they will be dealt with in more detail later. The agreements were concluded between 1989 and 1993. The following table gives an overview. A breakdown by country is shown in the annex.

Average number of foreign project workers in the Federal Republic of Germany

Year	Number	of which, % in construction
1989	16 600	35
1990	27 200	48
1991	53 100	62
1992	94 900	73
1993	70 100	76
1994	38 300	65

(until July)

Source: Federal Employment Services

The quotas agreed upon are often sub-divided into sub-quotas. For example there are special quotas for the construction industry, for certain occupations (restorers) or for medium-sized companies. The latter stipulation is introduced to avoid a situation in which only large companies profit from the agreements. The number of project workers employed reached its peak in October 1992 with 116,000. Since then their number has been falling, a series of restrictions having been introduced (see further below). In 1993 it amounted to 70 000, with a tendency to decline.

Finland concluded bilateral agreements with Estonia (1991) and Russia (1992) which also concern project workers.

In Sweden the employment of foreign labour is in principle possible within the scope of a contract for services of a foreign company. For that purpose a work permit is necessary. The competent authority, the Immigration Board, contacts the employment services, the Labour Market Board. The latter checks whether the labour market situation allows work permits to be issued. Furthermore the Labour Market Board checks whether the contract of employment corresponds to the current Swedish collectively bargained wage agreements. For this purpose the trade unions are involved and, finally, must give their approval for a work permit to be issued. According to information from the Swedish



Ministry of Labour the number of foreign project workers in Sweden is very small.

At this point the following agreements should also be mentioned which may also include project work:

Poland concluded agreements with the Czech Republic and the Slovak Republic concerning the employment of their citizens in one another's other countries in 1992. People looking for work can contact the employment services or get in touch directly with the potential employer. The employment service checks whether the labour market situation allows the issuing of a work permit. No quota has been laid down. In 1992 about 6000 Poles were employed in the Czech Republic and in the Slovak Republic, about 300 Czechs were working in Poland.

Russia concluded agreements with Vietnam and China for reciprocal employment of their citizens in 1992. The agreements are valid for 5 years. They do not necessarily involve project workers. The quotas are fixed each year in accordance with the labour market situation. They can fluctuate between 5,000 and 21,000.

Excursion: the agreements of the Federal Republic of Germany with the countries of Central and Eastern Europe states.

The Federal Republic of Germany has concluded the vast majority of agreements for the employment of project workers with the Central and Eastern European countries from 1989 onwards. Therefore a closer look should be taken at their objectives, their provisions and their impact.

The aim of the agreements is to promote co-operation between German and Central and Eastern European companies and mutual benefit of the countries concerned. In Germany sectoral or regional manpower demands, especially for skilled workers, can thus be met. For the reform countries the agreements are intended to support the restructuring efforts: the companies from those countries who are allowed to perform a paid service in Germany can earn profits which can be used for investment. Business contacts can be established. The wages paid to their project workers can be used for consumption. In addition the intention is to reduce the pressure to migrate and thus reduce illegal employment.

The basis of co-operation is a contract for services between a German and a foreign firm in which the "service" (task, project), to be performed is laid down. The foreign company providing the service carries out the necessary work with its own staff. The foreign company is thus a sub-contractor for a German firm. The contracts for services do not envisage that the customer (the German company) exerts influence on the number and quality of the workers involved in the performance of the service agreed. The foreign company providing the service retains the right to give instructions to its employees working on the customer's premises.<sup>33</sup>

In the bilateral agreements, quotas of project workers by countries are fixed which determine the maximum number of work permits issued. In general it is an overall quota and for all economic sectors. But with some countries sub-quotas for small and

medium-sized firms as well as additional quotas for the construction sector with a three-year limit have been agreed upon. The quotas refer to annual average figures which may be exceeded in individual months. If at the end of the year the annual quota is exceeded, the numbers must be balanced during the following year.

Within the scope of the quotas, no checks on whether a domestic worker is available or not, are carried out. However, for the protection to the domestic labour market the agreements contain an

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<sup>33</sup> Therein lays the difference as compared with so-called hiring-out of employees. Employees are hired out when the foreign employee is placed by his employer (the lessor), for the performance of work and for a specified period, at the disposal of another employer (the lessee) who employs him in his company according to his own company requirements. The hiring-out of employees is not permitted within the scope of contracts for services.

escalator clause: the quotas can be changed depending on the labour market situation. Thus a change in the unemployment rate of 1% results in a 5% change in the quotas. In 1993 further labour market protection clauses were introduced (see later).

The contract for services is checked by the employment services. A prerequisite is the agreement of the foreign partner administration (ministry, employment service) in the form of a licence or quota acknowledgement. Examination of the contract for services is to ensure that unlawful hiring-out of workers is not involved and that the foreign entrepreneur pays his workforce wages according to collective agreements in the Federal Republic of Germany. Social security contributions for the project workers are paid through the foreign company according to the provisions in its country.

Only after examination of the contract for services by the regional employment office, is the work permit issued. As a matter of principle, it is granted only for the duration of the contract for services, but not for more than 2 years. In exceptional cases an extension of up to a maximum of three years is possible.

In the event of non-compliance, fines are envisaged for domestic companies. Foreign firms may be excluded from the bilateral agreements if the foreign project company exceeds the quotas allocated, employs manpower without a work permit or residence permit, pays wages below the collectively bargained levels or if inadmissible hiring-out of staff to other firms has taken place. This is the case if the foreign company (lessor) lends to a German firm (lessee) his members of staff who were allowed in only on the basis of a contract for services.

Due to the rapid increase in contracts for services and the related difficulties in checking and monitoring, abuses have occurred. They mainly involved the conclusion of bogus contracts for services whereby hiring-out of workers occurred, with payment below the level of collectively bargained wages or with the quotas being exceeded. These abuses happened mostly in the construction industry which made use of three quarters of the quotas. In order to avoid distortions of competition, which result from the fact that large companies make most use of the quotas, it has been decided - as of 1 October 1993 - that the number of project workers must not exceed a certain percentage of the firm's domestic workforce.

Due to the deteriorating economic situation, further labour market protection clauses were introduced in 1993:

- \* Contracts for services will not be authorised if the average unemployment rate for the last six months has been 30% above the national average in the employment office district concerned.
- \* Foreign employees are not permitted if domestic workers are on short-time<sup>34</sup> in the company of the German project partner.
- \* For each project worker a fee of up to DM 2,000 is to be paid.

The employment of project workers rose steeply until 1992 and in that year reached a peak at 95,000 (including construction industry with 70,000). After that the figures dropped. In 1993 there were only 70,000 on the average for the year, and the trend was still going down.

The deterioration of the labour market situation has led to criticism of the agreements concerning the employment of project workers:

(1) The agreements specify payment of local wages by the project company. Compliance with this regulation is, however, very difficult to check. In many cases it must be assumed that wages are paid below the collectively bargained level and that wage and social dumping are therefore taking place. To make checks easier, the company under contract has to keep evidence of wages paid at the place of work in Germany. In the event of wage dumping, the foreign company can be excluded from any further work under contracts of services.

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<sup>34</sup> Short-time working benefit is paid to employees in companies in which a temporary shortage of work occurs which is due to economic causes or to an unavoidable event. The short-time working benefit, a partial wage substitute, is intended to save the employees' jobs and retain the trained employees for the companies.

(2) The foreign project workers should be paid collectively agreed wages, but for social security the rules of the assigning country apply. This means a labour cost advantage of 20 - 25%. This legal labour cost advantage can be passed on to the customer and makes the firm more competitive. Thus competition which is considered unfair develops between those companies which employ project workers and those which do not. The competition problem is even aggravated by the fact that more than two thirds of the employment of project workers are concentrated in the building sector. At the peak of the employment of project workers the latter made up about 4 % of the employment in the Western German construction industry. In addition, large companies were able to make use of the quotas faster and to a greater extent. Therefore the cost savings achieved by making use of the quotas were not the same for all German companies. Thus the distribution of the quotas was not competition-neutral for the companies, i.e. the labour cost advantage from the employment of project workers was unevenly distributed among firms. In order to involve small and medium-sized companies to a greater extent, in October 1993 a quota rule dependent on the size of the firm was introduced for companies in the building industry:

- \* companies with up to 30 employees can employ up to a maximum of 6 project workers.

- \* companies with up to 200 employees are allowed to take on 20 per cent project workers, but not more than 30 persons in total.

- \* in the case of more than 200 employees the percentage is 15, and no more than 200 in total.

In addition, work permits are not issued to foreign project workers in the building sector if the German contractor is not a company of the construction industry.

In order to avoid unequal access to the quotas for contract of service, and in order to base the distribution on "market prices", it has been proposed to set up a kind of exchange (clearing house) for contracts of services.<sup>35</sup> The services are to be offered and sold by auction to the highest bidder via a kind of clearing office.

(3) The agreements on the employment of project workers are seen as being the entry gates for illegal employment. This can happen if more foreign workers are employed for the execution of the project than the number of work permits issued, or if authorised project workers remain in the country after the completion of the project - and after the expiry of the work permit. In 1993 checks carried out by the employment offices on construction sites (80% of all checks cover that sector) resulted in 15,000 preliminary investigations by the public prosecutor because of the reasonable suspicion of illegal employment of foreigners, i.e. there was no work permit or no valid work permit. Four fifths of these investigations had to do with the performance of contracts of services.

(4) In many cases it is only a matter of hiring out employees as temporary workers rather than performing a contract of services. In the case of the hiring out of employees as temporary workers, employees from a lending firm are hired out (lent) to a third party (company) for the performance of work under the direction of the latter for a certain length of time. This procedure does not correspond to the intention of the agreements on the employment of project workers. Hiring out is, incidentally, not

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<sup>35</sup> Institut der deutschen Wirtschaft: Die wirtschaftlichen Implikationen der Werkvertragsabkommen für die Bundesrepublik Deutschland und die Reformstaaten Mittel- und Osteuropas, Gutachterliche Untersuchung im Auftrag des Bundesministeriums für Arbeit und Sozialordnung, Köln 1993, pp. 37 et seq. (Institute of German Business: The economic implications of the agreements on the employment of project workers for the Federal Republic of Germany and the reform countries of Central and Eastern Europe, Expertise on behalf of the Federal Ministry of Labour and Social Order, Cologne 1993, p. 37)

(Institute of German Business: The economic implications of the agreements on the employment of project workers for the Federal Republic of Germany and the reform countries of Central and Eastern Europe, Expertise on behalf of the Federal Ministry of Labour and Social Order, Köln, p. 37)

permitted for the construction industry in the Federal Republic of Germany.<sup>36</sup>

In the case of a contract of services the contractor undertakes to perform a service which can consist in the production of a tangible good or in the provision of a service. The criteria for the existence of contract of services can be summarised as follows:<sup>37</sup> (1) the result of the service must be clearly defined, (2) the contractor must be able to perform the service properly, (3) the contractor must have entrepreneurial freedom of action for the performance of the service, (4) the contractor must have the authority to issue instructions to his employees on the premises of the other company (employing company), (5) the contractor performing the service pays his employees and (6) the contractor performing the service assumes the warranty.

The difficulty is to be seen in the fact that the line between the contract of services and the hiring out of employees as temporary workers can in fact be drawn in legal terms but that in practice the transitions are hazy and can only be checked by a very complex process. During checks by the employment offices on construction sites in 1993 in about 5,000 cases legal proceedings were initiated because of the reasonable suspicion of the hiring out of employees as temporary workers. Approximately a third of the 5,000 cases were related to the performance of contracts for services.

Due to the difficulties which have arisen, the demand has been made by the business community that, instead of having agreements for the employment of project workers, direct employment by German companies for a limited period should be allowed. However, this would mean undermining the principle of the recruitment ban. Moreover companies of the countries undergoing reform would then not be enabled to capitalize on their competitive advantages (low labour costs) and to enter into co-operation projects with domestic companies. That contact makes it possible for the foreign company to gain entrepreneurial experience and the co-operation via the contract for services can form the basis for later co-operation.

Concluding this chapter it can be said that the agreements on the employment of project workers between the Federal Republic of Germany and a number of Central and Eastern European countries must be understood in the prevailing political context. With enormous labour cost discrepancies and, in principle, open borders with the eastern neighbours since 1989, the agreements on the employment of project workers represented a possible way to reduce the immigration pressure and to channel immigration; at the same time, they made a contribution to economic development through the activities of foreign contract for service companies. In times of good economic development the competition with domestic companies and labour does not become particularly noticeable and foreign workers can be absorbed by the labour market. The situation changes when the labour market is strained. Competition is intensified by the fact that contracts of services concentrate on certain sectors (e.g. construction industry), regions (e.g. near the border, cities), or types of companies (e.g. large companies). In a pluralistic society, labour cost competition by means of the short-term employment of foreign workers will only be accepted when the labour market situation is taken into consideration. Thus the labour market compatibility in the employment country becomes the most important criterion for accepting contracts of services. This assumes flexible as well as simple handling. As the description of the German situation has shown, increasingly complicated regulations made to prevent abuse have led to new evasion and circumvention strategies. Finally over-regulation can occur which renders the instrument of contracts of services no longer useful or possible for any of the parties involved. It must also be pointed out that the quantitative relief effect on the labour markets of the reform countries remained small. However, the transfers of capital, which had an effect on the balances of payment, were important.

### **7.3. Bilateral agreements providing for temporary training of foreign workers**

Under these agreements foreign workers should get the opportunity to improve their vocational and language skills in another country. The knowledge acquired during this stay abroad can later be useful

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<sup>36</sup> This regulation was introduced for social and employment protection reasons in early 1980.

<sup>37</sup> Institut der deutschen Wirtschaft (1993), cit.op. p.13

to companies in their home country. At the same time the additional skills acquired may improve their individual labour market opportunities upon return, either as self-employed or as employees. Agreements with such objectives have existed between a number of countries for a long time. The first ones were concluded in a period of more or less closed national labour markets. At that time it was important to create legal possibilities of temporary work and training abroad.

The framework conditions are laid down in the bilateral agreements. The most important conditions are:

- \* Provision of vocational training in a company of the receiving country - in practice mostly through training on-the-job.
- \* A vocational qualification of the foreign worker and adequate knowledge of the language is required.
- \* Age limits are fixed, usually between 18 and 30/35 years.
- \* The duration of stay is limited: as a rule, one year with a possibility of extension for a further 6 months maximum.
- \* Annual maximum figures (quotas) are laid down.
- \* Payment according to collectively bargained or usual local wages. Accommodation may be provided.
- \* The agreements may only apply to certain economic sectors and occupations. Even if such stipulations do not exist in practice the "trainee places" concentrate on certain occupational activities in the receiving country.
- \* Termination of the agreements is possible; in general an annual period of notice exists.
- \* In theory there is the principle of reciprocity. In practice, however, this form of temporary migration for training purposes tends to be a one-way street.

The number of foreign workers admitted under these schemes is very low so that their impact on the labour market of the receiving country is insignificant. Therefore agreements normally do not include any clause that the agreed annual quotas can be changed in accordance with the labour market situation of the receiving country. Control of the arrival and departure of foreign workers is managed via the competent public employment services of the countries involved.

The agreements include a training element. The work trainee should become acquainted with the way of working, the production processes and so on. of the host country. In many cases it is unclear to what extent and in what way vocational skills have actually been improved. A detailed laying down in the contract or a tightening of the training requirements makes the employment of foreign "trainees" unattractive for the company.

Additional training means costs. As the foreign worker is at the disposal of the employer only for a limited time, the employer is interested in a qualified worker (therefore the requirement of completed vocational training in the agreements) who requires as little induction training as possible. The situation may be different if the work trainee, after returning home, continues to benefit the company, for example in the company's subsidiary in the worker's country of origin. There may also be a governmental interest in further training and education, for example if the foreign worker is to act as a multiplier or is to be trained for self-employment after his return home. Those training needs go beyond the interests of the company. They cannot be demanded from the firm, except if training is carried out outside

the company and/or training costs are refunded. In the latter case one could think of courses, including language teaching, which are meant to prepare the foreign worker for his/her stay abroad. Repatriation could be eased by providing advice at the end of the stay, for example in preparation for self-employment. Such counselling should be carried out in co-operation with the country of origin.

The survey on bilateral agreements showed that the quotas are all very low. Moreover, they are not fully utilized. Thus, for example, the 1993 quota of 9,800 foreign occupational trainees in Germany was, at 5,771, only utilised 60%. Roughly the same applies to Switzerland: with a total quota of 3,370 in 1993 only 972 occupational trainees were counted in Switzerland.

The under-utilisation of quotas can be attributed to several causes. Firstly, at present the unfavourable labour market situation is showing its effect. But even in the past years of better labour market situation the quotas were not fully utilised. As already mentioned, the work trainee gets the usual local pay. An entrepreneur is normally interested in a worker who can start work immediately without long instruction. This is the case with simple jobs or if the qualifications required, including command of the language, work experience, social behaviour and so on are already available. The first case (simple job) does not match the intention of work training agreements. In the second case the selection is already considerably restricted.

The following list gives an overview of the bilateral agreements for temporary migration for training purposes.

Belgium: with Switzerland (1935), Finland (1951, quota 50), Sweden (1951, quota 100), Austria (1956, quota 100), Algeria (1970), Tunisia (1969), Poland (1990, quota 200).

The Federal Republic of Germany: has concluded agreements with a number of countries since 1989: Albania (quota 500), Bulgaria (quota 1,000), Latvia (quota 100), Poland (quota 1,000), Romania (quota 500), Russian Federation (quota 2,000), Slovakia (quota 700), Czech Republic (quota 1,400), Hungary (quota 2,000). In 1992 a total of 5,057 "trainees" were placed in Germany. The quota of 9,200 was not exhausted. In 1993 the number increased to 5,771 (see annex). There also exists an agreement with Switzerland dating from 1955 with a quota of 500.

Finland: Bilateral agreements exist between Finland and the Baltic states and some other Central and Eastern European countries. They involve several hundred persons a year.

France: with Switzerland (1946), Canada (1956, 1981), New Zealand (1983), the United States of America (1988, 1992), Poland (1990, quota 1,000).

The Netherlands: with Austria, Finland, Norway, Sweden, Switzerland.

Norway: with France (1951, quota 100), the Netherlands (1951, quota 50), Switzerland (1986, quota 50). In total a maximum of 30 trainees a year from these countries are in Norway.

Poland: with Germany (1990, quota 1,000), France (1990, quota 1,000), Belgium (1990, quota 250), Switzerland (1993, quota 150).

The Russian Federation: with Germany (quota 2,000), Finland (quota 500), Switzerland (quota 200), Vietnam.

Sweden: with Estonia (1990). Negotiations are under way with Latvia and Lithuania.

Switzerland: with 21 states (see annex). In 1992, 1609 young workers were employed in Switzerland within the scope of these bilateral agreements; in 1993 the figure was 972. The quota in 1993 amounted to 3370.

United Kingdom: with the United States (1987), Switzerland (1989, quota 400), Finland (1988), Malta (1992). These cases involve several hundred persons a year.

## **8. Summary and conclusions**

(1) Most countries have opened various doors for temporary migration in the form of seasonal employment, short-term employment for a few months, work trainee agreements and agreements on the employment of project workers. Project worker agreements were concluded by the Federal Republic of Germany with a number of Central and Eastern European countries. Through these "revolving doors" temporary employment is made possible, and via them a control of the particular migration movements can be achieved.

This report has tried to give an overview for the countries of the Council of Europe, of the type and the scope of the existing bilateral agreements concerning temporary migration. Three types were examined and discussed: seasonal employment, temporary employment as a project worker and stays for training purposes to improve vocational skills.

(2) The possibility of seasonal employment is often provided for in the general work permit system and



not necessarily tied to a particular bilateral agreement between two countries. However, there are also bilateral agreements which govern employment of foreign seasonal workers. The quotas and the number of foreign workers are, however, with few exceptions, not significant.

In general, seasonal employment depends on prior examination of the labour market situation by the labour market authorities, i.e. a check is made whether local labour (a national or a foreigner already resident in the country) is available for the work in question. Thus control is decentralised and in accordance with the local labour market situation. Labour market compatibility provides a flexible control mechanism for admitting foreign workers to the labour market. Two recruitment procedures are conceivable: request/application by name or anonymous request/application. In the first case, the potential employer and the foreign applicant for seasonal work already know each other. In the second case placement is effected via the employment services. In practice the first case is the usual one.

(3) The work trainee agreements have a long tradition and have been concluded between quite a number of countries. They are meant to give young foreign workers the opportunity to get to know the practice of their occupation and the field of work in a different country. The agreements are based on reciprocity and fix maximum numbers (quotas). As the quotas are low, prior examination of the labour market is dispensed with. It is remarkable that in general the quotas are not fully utilised. The degree of utilisation of the quotas varies with the labour market situation, but also depends on the prerequisites for the employment as occupational trainees (age limit, payment of usual wages, equal treatment as compared with local labour, knowledge of languages, administrative costs, administrative procedure). These requirements often make it difficult to find appropriate employers.

(4) For a variety of reasons (contribution to economic development, reduction of the migration pressure, political considerations) the Federal Republic of Germany has concluded agreements for the employment of project workers with a number of Central and Eastern European countries. Within a major project handled by a German company these agreements make it possible for a foreign company to perform a service with the help of its own manpower. With an increasing number of project workers (in the peak year, 1992, almost 100,000 project workers were employed) difficulties increased: since only overall quotas were fixed and no examination of the labour market situation took place, unequal competition between companies employing project workers and those not employing them arose. In addition, unequal distribution in favour of large companies occurred. Contracts for services often formed the basis for abuse in the form of illegal employment or so-called bogus contracts for services, i.e. in reality only hiring out of employees as temporary workers (manpower hiring) took place. To eliminate the undesirable effects on the labour market detailed regulations, intensified checks and reduction of the quotas were introduced. These required considerable administrative and inspection efforts and expenditure. Nevertheless new possibilities of evasion cannot be ruled out.

(5) A considerable south-north and east-west migration pressure will continue to exist in Europe.<sup>38</sup> Temporary immigration, it is argued, could help reduce the migration pressure between countries with different levels of economic development. Ideally temporary migration could serve the interests both of the countries of origin and of the receiving countries. A comparison of the interests of the parties involved in temporary migration did not always show matching goals.

(6) From an economic point of view the receiving country is interested in alleviating labour market bottlenecks of a seasonal, cyclical, sectoral or skill nature by means of temporary employment of foreign nationals. The country of origin hopes to ease its tight labour market situation (reduction of unemployment) and expects an improvement in its balance of payments as a result of the transfer of capital by its employees. A word of caution has to be added concerning the improvement of the labour

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<sup>38</sup> It should be noted that the much feared massive and uncontrollable influx of migrants from the Central and Eastern European States did not occur. Whether a pressure to migrate materializes or not depends, among other things, on whether the people perceive any improvement in the future in their own country. The latest forecasts by OECD give room for this hope, at least for some countries like the Czech Republic, Hungary or Poland. (OECD (1994): Economic Outlook, Paris, pp. 115-118)

market situation in the country of origin. We know from migration research that in general the younger, more dynamic workers tend to migrate. They are often not among the unemployed. Thus the effect on the level of unemployment should not be overestimated. Furthermore, the number of temporary workers admitted will remain too small to have a sizeable effect. But for the individual worker it can mean an escape from poverty.

(7) The transfers to the country of origin can make a contribution to its economic development. This essentially depends on how the funds transferred are utilised (for investment or for consumer goods, for imported goods or for domestic products). Remittances obviously increase the earnings of the migrant and the family left behind. They can significantly promote welfare at the household level. Where the macro-economic environment is stable and other conditions are conducive to investment, remittances can

also raise the level of domestic investment. In any case, the influx of foreign exchange from transfers of income plays an important role for the balance of payment of the country of origin.

(8) From the period of work abroad, certain training effects, e.g. knowledge of foreign languages and improved skills, are expected. To a high degree, these training effects depend on the type of job, the skill level and the duration of employment. Results obtained from migration research so far suggest that the use of skills acquired in the country of employment should not be overestimated.

Because of the limited stay, training costs are repeatedly incurred when foreign workers trained on the job are replaced by new ones. Therefore, the shorter the period of stay, the lower the companies will keep the induction training costs. Training costs are low, however, only when the foreign worker already has the required skills or if the job involves simple work requiring low qualifications. In the latter case the improvement of the foreign worker's vocational know-how remains limited.

(9) Alongside the advantages of temporary employment of foreign workers, there are also problems. Due to the rotation principle the family cannot join the foreign worker. The receiving country reaps the economic benefit from the work of the foreigner and need not pay for the consequential social costs which would arise if permanent residence and family reunion were allowed. Social costs would occur because of the payment of benefit (family allowances, sickness benefit, housing benefit etc.) or when the children go to school.

(10) Furthermore, temporary employment of foreign workers tends to result in continued employment, eventually becoming permanent, and in illegal employment. As the companies are interested in keeping trained foreign workers, they will exert pressure to get their contracts of employment extended. Temporary employment can also act as a bridge-head for illegal employment. The differences in income between the home country and the country of employment become known, information and contacts for work opportunities can be obtained and employment can be continued - on an illegal basis.

(11) The bilateral agreements aim at controlling the in- and outflow of foreign workers. At the same time, these agreements should provide a flexible tool to react to the labour market requirements in the receiving country. With increasing numbers, the German example has shown that undesirable side-effects have occurred, such as the displacement

of domestic workers by cheaper foreign workers, payment below the collectively agreed pay rates, exceeding of the quotas agreed and illegal further employment after the expiry of the contract.

(12) A major characteristic of temporary labour migration is that employment is limited in time and cannot be a preliminary step to settling in the employment country permanently. This implies that a temporary foreign worker (1) must always have a fixed-term contract of work, specifying the authorized occupation and the employer, which means that the foreign worker may not freely change employer, occupation or region; (2) he/she must leave the country on expiry of the contract; and (3) cannot profit from family reunion.

(13) These are strict rules which are difficult to enforce. To enforce rules there have to be controls and sanctions. Sanctions for whom (employer, foreign worker), of what type (fines, forced repatriation) and up to what level? In a democratic society, there are certain limitations. It may be difficult or undesirable to establish a nationwide network of tough controls and to impose severe



sanctions.

(14) From the experiences gained so far and considering the interests of the parties involved, agreements on temporary employment of foreign workers should be based on the following principles:

- \* equal treatment concerning wages and other working conditions in comparison with domestic workers;
- \* conditions of access should be formulated clearly, kept simple and transparent and should not be subject to frequent changes made by the country of employment;
- \* access to employment should be compatible with the prevailing labour market situation in the receiving country;
- \* the examination of the labour market situation should take place at the local level;
- \* action to combat clandestine short-term work must include strict and regular checks;
- \* some kind of sanctions, e. g. penalties, must be possible in order to enforce compliance with the agreements concluded;
- \* the countries concerned should cooperate closely to control the flow of migrants, to avoid undesirable side-effects like illegal migration and to make administrative procedures and possible sanctions mutually acceptable;

(15) There is a series of international conventions concerning the protection of migrant workers. The most important provision is the principle of equal treatment with regard to pay and other working conditions between national workers and foreign workers. The International Labour Office in particular adopted Conventions and Recommendations relating to migrant workers, including temporary migration.<sup>39</sup> However, the conventions are only binding on the countries which ratify them. The ILO Convention No. 97 (revised 1949), which ensures equality of treatment for migrant workers in certain respects has been ratified by many countries. But the Convention No. 143 (1979) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers has so far not been ratified by the majority of the European countries. The comprehensive 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families has been ratified by only a few countries up to now.<sup>40</sup>

Short-term employment is excluded from the scope of certain conventions. This, for example, is the case with the European Convention on the Legal Status of Migrant Workers of the Council of Europe which does not apply to persons undergoing vocational training, seasonal employees or project workers.

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<sup>39</sup> Convention (No. 97) concerning migration for employment (revised 1949); Recommendation (No. 86) concerning migration for employment (revised 1949); Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, 1975; Equality of opportunity and treatment and the elimination of abusive conditions; Recommendation (No. 151) concerning migrant workers, 1975; Convention (No. 118) concerning the equality of treatment (social security), 1962; Convention (No. 157) concerning the maintenance of social security rights, 1982; Recommendation (No. 167) concerning the maintenance of social security rights, 1983.

Source: ILO (1992): Migration, Geneva

<sup>40</sup> A joint ILO/IOM/UNHCR-document comments: "The small number of ratifications is worrying. There is no need for new standard-setting activities in the field of international economic migration. What is needed is strict application of the standards that have been voted into existence. Countries that have not ratified these instruments are called upon to do so in order to cut down on irregular migration or employment and to secure minimum level of rights for temporary migrants. (ILO/IOM/UNHCR (1994): Migrants, refugees and international cooperation, Geneva, pp. 13-14)

One final remark. The move to liberalize trade in services in the Uruguay Round of GATT has important implications for temporary migration. It means that foreign companies have to be allowed to enter and to perform that service. Since the service to be provided is generally engendered in the natural persons providing it, relaxation of the rules of entry for the person providing the service will have to accompany the liberalization of trade in services among countries. In this case questions can arise as to whether a company's own personnel can be brought into the country to perform this service. What categories of workers should be admitted and for how long? What wages have to be paid? How is social security to be ensured?

## ANNEX

**Table 1: Stocks of foreign population and foreign labour in some European countries (in thousands)**

Country	1981	1991
<b>Austria</b>		
Foreign population	299	512
% of total population	3.9	6.6
Foreign labour	178	277
<b>Belgium</b>		
Foreign population	886	923
% of total population	9.0	9.2
Foreign labour	188	196 (1989)
<b>Denmark</b>		
Foreign population	102	170
% of total population	2.0	3.3
<b>France</b>		
Foreign population	3714 (1982)	3597 (1990)
% of total population	6.8	6.3
Foreign labour	1427	1506
<b>Germany</b>		
Foreign population	4630	5882
% of total population	7.5	7.3
Foreign labour	2096	2179
<b>Italy</b>		
Foreign population	332	897
% of total population	0.6	1.5
<b>Luxembourg</b>		
Foreign population	95	109 (1990)
% of total population	26.1	28.4
Foreign labour	52	85 (1990)
<b>Netherlands</b>		
Foreign population	538	733
% of total population	3.8	4.8
Foreign labour	193	214
<b>Spain</b>		
Foreign population	198	361
% of total population	0.5	0.9
Foreign labour	..	104

**Sweden**

Foreign population	414	494
% of total population	5.0	5.7
Foreign labour	234	253

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**Table 1 (to be continued):**

Country	1981	1991
<b>Switzerland</b>		
Foreign population	910	1163
% of total population	14.3	17.1
Foreign labour	515	703
<b>United Kingdom</b>		
Foreign population	..	1750
% of total population	..	3.1
Foreign labour	..	828

Source: OECD (1994): SOPEMI - Trends in international migration,  
Paris, pp. 187 and 189

**Table 2: Bilateral agreements concerning seasonal/short-term workers:**  
**Agreements between countries**

Country	France	Germany	Switzerland
Bulgaria		x	
Croatia		x	
Czech Republic		x	
Hungary		x	
Italy			x
Morocco	x		
Poland	x	x	
Romania		x	
Slovenia		x	
Slovak Republic		x	
Spain			x
Tunisia	x		
Total number of seasonal workers covered	14,300	175,800	18,800
by these agreements (1992)		(1993)	(1992) *)

\*) The total number of foreign seasonal workers in Switzerland amounted to 93,100 in 1993.

Source: Statistical Yearbook of Switzerland

**Table 3: Seasonal Workers in Germany (number of placings in 1993)**

Country	Placings
Poland	143,861
Czech Republic	12,027
Slovak Republic	7,781
Hungary	5,346
Romania	3,853
Slovenia	1,114
Croatia	6,948
Bulgaria	71
Total	181,037

Source: Federal Employment Services

**Table 4: Foreign occupational trainees (stagiaires) in Switzerland 1993**

Country	Annual Quota	Actual Number
Austria	150	42
Australia	50	8
Belgium	100	19
Canada	150	74
Germany	500	294
Denmark	150	54
Spain	50	5
France	500	233
Finland	150	15
Great Britain	400	29
Ireland	200	38
Luxembourg	50	0
Norway	50	9
Netherlands	150	56
New Zealand	20	7
Sweden	100	31
USA	150	58
Other	450	
Poland	150	
Russia	200	
Total	3370	972*

Notes: An agreement with Bulgaria - quota 50 - is envisaged for 1995 (\*1609 in 1992).

In 1993, 695 Swiss occupational trainees stayed in the contracting states.

Source: Volkswirtschaft 4/94, pp. 65 et seq.

**Table 5: Foreign occupational trainees in Germany in 1993**

Country	Annual Quota	Actual Placings
Albania	1,000	247
Bulgaria	1,000	176
Czech Republic	1,400	1,557
Hungary	2,000	1,370
Latvia	100	57
Lithuania *)	100	..
Poland	1,000	943
Romania	500	562
Russia *)	2,000	..
Slovak Republic	700	837
Total	9,800	5,771

Note: there is also an agreement with Switzerland dating from 1955 with an annual quota of 500.

\*) Concluded in 1993

Source: Federal Employment Services

**Table 6: Bilateral agreements concerning project workers: Agreements between countries**

Country	Germany	Finland
Bulgaria	x	
Bosnia-Herzegovina	x	
Czech Republic	x	
Croatia	x	
Estonia		x
Hungary	x	
Latvia	x	
Lithuania	x	
Macedonia	x	
Poland	x	
Romania	x	
Russia	x	x
Slovenia	x	
Slovak Republic	x	
Turkey	x	
(Yugoslavia	x)	
Total number of project workers employed	70 100 (1993)	numbers are low
(annual averages)		

Source: Replies to questionnaire

**Table 7: Quotas agreed between the Federal Republic of Germany and**

<b><u>workers</u></b>	<b><u>Central and Eastern European States concerning project</u></b>
	(as of June 1994)
Agreement with	Quota agreed
Bulgaria	1 740
Czech Republic	3 020
Yugoslavia	1 730 (suspended)
Bosnia-Herzegovina	1 030
Croatia	5 260
Macedonia	490
Slovenia	2 010
Poland	23 710
Romania	4 360
Latvia	380
Turkey	6 100
Hungary	13 220
Total	64 690

Note: The agreements signed with Russia and Lithuania were not put into force

Source: Federal Employment Services

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