



The Nordic Labour Market two years after the EU enlargement

Mobility, effects and challenges

Jon Erik Dølvik and Line Eldring, Fafo

The Nordic Labour Market two years after the EU enlargement
Mobility, effects and challenges

TemaNord 2006:558

© Nordic Council of Ministers, Copenhagen 2006

ISBN 92-893-1370-6

Print: Ekspresen Tryk & Kopicenter

Copies: 150

Printed on environmentally friendly paper

This publication can be ordered on www.norden.org/order. Other Nordic publications are available at www.norden.org/publications

Printed in Denmark

Nordic Council of Ministers

Store Strandstræde 18
DK-1255 Copenhagen K
Phone (+45) 3396 0200
Fax (+45) 3396 0202

Nordic Council

Store Strandstræde 18
DK-1255 Copenhagen K
Phone (+45) 3396 0400
Fax (+45) 3311 1870

www.norden.org

Nordic co-operation

Nordic co-operation, one of the oldest and most wide-ranging regional partnerships in the world, involves Denmark, Finland, Iceland, Norway, Sweden, the Faroe Islands, Greenland and Åland. Co-operation reinforces the sense of Nordic community while respecting national differences and similarities, makes it possible to uphold Nordic interests in the world at large and promotes positive relations between neighbouring peoples.

Co-operation was formalised in 1952 when *the Nordic Council* was set up as a forum for parliamentarians and governments. The Helsinki Treaty of 1962 has formed the framework for Nordic partnership ever since. The *Nordic Council of Ministers* was set up in 1971 as the formal forum for co-operation between the governments of the Nordic countries and the political leadership of the autonomous areas, i.e. the Faroe Islands, Greenland and Åland.

Preface

The enlargement of the EU in 2004, and with it also of the EEA area, has had a great impact on the Nordic countries. Initial fears that the enlargement would entail serious problems for their respective labour markets spurred all the Nordic countries, with the exception of Sweden, to enact transitional arrangements for migrant workers from the new EEA countries. In light of the different choices made by the countries in terms of solutions and transitional regulations, it was a natural and appropriate decision to launch a collaborative Nordic project to monitor developments. The establishment of a Nordic working group, consisting of participants from various relevant governmental authorities and with the research institute Fafo as its secretariat, has contributed to a mutual exchange of information and systematisation of knowledge across national boundaries. This has been highly beneficial for the authorities in all the Nordic countries. The reports from the working group have simultaneously contributed to the Nordic debate on the impact of the new labour migration on the labour markets, and on the effects of the various types of transitional arrangements chosen.

The collaborative project has provided documentation of the beneficial effects from the expansion and opening of the European labour market. Due to their high level of economic activity, the Nordic countries have experienced a labour shortage in many sectors. The Poles, Estonians, Latvians, Lithuanians and others who travel northwards to find work are therefore meeting a demand in the Nordic countries. At the same time, working in the Nordic countries provides an opportunity for many workers from the new member states to improve their situation in life.

Consequently, labour migration benefits everybody! We must ensure, however, that this migration takes place in an orderly way so as to protect workers from being exploited, cheated or exposed to unfair wage levels and working conditions. We must also ensure that businesses that follow the rules are not exposed to unreasonable competition from those that engage in unlawful activities. A key concern for our Nordic welfare societies is also to prevent parts of the labour market from being characterised by illicit labour, tax evasion and fraud. The collaborative project has documented problems related to so-called social dumping, i.e. where workers from the new EEA states work under conditions that are substantially inferior to those of national, Nordic workers. Circumventions of applicable regulations and transitional arrangements have also been documented. The project has thereby provided knowledge and background information needed to take those measures necessary to prevent undesirable effects.

It is precisely this knowledge of the current situation, of the people who arrive and how they are treated that makes this Nordic project so important. Better knowledge of the labour migration streams from the new EEA countries after 2004 is a key factor for the implementation of measures to prevent social dumping and unlawful practices, and for ensuring that labour migration will be beneficial for everybody. At the same time, it is also very valuable to have an overview of the similarities and differences between the Nordic countries, both in order to understand the mechanisms at work and to learn from each others' experiences and solutions to the problems encountered. The reports from the collaborative project have indicated several core problems related to the current and future regulation of the Nordic labour markets; problems that should be at the centre of attention of the authorities, the social partners and the other actors in the labour market.

I wish to thank the working group and Fafo for their contributions to the reports and to the new knowledge base that they have made available.

Bjarne Håkon Hanssen
Minister of Labour and Social Inclusion
Oslo, 18 August 2006

Contents

Preface.....	5
Contents.....	7
Executive Summary.....	9
1. Development of individual labour immigration.....	11
2. Increasing service mobility and posting of workers	23
2.1 Regulation of wages and employment conditions for posted workers.....	25
2.2 Enforcement, control and sanctions.....	31
3. Conclusion.....	43
Sammendrag.....	55
References	57
Appendix 1: Transitional arrangements in the Nordic countries	59
Appendix 2: Statistics.....	61
Appendix 3: List of contact group members.....	63

Executive Summary

(1) Two years after the enlargement of the EU a certain pattern has emerged in the labour migration streams from the new EU member states to the Nordic countries. Individual labour migration has varied strongly among the Nordic countries, but continues to grow. By meeting growing demand for labour, the movement of labour has contributed to increasing production and employment, curbing prices and interest rates, and extending the room of manoeuvre in economic policies. Labour migration growth has been strongest in Norway and Iceland, while Finland and Sweden have seen a certain decline in registered migration. No signs of social tourism have been detected. Labour mobility related to *services* has increased strongly, and seems to clearly exceed regular labour migration in key sectors. This development has given rise to new challenges in terms of regulation, enforcement and control.

(2) In the same manner as most of the 'old' EU member states, Denmark, Finland, Iceland and Norway chose to introduce *transitional arrangements* for the movement of labour from the EU-8. Sweden, and in practice also the United Kingdom and Ireland, opened their labour markets from day one. Finland, Iceland, Greece, Portugal and Spain repealed their transitional arrangements from 1 May 2006, and Italy has followed suit. Denmark undertook a relaxation of its regime and made it possible to pre approve enterprises that have collective wage agreements, and will repeal its arrangement on 1 May 2009 at the latest, as will Norway. Also other EU member states have announced a gradual opening of the labour market in the coming years. With the exception of Austria and Germany, an open labour market will thus be established in the current EU/EEA area from 1 May 2009. There are indications, however, that several countries will make use of the right to establish transitional arrangements if/when Bulgaria and Romania join the EU.

(3) The Nordic experience has highlighted the difficulties involved in having separate regimes for *individual labour migration* on the one hand, and *labour mobility through services* on the other. Differences in the conditions for wage setting, labour conditions, taxation/duties, control and enforcement have given a certain rise to *strategic circumventions and distortions*. These have contributed to a reduction of regular labour immigration and to distortions of competition, dumping of wages and creation of disorderly conditions in parts of the labour and service markets. Signs of growing illegal employment of immigrants have also been noticed, for example in the household sector.

(4) Following a phasing out of the transitional arrangements, the legal opportunities for employment of workers from the EU-8 in enterprises

that pay wages below the national rate are expanded. Especially in countries/sectors that have limited coverage of collective wage agreements and/or no provisions for extension of wage agreements or statutory minimum wages, this may give rise to differential treatment, increased low-wage competition and strains on the collective bargaining system and on wages and working conditions. Abolition of controls at the border will serve to increase the requirements to be fulfilled by the internal regime for regulation and control in the labour market. One challenge is to develop policies that can ensure equal terms for service and labour migration, equal treatment of foreign workers, and that takes account of – and can influence – the conditions for free movement within the open European market.

(5) With their high level of welfare and an aging population, the Nordic countries are facing a number of demanding dilemmas. The demand for labour is increasing, and is not likely to be covered from within the Nordic countries in the long term. The new EU members will see stronger tendencies towards aging, and their wage levels and affluence is increasing. In the coming years we are therefore likely to see a growing competition for labour in Europe and a seller's market for services. The demand for labour from third countries and the pressure along the outer rim of the EU can be expected to increase. These factors will place demands on the development of a more unified and long-term policy for labour and service mobility nationally, in the Nordic countries and at the European level.

1. Development of individual labour immigration¹

(6) In 2004, *Denmark, Finland, Iceland and Norway* made use of the opportunity to establish a two-year transitional arrangement restricting labour market access for persons from the new member states, while *Sweden* opened its labour market from day one. During the first two years, none of the countries reported any material distortions or imbalances in their labour markets. The arrangements have contributed to a certain measure of *overview and control* of the supply of labour, while the low level of registered individual immigration to several of the countries has spurred a debate of whether the arrangements exert an inappropriately *limiting effect on the recruitment* of desired labour. The transitional arrangements can be prolonged until 1 May 2009, with a provision for further prolongation until 2011, if a risk of serious distortions in the labour market prevails. In the spring of 2006, the countries that have such transitional arrangements therefore had to decide whether to repeal, prolong or revise the arrangements. *The Nordic countries again opted for different solutions and a different pace in the phasing out of their transitional arrangements.* Finland and Iceland have repealed their arrangements, while Denmark and Norway maintain their arrangements for the time being, with a certain relaxation in Denmark.

(7) One year after the enlargement no major influx of job-seekers had arrived in the Nordic countries, though significant differences between the countries were evident. As of the end of 2005, one could observe that the variations in the volume of registered individual labour immigration to the Nordic countries continued and partly were enhanced, while the influx – with the exception of Sweden – was growing (where only labour permits with a duration in excess of three months are registered).² During 2005, a total of nearly 34,000 first-time permits were issued to new EU citizens, as well as 19,000 renewals, of which Norway accounted for the

¹ Many thanks to the members of the project's contact group for very good collaboration throughout the year, and for useful comments to the draft report (see annex 3 for a list of contact group members). Thanks also to Erik Hansen who translated the report into English, and to the Research Council of Norway whose support of Fafo's work on this topic has been of great use in this project.

² See also Dølvik, Jon Erik and Line Eldring (2005), [Arbeids- og tjenestemobilitet etter EU-utvidelsen. Nordiske forskjeller og fellestrekk](#). Sluttrapport for en arbeidsgruppe under Nordisk Ministerråd. TemaNord 2005:566, and Dølvik, Jon Erik and Line Eldring (2006), [Statusrapport Januar 2006: EU-utvidelsen og konsekvensene for arbeidsmobiliteten til Norden](#). Halvårsnotat fra Arbeidsgruppe under Nordisk Ministerråds Arbeidsmarkedsutskott og Friberg, J.H. (2006), [Individuell arbeidsinnvandring. utfordringer to år etter EU-utvidelsen](#). Fafo Østforum/Fafo-notat 2006:07

majority (see appendix 2, table 1). In comparison to 2004, Iceland saw a strong growth during 2005 (more than tripling to 3,608, including renewals), Denmark saw a doubling (to 4,594), while the increase in Finland was modest, and Sweden saw a certain reduction. Norway experienced a 40 per cent growth, up to 37,203 permits (including renewals). At the beginning of 2006, a total of at least 59,499 first-time permits/applications for EEA permits from EU-8 citizens had been approved since 1 May 2004, as well as 22,970 renewals. Norway had issued more than two thirds of the permits in the Nordic countries since 1 May 2004, – 36,276 first-time permits and 21,460 renewals – or a total of 57,736, whereof a significant share accounted for short-term work. In other countries in Western Europe during 2004–2005 the largest immigration influx were registered in Germany (500,000 permits), United Kingdom (160,000) and Ireland (110,000)³. In June 2006, Ireland reported unique levels of immigration, and that as many as 200,000 persons had immigrated from the new member states during the first two-year period⁴, while the UK had registered 391,000 by end of March 2006.

(8) Figures are now available for 2006 up to May/June, and a status can be established for the first two years that have elapsed since EU enlargement. In *Norway*, the influx is still increasing. During the first quarter of 2006, Norway granted 4,182 permits and 4,024 renewals, compared to 2,735 permits and 1,741 renewals during the same period of 2005. By the end of June, the number of permits approved during 2006 had risen to 24,618, of which roughly half were renewals, compared to 16,439 at the same time in 2005. As of the end of June, there were 28,596 valid permits, compared to 17,896 on the same date in 2005 and 11,976 in 2004, i.e. more than a doubling in two years. Longer durations and more renewals make the increase in the number of persons resident and working within the country far higher than the growth in the number of new permits. *Denmark* has also seen a more vigorous influx during 2006 than in the previous year. During January–March a total of 1,736 permits were granted, compared to 988 during the same period of 2005. In the period January–May the number of approved permits numbered 3,651, while a total of 4,923 permits were approved during the entire year in 2005. *Iceland* stands out with a very powerful growth; during the period January–May a total of 2,510 permits and 1,180 renewals were granted, which is approximately equal to the total number granted during all of 2005, during which the increase also was formidable. In *Sweden*, the level is stable and moderate, with 1,830 permits with a duration of more than three months having been granted during the first four months of 2006. *Finland* presents the same picture; the 803 permits granted during the first four months of 2006 correspond approximately to the level observed during

³ EU Commission (2006), Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (period 1 May 2004–30 April 2006) http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0048en01.doc

⁴ Embassy of Sweden, Dublin, Promemoria 2006-06-16.

2005. In the Nordic countries as a whole, a total of 74,450 work permits have been granted to citizens from the new member states during the first two years following EU enlargement, as well as 29,949 renewals. A considerable proportion of the permits are short-term, meaning that the net contribution to employment in the Nordic countries is far lower than what might be inferred from Figure 1.

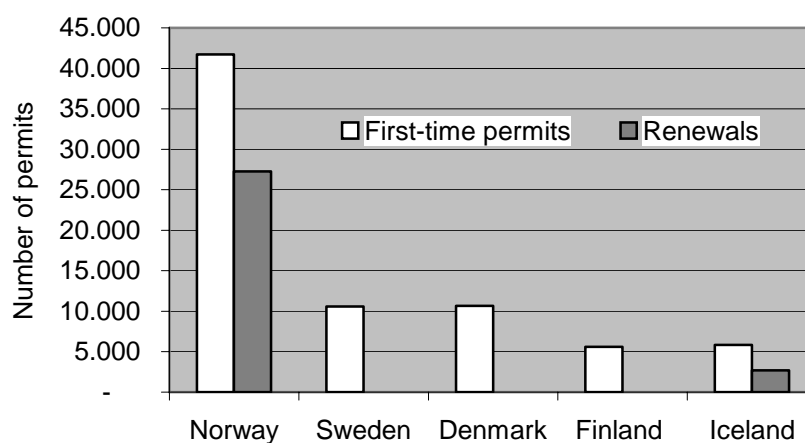


Figure 1 Work permits to individual job-seekers from the EU-8 in the period 1 May 2004 – 30 April 2006, by Nordic recipient country (see table 1 in appendix 2 for sources and definitions)

(9) As a consequence of national differences in registration practices with regard to permits of less than three months' duration, a comparison of the total figures will give a biased impression. In Norway, 30 per cent of the permits apply to work of less than three months' duration; in Sweden these are not registered, and in Finland only partially. In Finland, seasonal work in agriculture is not registered after 1 May 2004, but according to statistics from the Finnish tax authorities there seems to be no major increase in this category (prior to the enlargement a total of 2000–3000 such permits were granted annually). No comparable and updated statistics are available only for work permits with a duration of more than three months, but as of August 2005, Norway accounted for half of these permits, and this proportion has increased during 2006. Even though *short-term and seasonal work* still accounts for a significant proportion of immigration to Norway, a growing number of the permits apply to lengthier periods of residence. While 42 per cent of the permits granted during January–May 2005 applied to periods of residence shorter than three months, this figure had been reduced to 30 per cent in the same period of 2006. A total of 62 per cent of the permits had a duration of 3–12 months, while the number of permits with a validity of more than 12 months accounted for eight per cent in the spring of 2006. The increase in the number of applications for renewal (from 5,526 in January–May 2005 to 8,808 in January–May 2006) also indicates a shift towards periods of residence of somewhat longer duration, and a transition from typically

seasonal work towards other forms of employment that to a greater extent are distributed over the entire year.⁵ This trend is reflected in the increasing number of arrivals and family reunifications. In 2005, net immigration from the EU-8 constituted 4,213 persons. Poland currently tops the Norwegian statistics on family reunifications, and is the fastest growing country in this respect⁶. Danish statistics on family reunifications do not reflect this trend, and Poland remains far down on the list of applications for family reunification⁷. Compared to the total workforce, the number of work permits granted by the Nordic countries to citizens of the EU-8 (including renewals) constituted a supplement of 0.4 per cent to the Nordic workforce in 2005. In Norway, this supplement constituted 1.6 per cent, and in Iceland approximately 2.3 per cent.

(10) Certain industries stand out as employers of labour from the East: *agriculture, horticulture and forestry (typically seasonal work)*, as well as the *construction industry*. However, even *manufacturing* and parts of the *service industries* (hotels/catering, cleaning and private households) are to an increasing extent recruiting labour from the EU-8. However, industry-level statistics are unavailable for several countries. A study⁸ undertaken by Fafo among enterprises in Norway in the spring of 2006 documents a relatively widespread use of Eastern European labour, both in the form of individual labour migrants and through services. Around 15 to 19 per cent of the enterprises in the construction and manufacturing industries had made use of Eastern European labour during the preceding year. The figure for hotel/catering and cleaning industries was around ten per cent of the enterprises. While the services sectors mainly employed individual job-seekers, posted workers dominated in construction and manufacturing industries. *Workers from Poland still dominate in the Nordic countries*, in particular in Iceland, Sweden and Norway, and more men than women arrive. In Finland, the majority of labour migrants originate in Estonia, while Denmark has an approximately equal number of arrivals from the Baltic countries and from Poland. It has been assumed that *unskilled or low-skilled labour* dominates; in Denmark it has been concluded that the recruitment of skilled and other highly educated labour from the new EU member states has only been moderately successful⁹. In Finland, a significant increase in the mobility of health personnel from the East has been registered, in particular from Estonia, but because the permits have been granted outside the area of application of the transitional arrangements they appear to only a minor extent in ordinary statistics. In the period 1 May 2004 – December 2005, the Finnish National

⁵ UDI, 28.06.06, EØS-utvidelsen – tillatelser med formål arbeid.

http://www.udi.no/upload/Statistikk/EOS/EOSrapport_mai2006.pps

⁶ SSB (30.3.2006) 'Høyeste nettoinnvandring noensinne', [www.ssb.no/emner/02/02/20/innvutv;](http://www.ssb.no/emner/02/02/20/innvutv;UDI,Tall%20og%20fakta%201.%20tertial%202006) UDI, Tall og fakta 1. tertial 2006 <http://www.udi.no/upload/Statistikk/Tallogfakta-1tertial06.pdf>

⁷ Udlændingestyrelsen juni 2006, Familiesammenføringsansøgningsantal.

⁸ Dølvik, J.E., L. Eldring, J.H. Friberg, T. Kvinge, S. Aslesen og A.M. Ødegård (2006), [EU-utvidelsen: Endringer i norske bedrifters arbeidskraftsstrategier?](#) Fafo-notat 2006:14

⁹ Arbejdsmarkedsstyrelsen, Memo. Bilag til møte i forligskredsen den 5. april 2006

Authority for Medicolegal Affairs registered 432 physicians and dentists from the EU-8, which is not an insignificant number in this context. Still, professions requiring low or no education also dominate in the Finnish statistics¹⁰. In Norway, results from Fafo's study indicate a more widespread use of skilled Eastern European labour than what has been previously assumed, but few enterprises have so far recruited highly skilled labour from the East.

(11) The marked *differences* in the influx of individual job-seekers to the Nordic countries are *not easy to explain*, also because no comparable information is available on the volume of labour migration that is taking place in the form of other types of mobility, in particular service migration. Differences in the *demand for labour* doubtlessly play an important role (cf. the modest migration to Sweden and the differences between Denmark and Norway). The *transitional arrangements* can only explain part of the variations. As mentioned above, Sweden has no transitional arrangement, and the volume of short-time work that lasts less than three months is therefore unknown. Denmark and Norway have had far more liberal arrangements than Finland and Iceland. All transitional arrangements have contained provisions for 'national wage conditions and full-time employment'. Finland and Iceland have made additional assessments of the demand for labour, and this has probably served to reduce the influx of applicants. Since the transitional arrangements in Denmark and Norway are largely comparable, the cause of the marked differences cannot be found in the criteria for approval of permits, but rather on the demand side and/or in *the exercise of the entry control and the signal effects of the same* on the influx of applicants. Denmark's profiled "East Agreement" and its more systematic processing of applications and controls may have contributed to creating an impression of the Danish regime as stricter than its Norwegian counterpart. In addition, the strong growth in the Norwegian labour market as well as *established networks* created through increasing seasonal migration since the nineties and a relatively high wage level for unskilled labour may have contributed to the fast growth in labour migration to Norway during 2005. Nordic experience thereby indicates that the influx is demand-sensitive, and no countries report incidences of "social tourism", which was a prominent topic in the debate prior to EU enlargement.

Status for the transitional arrangements after 1 May 2006

(12) In 2004, the Nordic countries chose different adaptations to the enlargement of the EU, thereby reflecting the European situation, which varied between 1) restrictive transitional regimes involving quotas and

¹⁰ Statsrådets redogörelse til riksdagen om verkningarna av lagen om övergangstid samt verkningarna av arbetskraftens och tjänsternas fria rörlighet på arbetsmarknadsläget inom olika branscher. Finland, 2006.

labour market demand assessments (Belgium, *Finland*, France, Germany, Greece, *Iceland*, Luxemburg, Spain, Austria, Italy, the Netherlands, Portugal), 2) regimes that allow labour migration, but involve specific requirements for wages and labour conditions (*Denmark*, *Norway*), and 3) countries who chose full liberalisation and opening of their labour markets (Ireland, United Kingdom, *Sweden* (though with registration schemes in Ireland and the United Kingdom)).

Transitional arrangements	1 May 2004–30 April 2006	Since 1 May 2006
1) Restrictive immigration regimes: EU-8 citizens have the same rights as third country citizens; labour demand assessments or quotas	Belgium, <i>Finland</i> , France, Germany, Greece, <i>Iceland</i> , Italy, Luxemburg, Netherlands, Portugal, Spain	Austria, Belgium, France, Germany, Luxemburg, Netherlands. (All but Austria and Germany have signalled a gradual relaxation of restrictions until 2009)
2) Free access, but requirements for wage levels and working hours	<i>Denmark</i> , <i>Norway</i>	<i>Denmark</i> , <i>Norway</i> (until 1 May 2009) (Some revision in Denmark, more flexible procedures, the aim is a gradual lifting of the transitional arrangements.)
3) Free access (some limitations in the access to welfare services in the UK and Ireland)	Ireland, <i>Sweden</i> , United Kingdom	<i>Finland</i> , Greece, <i>Iceland</i> , Ireland, Italy, Portugal, <i>Sweden</i> , Spain, United Kingdom

Figure 2 Transitional arrangements in the EU-15 before and after 1 May 2006¹¹

After 1 May 2006, a clear shift from group (1) to group (3) has occurred in Europe, as among the Nordic countries. In addition to Finland and Iceland, Portugal, Spain, Greece, and recently Italy have also repealed the restrictions on workers from the EU-8. It is interesting to note that group (2), that comprises Denmark and Norway, is the only one to remain unchanged. European experiences indicate that the transitional arrangements have exerted only a limited effect, assuming that their intention has been to stem and control the flow of labour, when taking into account that the market for services was fully opened immediately (with the exception of Austria and Germany that had the opportunity to introduce transitional rules for service mobility). On the other hand, ordinary labour immigration to many of the countries has remained relatively low, and in some cases in fact lower than is desirable. The national debates have consequently changed in character over the last years, from reflecting a widespread concern of becoming flooded by Eastern Europeans who seek to exploit Western social welfare benefits, attention has turned towards labour scarcity and not least the emerging competition for skilled labour.

¹¹ Dølvik, Jon Erik and Line Eldring (2006), Industrial relations responses to migration and posting of workers after EU enlargement: Nordic trends and differences. In: Transfer- European Review of Labour and Research 2/2006. See also: Transitional measures for the free movement of the workers that form the subject of the accession treaty of 2003, Memo/06/176: <http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/06/176&format=HTML&aged=0&language=EN&guiLanguage=no>

Moreover, when observing that the most pronounced problems in terms of low-wage competition and social dumping have occurred in the service markets, it is not surprising to see that several countries have moved from restrictive to liberal solutions. The EU Commission and the social partners at the European level have also recommended a repeal of the transitional arrangements, and most countries have signalled a gradual phasing out until 2009.

(13) In *Sweden*, the authorities and the social partners have regarded the modest influx as a confirmation of the correctness of the decision not to impose a transitional arrangement. The partners emphasise that formerly illegal work has become legalised, and even though there is little information on the short-term labour market (of less than three months' duration), it is pointed out that the high degree of coverage of wage agreements mainly serves to maintain orderly conditions, and that service mobility seems to be lower than in the other Nordic countries that have introduced a transitional regime for individual workers.

(14) In *Finland*, concerns were voiced quite early in the first two-year period over the circumstance that the barriers to individual labour migration were causing a marked growth in service mobility, that partly entail irregular labour conditions. The growth in service mobility served to complicate monitoring of labour conditions, and problems were encountered in keeping records of the number of arrivals. In spring 2006, the partners and the government agreed that the transitional arrangement should not be prolonged, with particular reference to the fact that it has hindered employment of labour in Finnish enterprises. In its assessment of the effects of the transitional arrangement, the Finnish Government emphasises these unfortunate distortions, and claims that a repeal of the restrictions may contribute to dampening these effects. Finland therefore decided to repeal the transitional arrangements, while at the same time a bill on compulsory registration of work performed by workers from the EU-8 was prepared, as well as a new bill on subscriber liability. Some provisions in the Posting of Workers Act have also been tightened. The intention behind this new and strengthened legislation is to contribute to acceptable wage levels and labour conditions in a more efficient manner than through the transitional arrangements, which applied only to parts of the labour market. The former of these two acts came into force on 5 June 2006 and will remain in force until 30 April 2009. The act on registration requires that certain information be sent to the labour market authorities no later than two weeks after the work has started. The information can be supplied by the employer or by the worker him-/herself. The information should comprise the worker's personal background, the employer's registration number, type of industry, workplace, the duration of the work contract and the applicable collective agreement or the wages to be paid. New information must be submitted in the event of material changes or a change of employer.

(15) *Iceland* currently has a large demand for labour, and a strong growth in the influx of labour migrants from the EU-8 was registered during 2005. Therefore, the Icelandic government decided, with approval from the partners, not to prolong the restrictions for persons from the new EU member states. From 1 May 2006, workers from the new member states can freely seek work and be employed without having to apply for a work permit. However, until 1 May 2009, employers are obliged to inform the Labour Directorate that they have employed a person from the EU-8, and a copy of the work contract must be appended. Employers failing to comply with this provision risk fines. The purpose of the registration is to monitor compliance with applicable agreements and regulations and to provide an opportunity for the authorities to inform the workers of their rights. The trade unions concerned are entitled to obtain copies of the foreign employees' work contracts if they suspect violations of the applicable collective agreement. In the context of the repeal of the transitional arrangements a working group was established with the purpose of studying the situation for foreign workers in the Icelandic labour market, including the service markets.

(16) In *Denmark*, there is agreement that the transitional regime has functioned according to the intentions, and has contributed to ensuring adequate conditions for the labour migrants. The conclusion is that the transitional arrangement has provided key signals to the effect that work in Denmark should take place with "Danish conditions", and has served to contribute positively to maintaining a broad political and popular support for the EU enlargement. Analyses of the effects of EU enlargement for the Danish labour market concluded that no imbalances had occurred in the labour market, and that no unintended use of social benefits had taken place. Even if the influx has not been sufficient to fully prevent bottlenecks, there is agreement that labour migration has exerted a positive influence on the adaptation of the labour market, not least in relation to seasonal work in the agricultural sector. Recruitment of skilled labour has been only moderately successful. In the light of the high level of activity in the Danish economy the current goal is to strengthen recruitment of workers from the EU-8, reflecting a concern of whether a sufficient number of workers will arrive. Therefore, Denmark decided to adjust the transitional arrangement and revise the previously signed East agreement in order to ensure more flexible recruitment of required labour, while at the same time maintaining the requirement that labour from the EU-8 should be hired with the conditions defined by collective agreements. A core point in the revised transitional arrangement states that enterprises that have a collective agreement can obtain advance approval for hiring workers from the EU-8. Workers who are hired by these enterprises therefore need no work permit prior to becoming employed, but the employment should be reported to the immigration authorities when the person concerned starts working. Furthermore, opportunities are ex-

panded for commuting and part-time work; work permits are automatically granted to students from the EU-8, and permission is granted to work while applications for an extension are being processed. A further goal is to reduce processing time for all types of applications. At the same time, measures are enacted with a view to stimulating recruitment of required labour. During the three-year period continuous assessments of the need for further revision of the transitional regulations will be undertaken, and the partners to the East agreement will meet semi-annually to assess whether to repeal the requirement for a residence permit for industries that have a particularly strong demand for labour.

(17) *Norway* decided to prolong the transitional arrangement without amendments. The relatively major influx of workers from the EU-8 is regarded as evidence that the transitional arrangement has not had any significant restrictive effect on the recruitment of labour. In spring 2006, the Norwegian government concluded that the EU enlargement has supplied the Norwegian labour market with highly needed labour, and that the demand for labour is likely to increase over the next years.¹² In spite of a certain concern that a continuation of the transitional arrangement may serve to reduce the recruitment of labour to Norway – in particular when other countries repeal their arrangements – the government proposed to prolong the transitional arrangement in its present form, and the Storting endorsed this proposal. The main argument was that the transitional arrangement contributes to maintaining orderly conditions in the labour market, and that a set of strengthened regulations and provisions with a view to preventing social dumping must be in place before the arrangement is phased out. Emphasis is placed on the opportunity to repeal the arrangement during the three-year period, and that a new assessment will be undertaken during this period. Recently, questions have been raised as to the effectiveness of the transitional arrangement in terms of protecting wages and working conditions. For example, Fafo's enterprise survey demonstrated that a considerable proportion of the enterprises that use individual labour migrants report to have reduced their wage costs and increased flexibility of working hours. A proliferation of bogus single-person companies has recently also been reported. In the context of the prolongation of the transitional arrangements the government launched a series of measures aimed at preventing social dumping. The measures introduced comprise a reinforcement of the monitoring functions in terms of resources, increased cooperation between public agencies and expanded opportunities for sanctions in the event of non-compliance with generally applied collective agreements or the transitional arrangements. Furthermore, preparations will be undertaken for the introduction of ID cards for construction workers, the implementation of

¹² Report No. 9 to the Storting (2005-2006), Om overgangsordningane for arbeidstakarar frå dei nye EØS-landa. (On the transitional arrangements for workers from the new EU member states)

ILO's 94 Convention in the municipal sector, and assurance of more orderly conditions for the hiring and posting of workers.

(18) Independently of the solutions chosen by the Western EU/EEA countries in 2006 with regard to transitional arrangements, they will face the same challenge in 2009 when equal regulations will apply to all countries that presently are members of the EU/EEA. In contrast to the opening up process towards EU-8, several countries – including some of the “new” EU member states – have indicated that transitional regulations may become applicable with regard to the foreseen membership of Bulgaria and Romania in 2007.

Denmark and Norway chose an intermediate solution in 2004, and remain on this course for the time being. With regard to the appropriateness of these arrangements in terms of safeguarding orderly conditions, it seems as if the absence of a comprehensive minimum wage regime has made it appear safer to maintain certain requirements to the wage and employment conditions for individual labour migrants. This does not make the challenges involved in the establishment of legislative frameworks and negotiated agreements applicable to all groups of workers any less poignant – in particular for Norway – but the parties realise a period of grace. While Finland and Iceland have long traditions for *erga omnes* collective wage agreements, this opportunity still appears to be out of the question in Denmark, and is little used in Norway with the exception of the construction industry. The widespread coverage of collective agreements in Sweden and the instruments available to the trade unions in the form of solidarity action and boycotts so far seems to have yielded good results with regard to fulfilling the intention of the “Swedish conditions”. In Denmark and Norway, the “generalisation clauses” for citizens from the EU-8 in the transitional arrangements have been of core interest in the assessments of whether to prolong the transitional regime. In industries with low rates of unionisation and coverage of collective agreements, such as the service industries and agriculture, it is reasonable to assume that the potential for a downward pressure on wages could become substantial if the supply of labour continues. Even today we may assume that the provisions in the transitional arrangement to some extent are being circumvented, and the resources for monitoring and control are limited, particularly in Norway, which has the largest number of immigrants. In all countries available information on the actual conditions of immigrants is scarce. When the transitional arrangements are phased out, the requirement for national wage conditions will cease to apply. All countries have a statutory defence against discrimination, which in principle should protect foreign workers against wage discrimination in relation to other workers within the same enterprise. However, this will be ineffective if there is a continued emergence of enterprises within certain industries that ‘specialise’ in the use of low-wage foreign labour. If everybody receives the same poor wages, nobody is in fact discriminated against, but

the effects in the labour markets of the industries concerned could still be noticeable.

(19) The Nordic debate surrounding labour migration has quite naturally focused on the situation in the recipient countries, and less on consequences in the countries of origin. Both in the Nordic countries and in Europe as a whole there is a growing concern over shortages of labour in the coming years, and this also applies to the new member states in spite of considerable current unemployment in a number of regions. In the Nordic countries, and in Norway in particular, the increased supply of labour has oiled an economy running at full speed, and there are reports of labour shortages in many industries. In Europe there is also competition for skilled labour, and while the Western countries debate how to attract highly skilled labour from the East, the Eastern countries express concerns over a brain-drain and shortage of skills. According to Polish authorities around 1 million Polish workers are now employed in other EU/EEA countries and researchers suggest the figure is around 2 millions. In this perspective, one can hardly assume it to be a sustainable strategy for the Nordic countries to rely on ensuring the supply of labour from external sources of skills in the EU-8, in terms of both quantity and quality. Experience from the intra-Nordic labour market has shown that both supply and demand are strongly connected to the business cycle, and thereby highly volatile. Seen in this perspective, the structurally stagnant labour supply in the Nordic countries and Europe indicates the need for development of a more unified and long-term policy for increasing the supply of labour, combining internal mobilisation of unused labour resources with a more targeted policy for attraction and development of skills even from regions other than the EU-8.

2. Increasing service mobility and posting of workers

(20) The free movement of services is enshrined in EU treaties (article 49) as well as in the EEA agreement (article 36), and is not comprised by the transitional arrangements related to EU enlargement. In spite of deficient statistics, all Nordic countries report a marked growth in service mobility from the EU-8, and that this type of mobility in some sectors – such as construction and manufacturing – in all likelihood exceeds ordinary labour migration. Norwegian tax authorities have reported a tripling of the number of posted workers every year since 2004, and a study undertaken by Fafo shows that in the construction and manufacturing industries the number of posted workers exceeds the number of directly employed workers from the EU-8 (Dølvik et al. 2006). The growth in service mobility has had positive effects for the economy and has served to remove bottlenecks, but has also created problems of social dumping, low-wage competition, circumvention of legislation and collective agreements and tax evasion in parts of the labour market. A number of subcontractors and individual enterprises engage in activities that in reality appear to comprise an illegal supply of ordinary labour ('fictitious posting'). While the increasing mobility of services gives rise to new challenges in terms of regulation, registration, control, enforcement and sanctions, it also contributes to changes in the enterprises' labour strategies that may influence the functioning of parts of the labour market.

(21) EU legislation requires foreign service suppliers to be given terms equal to suppliers from the host country, and they can freely bring their own labour for contracted assignments. In this context, services also comprise all types of tenders, assignments and sub-contracts, as well as staffing and supply of temporary workers,¹³ and are therefore closely related to – and cannot always be separated from – movement of labour. The demarcation line between free movement, protection of workers and protection of the host country's labour market standards against social dumping is drawn in the EU Council Directive 96/71 on the posting of workers in the framework of the provision of services ('The Posting of Workers Directive').¹⁴ The directive is based on the host country princi-

¹³ In the transport sector there is a transitional regulation for so-called cabotage that may entail a post-ponement (4-6 years) of the right of transport enterprises from the new EU member states to undertake domestic transport assignments.

¹⁴ For an overview of rules and national practices pertaining to posting of workers in the inner market, see Bruun (2006), Cremers (2006), Dølvik and Eldring (2006), Maier (2005), and a special issue of *Transfer* 2/2006 *Mobility of Labour and Services in an Enlarged Europe*.

ple with regard to wage levels and labour conditions, but states that in accordance with the principle of equal treatment the host country's wage levels and labour conditions must also apply to the national workers and consequently must be embedded in statutory minimum wages, generalised collective agreements or generally valid collective agreement (article 3.8). Posted workers are not eligible for social benefits and welfare schemes in the host country (Provision 1408/71), and should pay taxes and social contributions to the home country for the first half year or year. Foreign service providers should pay VAT in the host country in the same manner as domestic enterprises. The Posting of Workers Directive does not regulate the conditions for control of wage levels and labour conditions by the host country, but the EU Court of Justice has set a judicial precedent for the criteria of how the host country's requirements (with a view to the public interest) can be applied in practice, based on principles of equal terms, mutual approval and proportionality.¹⁵ The EU's current proposal for a service directive does not alter these main principles, but the Commission's efforts to evaluate/follow up the implementation of the Posting of Workers Directive may contribute to a clarification – and possibly a tightening – of the conditions for host country control (Commission Report January 2003; COM (2006)159 final).

(22) Because none of the Nordic countries have statutory minimum wage provisions, and extension of collective agreements is practiced only in Finland, Iceland and partly in Norway, the growth in service mobility from the EU-8 has challenged the Nordic traditions for regulation, control and enforcement of wage levels and labour conditions in the labour market. These issues have been brought into focus in the Laval/Vaxholm affair, which is currently under consideration by the EU Court of Justice,¹⁶ and which has spurred a renewed debate on the implementation of the Posting of Workers Directive by the Nordic countries. In the same manner as Iceland, Finland has taken major steps towards establishing a statutory minimum wage regime embedded in collective agreements for posted labour. Sweden and Denmark rely on the autonomous collective agreement model, according to which the trade unions coerce foreign service providers into entering collective agreements based on national conditions, if necessary by using solidarity actions and boycotts. Less widespread coverage of collective agreements, as well as barriers embedded in legislation and agreements in practice exclude the use of such strategies in Norway, and the trade unions in the construction sector have therefore tabled a motion for nationwide extension of the collective

¹⁵ See for example Maier, Lena (2005), [Utstationering av arbetstagare och det svenska kollektivavtals-systemet. En rättslig analys](#). Stockholm: SACO, Bruun, Niklas (2006), Posting of workers: do the EU-rules work? A Nordic perspective. Mini-hearing, European Parliament, 20.04.2006 or Evju, Stein (2006), Evaluering av allmenngjøringsordningen – høring. <http://odin.dep.no/filarkiv/269805/Evju.pdf>

¹⁶ See Ahlberg, Bruun and Malmberg (2006) in *Transfer* 2006/2, and Sweden's statement of case to the EU Court of Justice ; Regeringskansliet, Utrikesdepartementet, 2006-01-30.

agreement for the construction industry. The Nordic countries consequently have very differing conditions as well as instruments at their disposal, which can be used to counteract social dumping and thereby maintain an effective minimum wage level in the national labour markets. The phasing out of the transitional arrangements – which so far have had a generalisation effect of an ‘ad hoc’ character with regard to workers from the EU-8 – could, as described above, serve to enhance the challenges in this field.

(23) Irrespective of prevailing regulatory frameworks, experience from the first two years shows that ensuring an effective wage floor and equal terms in the labour markets is highly demanding in terms of control and enforcement. Whether these functions are fulfilled by the Labour Inspection Authority or the trade unions, possibly in cooperation with the employers, they remain highly labour intensive and require specialised skills. These functions also often raise complicated judicial issues with regard to national legislation, sanctions and the relationship to EU legislation. Independently of the prevailing regulatory regime, these functions place new requirements on cooperation between various governmental agencies, enterprises and the social partners. In order to obtain information on the movements and the actors in the markets, the countries need to combine various indirect information sources within the tax authorities, business registers and social security administrations, and cooperate with the authorities in the countries of origin. While the EU/EEA regulations for free movement provide key frameworks for registration, access to information and control of the foreign service providers’ employees, this regime is currently under review in the context of the evaluation of the Posting of Workers Directive and the implementation of the service directive. In addition to domestic challenges related to further development and adaptation of the internal regimes for regulation and control created by the cessation of external controls of the labour market, the Nordic countries currently have a window of opportunity in terms of influence on the political and legal development at the EU level in accordance with Nordic goals and interests. In these processes, the countries are likely to have a lot to gain from learning from each other’s experiences and initiatives, and from making a coordinated approach to the EU. In the following paragraphs we will provide an overview of core themes and topics on the agenda in these processes.

2.1 Regulation of wages and employment conditions for posted workers

(24) As can be seen from the overview below, the Nordic countries have implemented the Posting of Workers Directive (Dir71/96EC) in very different ways. The national legislative frameworks and collective

agreements provide very different instruments for formulating and enforcing requirements for “national conditions” for foreign workers (see Bruun 2006). This reflects differences between the countries in terms of union density and coverage of collective agreements (see figures next page), as well as differences in the perceived role of the state with regard to wage formation, regulation of minimum wages and general application of collective agreements. In all countries, with the exception of Norway, the signed collective agreements are mandatory for enterprises that are members of the employer’s association concerned.

Figure 3 Regulation of wage levels and labour conditions for workers from the EU-8 in the Nordic countries

	Denmark	Finland	Iceland	Norway	Sweden
Wages, individual labour migrants from EU-8 ¹⁷	77 % coverage of agreements in the private sector <u>Until 2009:</u> Transitional arrangement; “Danish conditions”	90% coverage of agreements (public/private) Widespread extension of collective agreements	90 % coverage of agreements (public/private) Legislation ensures min. wage in coll. agreements as a minimum	53 % coverage of agreements private sector <u>Until 2009:</u> Transitional arrangement; “Norwegian conditions”, extension of agreements (mainly in constr. ind.)	90 % coverage in private sector
Wages, posted workers from EU/EEA	Accession agreements with local negotiations, or entry into employers’ org., making coll. agreement mandatory	Extension of coll. agreements Tariff wages required by the Posting of Workers Act	Extension of coll. agreements Tariff wages required by the Posting of Workers Act	Home country conditions unless generalised (mainly in construction)	Accession agreements Lex Britannia

(25) Since the early 1980s, *Iceland* has had legislation that enforces the principle that workers should at least receive the minimum wages stipulated by the relevant collective agreement, without this having had any appreciable influence on the recruitment to the trade unions. In the early 1970s, *Finland* enacted legislation that ensured extension of nationwide collective agreements, and in 2006, a provision was added to the Posting of Workers Act with a view to ensuring wages that are commensurate with the most relevant collective agreement for posted workers who are not covered by an *erga omnes* collective agreement. Both these countries have thus law-based systems in conformity with EU regulations, in which the minimum wage rates in the collective agreements define a wage floor in the labour market. The system appears to be undisputed among the social partners, and in theory prevents competitive distortions in the labour markets.

(26) In *Sweden* and *Denmark* there is widespread agreement among the social partners concerning the doctrine stating that wage issues are a

¹⁷ Figures for coverage of collective agreements in the private sector are taken from: Lismoen, H. (2006), Low-wage regulation in Scandinavia. In: Schulten, T. et al (ed.), Minimum wages in Europe. Brussels: ETUI-REHS and <http://www.ilo.org/travaildatabase/servlet/minimumwages>

matter to be decided by the social partners alone. Legislation pertaining to matters of wage is regarded as a threat to the system of collective agreements, and in the long term, against the popular support for the organisations. Therefore, the countries decided not to make use of Article 3.8 in the Posting of Workers Directive, which provides an opportunity for governmental implementation of the host country principle by referring to collective agreements that are generally valid in the professions/industries or regions concerned. In practice, the trade unions are thereby responsible for ensuring that posted workers are being paid in accordance with the domestic wage level. The unions perform this function by tracking foreign employers and convincing them – using boycotts and solidarity action if necessary – that they should join the employers’ association and accede to the relevant collective agreement, or sign an accession agreement. In Denmark, the unions may legally resort to industrial action in order to coerce enterprises that have an existing (competing) agreement into signing a new collective agreement. According to the Swedish Co-Determination in the Workplace Act (*Medbestämmandelagen*) the use of industrial action in relation to Swedish enterprises is prohibited in such cases, but according to the so-called *Lex Britannia* clause this does not apply to enterprises that are not bound by the Act, i.e. foreign enterprises. In the context of the *Laval/Vaxholm* case, the Latvian parties have claimed that this constitutes discrimination, while Sweden regards it as a required and proportional measure serving to promote the purpose of the directive, which is to ensure equal conditions for foreign workers in Sweden (*Utrikesdepartementet 2006-01-30*). In the event that the court rules against Sweden in the *Laval/Vaxholm* case, Swedish researchers have claimed that the principle of equal terms can be maintained by introducing relatively modest amendments to the *Lex Britannia* and the *Britannia* clauses in the Act (*Ahlberg et al. 2006*). In order to counteract problems for foreign service providers, the Swedish social partners have signed a framework agreement that offers an ‘adapted package’ to foreign enterprises, including a guarantee of industrial appeasement during wage negotiations if they join the relevant employers’ association and thereby accede to an adapted version of the collective agreement which is valid for the industry concerned. Swedish, as well as Danish, industry-level collective agreements presuppose local negotiations over actual wage levels. The framework agreement gives trade unions the right of access to information on wage levels and labour conditions in sub-contractor firms. To the extent that foreign service providers make use of the ‘package’ this will mean that the parties have gone a long way towards finding a solution to the *Laval/Vaxholm* knot by way of mutual agreement.

(27) *Norway* occupies an intermediate position in this field in the Nordic countries. Lower union density and coverage of collective agreements as well as legal and agreed barriers against the use of industrial

action make the Swedish/Danish strategies unrealistic. In addition, the partners in general are opposed to governmental regulation of matters pertaining to wage levels, and thereby also to widespread extension of the agreements. On the whole, hiring EEA-based sub-contractors using labour which is remunerated according to home country standards that often are far below Norwegian levels has therefore been completely legal as well as common practice. The Act relating to general application of wage agreements from 1994 has a limited area of applicability, which is to prevent unequal treatment of foreign workers, and it can usually only be applied after a violation has been reported. If sufficient evidence is available, a majority of the Tariff Board (which is composed of three external members and one member from each of the social partners) may use discretionary judgment to decide what conditions and provisions in the collective agreement should generally be applied. So far, this opportunity has largely been used regionally in the construction sector, but a motion has currently been advanced to apply a nationwide extension in construction. In contrast to the Finnish and Icelandic practice of extension, which is part of the ordinary national regulatory regime and applied according to predictable and quasi-automatic procedures, the Norwegian arrangement is based on assessments of evidence and discretionary judgment, and can only be applied if foreigners have been discriminated against. The responsibility for control and enforcement rests with the Labour Inspection Authority and the Petroleum Safety Authority, which have recently been given expanded authority to impose sanctions in the event of violations of the provisions for general application of collective agreements. The practicing of the legal regulations has been met with criticism for conflicting with EU legislative principles of equal terms, predictability and proportionality (Hjelmeng and Kolstad 2006)¹⁸, and is currently being evaluated. In addition to debates on the practice of extension, motions have been proposed to introduce a national minimum wage based on statute and/or industry-specific agreements, in response to the growing service mobility.

(28) In addition to regulatory regimes that differ considerably, the Nordic countries have very differing views on the relative wage level to which the practice of the principle of equal treatment or the host country principle should refer with regard to posted workers. In Iceland, legislation pertaining to posted workers refers to the minimum wage rates in the collective agreements. In Norway, the trade unions have been content to set demands for generalisation of certain minimum wage rates in the agreements, as well as working hours, certain mandatory wage supplements and social provisions, making the generalised wage level substantially lower than the actual wage level for comparable work within the same industry. This reflects a desire on the part of the trade unions to

¹⁸ Erling Hjelmeng and Olav Kolstad (2005), *Allmenngjøringsloven og innsynsrett – EØS-rettslige problemstillinger* http://odin.dep.no/filarkiv/269459/NHO_-_vedlegg.pdf

maintain certain advantages for being a member in a trade union that has a collective agreement compared to unorganised national workers, who otherwise would be able to reap a benefit at no cost from an extension of the collective agreements. This contrasts with the Finnish situation, in which also the minimum wage rates and all the individual provisions in the collective agreement are generally made valid. The revised act on posting of workers requires 'customary and proper' wage levels to be granted to those posted workers who are not covered by the extension, while the work agreement act ensures temporary agency workers pay in accordance with the agreement of the contracting company or, alternatively, the relevant generally applicable agreement in the branch of the contracting company. In Denmark and Sweden, where to a greater extent wage formation takes place at company level, the trade unions have rejected the minimum wage rates as a starting point for negotiations with foreign enterprises, and usually set demands that are related to – but not necessarily equal to – the actual wage level for comparable work in the industry/region concerned. The different strategies used by the Nordic trade unions illustrate how a different balance is struck between concerns for prevention of competitive distortions on the one hand, and a desire to maintain advantages for members on the other. This aspect is also related to the fact that the other incentives for joining a union are stronger in those countries where unemployment benefits to a large extent are administered by the unions (Denmark, Finland, Iceland and Sweden). The different national traditions, with regard to wage differentiation between enterprises that are covered by a collective agreement and those that are not covered, are also reflected in the views held by employers on how the host country principle should be applied. Employers have been accustomed to how the general application of all the individual provisions in the collective agreements in Finland – and in Sweden and Denmark the tradition of accession agreements – has ensured a relatively homogenous wage level and equal competitive terms between domestic enterprises and EEA-based suppliers. In Norway, the central employers' associations (that offer membership without the obligation of entering into a collective agreement) have traditionally been less concerned with this type of competitive distortions, and the enterprises have been accustomed to being able to hire cheaper sub-contractors of domestic, Nordic and European origin. Even if Swedish employers, for example in the Laval/Vaxholm case, have raised doubts concerning the trade unions' interpretation of the host country principle and the right to engage in industrial action, the trade unions' demands for wages in accordance with the collective agreements for posted workers (as well as extension of collective agreements) have been considerably more controversial in Norway, and have given rise to significant discord among Norwegian employers. The trade unions have neither desired to make use of *erga omnes* collective agreements within manufacturing industries, where union officials in many

enterprises have been forced to accept hiring of sub-contractors from the EU-8 at wage levels considerably lower than the collectively agreed minimum rates. Bearing also in mind that there are significant differences in wage levels between the Nordic countries – it has been claimed that the generalised minimum wage rates in Norwegian construction are approximately equal to the average wage level for corresponding work in Sweden – the Nordic countries have thus quite different instruments, traditions and cultures as regards the range of wage differences that are accepted in enterprises with and without collective agreements, and between domestic and foreign enterprises.

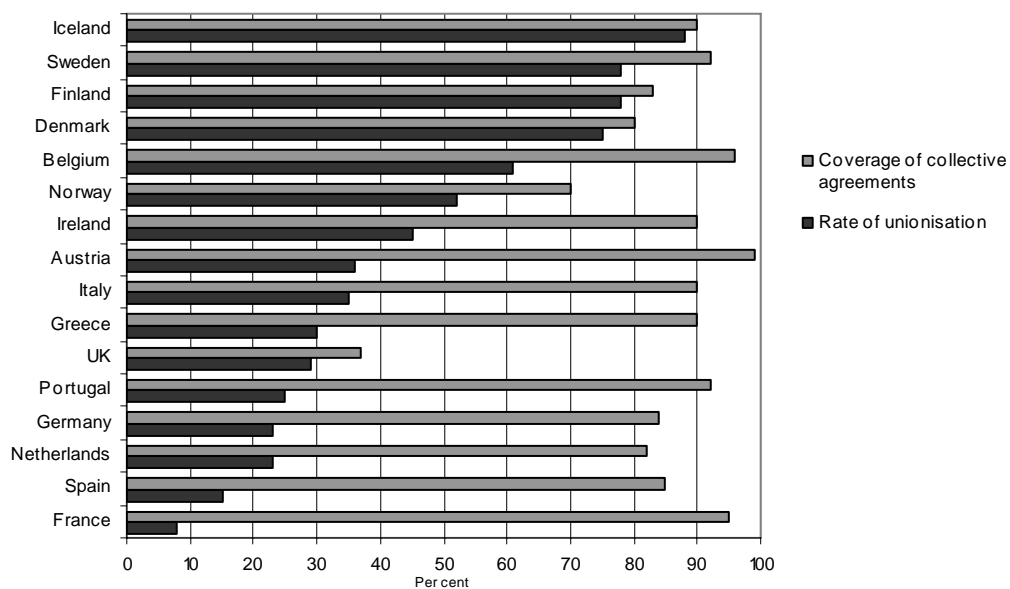


Figure 4: Rates of unionisation and coverage of collective agreements in EU-15, Iceland and Norway Source: Stokke 2005 and ASI 2004.

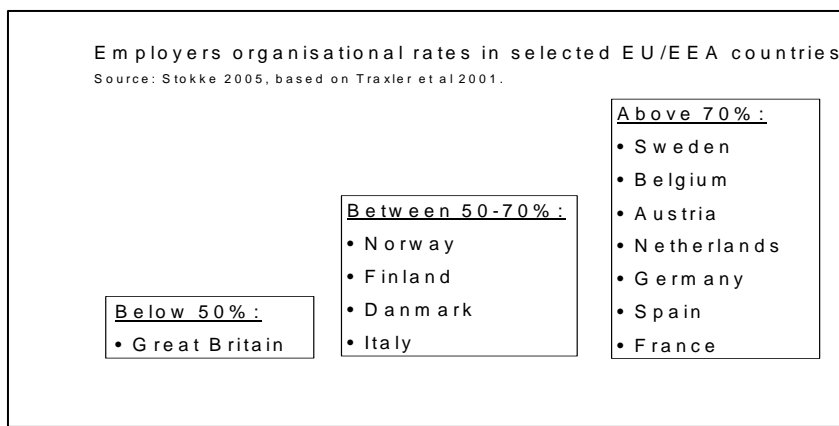


Figure 5: Organisational rates among employers

2.2 Enforcement, control and sanctions

(29) One of the main impacts of EU enlargement on labour market governance is the gradual removal of external control of access to the national labour markets at the border for citizens from the new EU member states. Combined with increasing labour and service mobility this will call for a tightening of internal controls of compliance with labour market rules, while provisions in EU legislation will increase in importance. All Nordic countries have enacted a number of measures that aim at strengthening internal regimes of control and enforcement, but all countries also report having difficulties in revealing, counteracting and sanctioning circumventions. For domestic employers, foreign sub-contractors, and partly even for employees, considerable financial gains can be reaped from sub-contracts based on circumvention of provisions related to taxes/duties, working environment/HES, residential conditions, etc. In these triangular games the community and the law-abiding enterprises will be the 'Old Maid', but the weakest party in the game – the foreign workers – will also often be exposed to social, financial and health risks. In a highly mobile, trans-border market that involves judicial grey areas between different relations of employment, complex judicial regulations, long and complex chains of sub-contracts and high volatility, the tasks related to control and enforcement are quite demanding. These tasks involve a number of public authorities, enterprises, organisations and users. Irrespective of the form of regulation this situation places strong demands on cooperation, coordination and sharing of information between public authorities and other social actors in the recipient countries and the countries of origin. In addition to a further development/adaptation of the national regulatory regimes to a situation with higher mobility and far stronger incentives to circumventions/ evasions than what has previously been witnessed in the Nordic context, the ability to face the challenges that pertain to enforcement will, in our opinion, be a critical factor for maintaining order in the common market for labour and services. Enforcement of the rules of the game is critical, not only for preventing usurers and short-term profit-hunters from benefiting at the expense of others, but also for protecting national standards, labour market regimes and the common market's potential for social development from becoming undermined through regime-shopping and social dumping.

30) In the following paragraphs we will therefore provide a sketch of the themes and topics that we perceive to be of core interest on the agenda for development of registration, control and enforcement regimes that can be sustainable in an open market for labour and services.

At the outset, it is important to bear in mind that the Nordic countries, owing to variations in regulatory systems, face very different conditions and possess different instruments for control and enforcement of wage and working conditions for posted workers (and directly employed wor-

kers from the EU-8 once the transitional arrangements have been phased out). In Finland, Iceland and partly in Norway where the rights of posted workers are defined in statutory regulations and/or embedded in *erga omnes* collective agreements, the main responsibility for control and enforcement rests with the Labour Inspection Authority, which in all countries concerned report encountering considerable difficulties in the volatile service markets.¹⁹ In Sweden and Denmark, the main responsibility for monitoring of wage setting rests with the trade unions in coordination with the employers, and this task has been labour-intensive, as well as represented a complicated dual role in the implementation of the EU's Posting of Workers Directive. The trade unions are partly charged with the responsibility for ensuring regular wage and working conditions through accession agreements (the 'wage police' role), and partly charged with control of the legality of the posting and compliance with working environment regulations, etc. (the 'border guard' role), and partly they should protect/support foreign workers against exploitation and possible expulsion/loss of work (the 'solidarity' role). This position has entailed considerable problems of legitimacy and explanation with regard to foreign enterprises, workers and authorities as well as domestic public opinion, which sometimes fails to grasp that the trade unions in fact fulfil European roles of implementation that *de facto* have been entrusted to them by national politicians partly by means of very significant publicity at the EU level.

Registration – a necessary but controversial precondition for control

(31) One key precondition for the exercise of control of wage levels and labour conditions among foreign enterprises and workers is to have sufficient statistics and information available on the parties operating in the domestic market. This applies to the service markets in particular, with its short-term and volatile assignment relations, where the parties will be difficult to monitor through routine/random controls over time. Access to this type of information in practice presupposes some form of registration, which is required in some European countries, including Belgium, France and Germany. The Posting of Workers Directive does not regulate the opportunity to introduce specific control measures, including registration. The limitations placed on the control measures that can be imposed on a service provider are defined by the basic principles of the EU Treaty, implying that the free movement of services can only be limited by compelling concerns for the public good. Concerns for the protection of workers and for avoidance of distortions in the labour market are among the-

¹⁹ Even in these countries, the trade unions with their presence and opportunities for taking industrial action fulfil an important role in control and enforcement. In Norway, the trade unions have been granted legal opportunities to undertake "enforcement boycotts" in relation to employers subject to generalised collective agreements, and the unions have demanded a statutory right to access information on wage levels among sub-contractors.

se factors according to the jurisprudence EU Court of Justice. To the extent that registration may constitute a disadvantage/burden on foreign suppliers of short-term services, any registration scheme will have to comply with the criteria set by the EU Court of Justice for what constitutes a legitimate limitation of the free movement with a view to promote the public good, which means that the measure complies with the demands for equal treatment, appropriateness and proportionality.²⁰ Concerns for appropriateness and proportionality refer to another key precondition for registration schemes, which is that the host country has laid down unequivocal and general rules against which the purpose of the control can be tested, in the same manner for both foreign and domestic enterprises.

(32) In other words, the precondition for establishment of registration schemes with a view to control wage levels and labour conditions among foreign service providers and posted workers is that the host country's legal regulations and practices specify certain wage levels and labour conditions and authorise such control of domestic workers. Therefore, one cannot establish a registration scheme for control of the wage level among posted workers if the host country – such as Sweden and Denmark – has no legally based rules for wages among corresponding national workers. Extended collective agreements in Finland, Iceland and Norway, on the other hand, represent examples of legal regulations that allow public monitoring and can thereby give grounds for a registration scheme. In contrast to Sweden and Denmark, in 2006 Finland and Iceland imposed mandatory registration on foreign sub-contractors and their workers. With reference to tax purposes, Norway has had rules for registration/reporting of foreign enterprises and employees in the offshore petroleum and construction industries for a long time, and in 2004 decided to introduce a general obligation to register in all industries. However, this obligation has so far been imposed only in relation to workers in sub-contracting enterprises and not with regard to other forms of employment, because of doubts concerning compliance with EU legislation (Report No. 9 (2005-6) to the Storting). In 2006, Denmark has introduced a similar scheme for registration/reporting for the construction industry, with a view to monitoring the occurrence of tax liabilities to Denmark. As described above, Finland and Iceland, like the United Kingdom and Ireland, have also introduced mandatory registration for directly employed/individual labour migrants, but these schemes are likely to be legitimate only in the transitional period until 2009, when the rules for free movement of labour come into force. In 2004, Norway also decided to introduce mandatory registration for all EU and EEA citizens who will engage in trade, services or work in the country for a period of up to three months and there-

²⁰ See for example Bruun et al. 2005, Kolstad and Hjelmeng 2006, Evju 2006, Maier 2005, The Danish Ministry of Employment 2006.

fore do not require a residence permit, but the authorities have chosen to postpone the entry into force of the scheme.

(33) A memo from the Danish Ministry of Employment (24 February 2006), which assesses the opportunities for establishment of a registration scheme for posted workers within the framework of EU legislation discusses alternative (indirect) foundations for registration, including working environment regulations, which foreign enterprises are obliged to follow. The memo concludes, however, that the Labour Inspection Authority only needs information on which industry the enterprise in question belongs to, and whether the enterprise has employees, whereas more precise information on the number of employees and their personal details is not relevant in order to ensure compliance with Danish working environment regulations. The memo also discusses a number of other possible purposes and legal grounds, such as the desire to ensure access to information for the social partners with a view to signing collective agreements, as well as control of other individual labour conditions embedded in the Posting of Workers Act (including the principle of equal treatment). However, the conclusion appears to be that, on the basis of such purposes, registration will not comply with demands for equal treatment and proportionality, taking into account that such governmental control is not exercised in relation to Danish workers.

Thus, according to present EU rules it may seem as if the establishment of registration schemes that aim to control wages among posted and foreign workers is only acceptable if the host country has enacted legal provisions or generally applicable collective agreements defining wage levels. The countries thereby have to rely on registration with other purposes, first and foremost with a view to controlling the occurrence of tax liabilities among foreign service providers and posted workers – as has been decided in Denmark and Norway – as well as the VAT and Enterprise Registry. While the latter does not authorise the collection of more than basic information on the enterprise and its turnover, Norwegian experience indicates that strong incentives and sanctions are required in order to motivate domestic enterprises to report all foreign employees of sub-contractors. The Norwegian Foreign Tax Affairs Office has given notice of considerable underreporting, mainly because this reporting is extensive and labour-intensive, and because the risk of sanctions in case of non-reporting has been low. Yet, throughout the last year the number of persons reported has tripled, which probably indicates increasing mobility, better reporting discipline and an expansion of the obligation to register to a larger number of enterprises.

(34) Denmark has also decided to introduce a systematic registration of posted workers who have been issued form E-101 (confirmation of social security rights and employment in the home country) based on ordinance 1408/71. The countries of origin are obliged to maintain data registers on persons who have received form E-101, but there are indica-

tions that registration practices are deficient.²¹ Access to this information could be useful for controlling whether the employment relationship is real, whether the conditions for legal posting are present, or rather represent a case of employment in a host country enterprise, which in turn will have tax repercussions in both the host country and the country of origin.

In the same manner as in the case of the above-mentioned schemes for VAT and tax registration, it appears to us that there is a need for exchange of more specific information and experiences between the countries with regard to the benefits as well as the limitations (for example, in terms of inter-agency exchange and combination of databases) to be found in the use of such tax and social security registers for the purpose of control and enforcement of wage and working conditions among posted workers. This applies not least to the development of cooperation with the authorities in the countries of origin, which is a precondition for effective controls.

(35) The European Commission's original draft for a service directive (in Article 24 and 25) recommended a prohibition of certain measures and requirements motivated by the need for control on the part of the host country. These prohibitions included:

- requirement to have a representative present in the host country
- requirements for authorisation, registration or similar obligations in relation to host country authorities
- requirements to keep certain original employee documents at the workplace.

In the revised compromise proposal from the Parliament and the Commission, these articles were deleted. Against this background, the Commission has elaborated a Communication containing guidelines for posting of workers (COM (2006) 159final), in which it partly attempts to clarify what it regards to be *aquis* (prevailing EU legislation) concerning proportional control measures, and partly sketches a framework for a process aimed at clarifying regulations and improving control and enforcement of the rights of posted workers by member states. Even though the Commission's interpretation of the judicial situation given in the guidelines is controversial (see e.g. Bruun 2006), the message appears to be that:

- the requirement to have a permanent representative is doubtful (but an appointed ombudsman from among the employees is acceptable)
- the requirement for prior authorisation and prior registration/control is non-proportional (with the exception of certain professions, temporary

²¹ For example, we have been told that according to the Polish E-101 register there are no more than a few hundred Polish workers posted in Norway, whereas available information suggests that the real figure is several thousand.

staff recruitment agencies, etc., that are subject to authorisation schemes in the host country)

- the requirement for an advance declaration that comprises information that is necessary for host country authorities to exercise their obligation to undertake effective/appropriate control and enforcement in the enterprises appears to be acceptable
- the requirement to keep original employment documents on file appears to be unreasonable, but staff lists, HES documents and time sheets required for control are acceptable.

(36) The Commission's attempt to review the judicial precedent set by the EU Court of Justice in this field is quite naturally subject to contention, and marks the start rather than the end of a process of clarification of the political and legal frameworks in this field. For Denmark and Sweden, the opportunity to require a representative in the host country will be decisive for the possibility of obtaining collective agreements, and it is unlikely that the last word has been said in this matter. The Danish and Norwegian requirements for tax registration are unlikely to be controversial, but Finland's new rules on registration, the requirement to have an independent ombudsman, wage information, etc., probably go further than the Commission's restrictive interpretation of the prevailing legal precedent. The purpose here, however, is not to attempt to draw the lines for compliance with EU legislation (cf. NMR committee on labour legislation), but first to point out some of the key concerns and topics that define the room for manoeuvring in relation to EU legislation in this field, and second to point out that both politics and legislation in this field are in the formative stage, and that the Nordic countries need to assert their views and interests at the European level. A key message in the Commission's document is the emphasis placed on the member states' obligation to enact all measures necessary for an effective enforcement of the rights of posted workers, including credible sanctions; the need to improve information, liaison offices and schemes for solving the problems and conflicts encountered by posted workers; enhanced administrative cooperation between the countries, as well as signals of a thorough evaluation and dialogue with the member states on the preconditions for a more efficient implementation and, if necessary, a revision of the Posting of Workers Directive. The Commission has also signalled that it will assess the need to initiate reactions against countries that fail to implement the directive properly. In other words, the coming year will represent a window of political opportunity, both in terms of bringing the domestic control and enforcement regimes in order, and for actively influencing the terms for evaluation and political debate of this issue at the EU level.

Access to information on wages and working conditions in sub-contractors and manpower suppliers

(37) Irrespective of prevailing regulatory regimes, the trade unions play a key role in the monitoring of conditions at workplaces with foreign sub-contractors. The possibility for the trade unions to access information on wages and employment conditions among sub-contractors has therefore been a prominent issue in all the Nordic countries. In a number of European countries it is common for trade unions to have agreements with their employer that provide them indirect access to information on relationships with sub-contractors, but a general and direct right of access for trade unions is uncommon (Stokke 2006). EU legislation also limits the opportunities for giving third parties access to business contracts or business information, which is sensitive in terms of competitiveness (Hjelmeng and Kolstad 2006). Sweden's Co-determination Act has for a long time authorised rights of information and consultation with union officials on the conditions for hiring of sub-contractors in the employing enterprise, and the framework agreement signed by the central partners in Sweden in 2005 established that the trade union in the employing enterprise should have the right to information and control of the wages and employment conditions among sub-contractors. This type of access to information is also common practice in collective agreements in Denmark. In Finland, the revised Posting of Workers Act from 2006 strengthened the right to access to information for trade unions that have an agreement with the employing enterprise, while the new ombudsman for foreign sub-contractors shall submit relevant information on the conditions for the posted workers, and this may indicate a broader and more general right of access to information. In Iceland, trade unions and associations have for control purposes been given legal authorisation to access wage information from foreign enterprises with posted workers, and this is probably the most comprehensive right to access such information in all the Nordic countries. Until 2006, Norway has had no rights of access to information on wages in sub-contracting enterprises, even though the Working Environment Act and some collective agreements have given the trade unions rights to consultations, and in some cases negotiations, on cases pertaining to hiring of manpower suppliers. Accordingly, the issue became a controversial topic during the bargaining round in 2006. Based on legal studies (Hjelmeng and Kolstad 2006), employers have rejected information rights for trade unions with reference to management prerogatives and concerns for competitiveness, business confidentiality and privacy. However, in the collective bargaining round in e.g. the metalworking and construction industries they acceded to a conditional obligation to submit documentation of wages and employment conditions for union officials in the hired enterprise, on the condition of confidentiality of information which is sensitive in terms of privacy and competitiveness, as well as protection against publication, though with

the exception of disclosure to relevant public regulatory authorities. The trade unions were also granted the right to consultation on needs and volumes in relation to hiring external manpower and outsourcing. The Norwegian Confederation of Trade Unions has expressed demands for a general, legal right to access information. With reference to judicial constraints, the Government has so far appeared unwilling to comply with this demand, but it has signalled a forthcoming assessment of a legally based right to information in enterprises that are subject to provisions of general application of collective agreements, though it remains to be seen which parties will be subjected to these regulations. According to the Norwegian Act relating to general application of wage agreements, the parties to a collective agreement have the right to boycott enterprises that are suspected of violating the provisions, but the trade unions claim that this right is of little value as long as they have no access to information on the actual wage conditions in the enterprise concerned.

(38) Questions pertaining to access to information and the conditions for, and the limitations of this right, in the same manner as the question of registration illustrate how the legal and political room for manoeuvring is defined in the interface between national forms of regulation (legislation/extension vs. agreement), rules and practices with regard to domestic enterprises, and demands for equal treatment and proportionality defined by EU legislation. Indirect rights of access to information for union officials in the employing enterprise appear to be unproblematic, assuming that there is an adequate basis in legislation or agreements, whereas introduction of the right to information for parties external to the direct contractual relation between the employing enterprise and its workers raises a series of complex issues, both with regard to protection of privacy, national business and competition rules and the rules for free movement within the EU.

(39) Builder/subscriber liability.

An important, but complicated topic is related to the responsibility to be exercised by purchasers of services with regard to the fulfilment of suppliers' and sub-contractors' obligations pertaining to wage levels and labour conditions for their own employees. This issue has been controversial for a long time within the construction industry, irrespective of whether the sub-contractors and their employees are foreign or not. The contractual and production chains are long, and it is rarely obvious where in this chain the responsibility for fulfilling the requirements is to be placed. Experience indicates that the increasing number of foreign sub-contractors exacerbates this problem, and EU enlargement has therefore revived the need for improvements in existing legislation and regula-

tions.²² Specific examples can be found in the new parliamentary bills submitted in Finland and Norway. In *Finland*, the present bill concerns “the reporting duties and responsibilities of the purchaser when hiring external labour”. The purpose of the bill is to establish equal competitive terms between the enterprises, to monitor labour conditions and to ensure a basis for compliance with requirements by sub-contractors and purchasers of services. The purchaser of sub-contracts will be made responsible for clarifying whether the supplier is adequately registered and has paid all mandatory fees. Furthermore, reports must be submitted on pension and insurance schemes, collective agreements and main labour conditions. The reporting obligation will apply equally to foreign enterprises as well as to Finnish ones. According to the proposal, evasion of the obligation to report can entail an imposition of fines. The proposal also comprises the introduction of a provision that obliges the purchaser on request to inform about the prevailing contract for external workers. In the other Nordic countries various proposals on expansion of builder/subscriber liability in relation to the chain of sub-contractors are being debated. At the European level, the partners in the construction industry have tabled a motion on liability. The Commission has expressed a positive attitude to this motion in principle, but has not submitted the matter at the European level. In *Norway*, preliminary experience with *erga omnes* collective agreements has raised the issue of where to place the responsibility for compliance with regulations. When amending the regulations concerning the Labour Inspection Authority’s competence for monitoring compliance with the Act relating to general application of wage agreements and the Immigration Act,²³ a proposal was also submitted for obligating builders (in the construction industry) to include a clause in their contracts with sub-contractors to inform them that the workers should have wages and labour conditions in accordance with prevailing regulations on general application of collective agreements. Builders are already responsible for health, environment and safety on the site, and the proposal represents an expansion of the builder’s responsibility. The background documents for the proposal specify that the purpose of the provision is to fulfil information needs, and that the subscriber will not be made responsible for any failure to comply with the contractual clauses. Whether or not, and potentially which social requirements should be imposed by the authorities when purchasing services (cf. ILO Convention 94 and the Directive on Public procurement 2004/18/EEC) is a particular topic in all countries.²⁴

²² See for example the report from the Norwegian collaborative project “Seriositet i byggenæringen” <http://www.fellesforbundet.no/upload/NYHETER/Svartvedlegg.pdf>

²³ Proposition No. 92 (2005-2006) to the Odelsting

²⁴ See SOU 2006:28 for a thorough review of the status in Sweden (and the Nordic countries) : <http://www.regeringen.se/content/1/c6/06/03/33/447d389e.pdf>

(40) Manpower suppliers and contracting of labour.

The use of temporary and hired labour is increasing all over Europe, and accounts for one to two per cent of total employment.²⁵ The frameworks for operating manpower supply agencies have been liberalised in the Nordic countries, and a high number of such agencies, both domestic and foreign, today contract out Eastern European manpower to Nordic enterprises. In addition, Nordic enterprises may hire labour from foreign subsidiaries or cooperation partners. Contracting and hiring of manpower is regarded as a service provision according to EU/EEA rules, and workers who are hired out from manpower suppliers in the home country will in principle not be subject to any transitional arrangements. In the Nordic countries this issue is relevant only in Denmark and Norway, which follow varying interpretations of the regulations. In Denmark, temporary workers from the EU-8 who are employed by manpower suppliers in the home country are also comprised by the transitional arrangement, while in Norway this applies only to workers who are employed and contracted by agencies based in Norway. If they are contracted out by enterprises based abroad they are regarded as posted workers who are not comprised by the transitional arrangement, and thereby not by the requirement for “Norwegian wages”. However, if the work is carried out in a field in which a generalised collective agreement applies, the agreement is valid also for hired manpower. The different interpretations applied by the two countries highlight the difficulties that are related to differentiating between the movement of services and the movement of labour. In Denmark and Sweden, the wages for temporary agency workers are regulated by collective agreements, in Norway partly through collective agreements and partly through generalised collective agreements, but for temporary workers from the EU-8 conditions are largely unregulated. In Finland, legislation (through the Act relating to labour contracts) stipulates that if the manpower supplier is not bound by a local or generalised collective agreement, the temporary worker should be paid according to the collective agreement of the contracting enterprise.²⁶ In 2005, Iceland introduced a new act on manpower suppliers and suppliers of temporary workers based on a mutual agreement between the authorities and the social partners. According to the new act, manpower suppliers who deliver services to enterprises in Iceland are obligated to submit a report eight days prior to the start of any work. Reporting information must include the address and a contact person for the manpower supplier, both in Iceland and in the home country, and the enterprise is subsequently registered in the Directorate of Labour. Unregistered enterprises are

²⁵ European Foundation for the Improvement of Living and Working Conditions (2006), Temporary agency work in an enlarged European Union. Dublin.

<http://www.eurofound.eu.int/pubdocs/2005/139/en/1/ef05139en.pdf>

²⁶ For detailed information on the national regulations, see:

<http://www.eurofound.eu.int/thematicfeature14.html>

barred from supplying services. If the services are delivered over a period of more than ten days, the names, addresses and qualifications of the individual workers must be submitted. The employees should have wages and labour conditions in accordance with Icelandic collective agreements and labour legislation. Norway abolished the reporting obligations for manpower suppliers in 2003, but the Labour Market Act still authorises the introduction of regulations pertaining to conditions for reporting, inspection, etc., with regard to manpower suppliers. In Sweden, in 2004 the social partners signed an agreement related to voluntary authorisation of manpower suppliers. In order to receive authorisation the enterprise must be member of the employers' association (Bemanningsföretagen/Svenskt Näringsliv), follow the association's ethical guidelines and accept collective agreements. In the course of the first year following the agreement a total of 79 enterprises received authorisation. In the light of the emergence of a trans-border market for short-term labour, which is largely organised through the Internet, further development of knowledge and experience on relevant measures appears to be required, at the Nordic as well as at the European level. The proposal for a directive for suppliers of temporary manpower has been blocked in the Council, and it is currently unclear whether the issue will be put on the agenda by the Finnish presidency. EURES constitutes an alternative channel for organising temporary work, and accentuates the question of whether the authorities in the Nordic countries, in combination with improved information and control, may contribute to the development of improved and safer frameworks for the short-term labour market around the Baltic Sea.

3. Conclusion

(41) In retrospect, it appears evident that the influx of labour from the new EU member states has exceeded expectations, but also that its distribution is more skewed than what was expected. One of the best known extrapolations made by Boeri and Brucker (2003) estimated that the net immigration from the EU-8 to the Nordic countries would increase from approximately 50,000 to 230,000 over a period of 30 years, i.e. by 6,000 per year on average, though at a somewhat higher rate during the first years. Around 40 per cent were estimated to be economically active. After two years, we can observe that in the Nordic countries as a whole approximately 75,000 first-time residence permits have been issued to citizens from the EU-8 connected to work, and close to 30,000 renewals. Even though a considerable part of these permits apply to temporary work – so-called revolving door migration – the current development of valid/active permits indicates that the number of individual labour migrants in Norway alone will vary between 13,000 and 40,000 during the course of 2006, corresponding to 0.6 – 1.8 per cent of employment. Whereas only 11,976 valid permits were registered by end of June 2004, their number had grown to 28,596 on the same date in 2006, i.e. more than a doubling over two years. In 2005, the number of residence permits allowing for work accounted for approximately 1.6 per cent of the workforce, and in 2006 this figure is likely to exceed two per cent, whereof renewals account for around half in both years. In Norway, we can also observe an increase in the number of labour migrants who settle and bring their families, even though the numbers remain moderate so far: net immigration from the EU-8 constituted 4,213 persons in 2005²⁷, or equal to 22 per cent of total net immigration. In Iceland, the relative growth of labour immigration has been even stronger, and the number of permits granted in the period 1 January to 30 April 2006 corresponded to approximately 2.4 per cent of the workforce. In the Nordic countries as a whole, the number of granted permits in 2005 accounted for a supplement of 0.4 per cent to the workforce. In 2006, it appears as if the net volume of labour migrants from the EU-8 in the Nordic countries will fluctuate between 20,000 and 50,000, or between 0.2 and 0.4 per cent of the total Nordic workforce.

²⁷ According to Statistics Norway (30.3.06), persons from the EU-8 accounted for 22 per cent of net immigration during 2005. 'Høyeste nettoinnvandring noensinne' ('Highest net immigration ever') (30.3.05); <http://www.ssb.no/emner/02/02/20/innvutv/> see Table 9.

(42) Even though this volume is higher than expected, net mobility is still far smaller than the net intra-Nordic mobility and the annual fluctuations in the Nordic labour force. If we assume that the direction and volume of the migratory flows will vary in accordance with the business cycle, as previously seen in the Nordic countries, and assuming that intra-Nordic mobility will decline for demographic reasons, a net labour immigration of this magnitude is unlikely to cause distortions in the labour markets, but represents a desired supplement to the aging Nordic labour force in the coming years. If we further assume that the strong growth observed during the initial two years represents a kind of “first wave” which will gradually recede – also because the levels of affluence, aging and scarcity of labour will increase in the countries of origin and the competition for labour will increase in Europe – there is reason to assume that labour immigration from the EU-8 will only to a limited extent be able to solve the Nordic problems of labour scarcity in the years to come (Stien et al. 2006). If we alternatively assume that the Nordic labour markets, due to their much higher wage levels and better job and career opportunities, will continue to attract job-seekers from Poland and the Baltic countries – even if the conditions in the home countries improve – we may be facing a scenario of permanently higher rates of labour immigration than previously has been witnessed in the Nordic countries. In that case, demands for enactment of a more active and targeted integration policy will be raised in the most popular recipient countries. However, a main conclusion drawn by the Nordic contact group so far is that the individual labour immigration to a large extent appears to be demand-driven and adapts to the needs in the recipient countries’ labour markets. In this perspective it is reasonable to assume that neither a scenario that involves somewhat higher labour immigration is likely to cause imbalances in the labour markets in the Nordic countries.

(43) However, the registered individual labour migration accounts for only part of the total labour immigration from the EU-8; in addition comes labour mobility related to the free movement of services and employment in private households. The total volume of these types of mobility is unknown, but there is some evidence to indicate that the volume may be comparable to the registered individual migration streams. In Finland and Iceland the authorities assume that service mobility throughout the initial two years has exceeded the movement of individual workers, while the Danish authorities assume that service mobility is lower, and the situation in Sweden is unclear. The Swedish trade unions still assume that the number of posted workers is higher than the number of ordinary labour migrants. In Norway, several studies show that the volume of postings in the construction and manufacturing industries – these being two of the major users of labour from the EU-8 – is far higher than the number of directly employed workers, while the situation is the opposite in the service industries and in agriculture. On the basis of assess-

ments by industry spokesmen and Fafo's enterprise study we may as a rough, but realistic, estimate assume that the posted workers number between 20,000 and 30,000 within the Norwegian construction and manufacturing industries. The purpose here is not to present an accurate estimate, but to point out that, in addition to a net volume of 20–50,000 individual labour migrants in the Nordic countries, there is also an approximately equal number of service providers. In Norway and Iceland, this means that the legal labour migrants' proportion of the labour force probably can be nearly doubled, and accounts for more than three per cent in Norway and more than five per cent in Iceland. These proportions are markedly lower in the other Nordic countries and for the Nordic region as a whole (0.5–1.0 per cent). An unknown, but not insignificant stream of unregistered migrants working in the private households, can also be added to these numbers.

(44) Altogether, the main tendencies described above give a very complex picture of labour migration to the Nordic countries during the first two years following EU enlargement. On the whole, labour migration to the Nordic countries remains moderate, while the national distribution of the influx depicts a polarised impression: Sweden and Denmark emerge as recipient countries with a low influx (though there are indications that Denmark will show considerably higher influx in 2006), Norway and Iceland have a high influx of both job-seekers and service providers, while Finland occupies a middle position with high influx of services and low regular labour immigration. The different transitional arrangements in the countries have apparently exerted little influence on the total volume of labour migration, and have first and foremost had an impact on the relative distribution of labour migration and service mobility. In particular in countries with restrictive transitional arrangements (assessment of needs) – such as Finland and Iceland – these have entailed a strong tendency towards service mobility, this being the main reason why these countries decided to repeal their transitional arrangements from 1 May 2006. In other words, the countries desired more regular labour immigration.

(45) So far, the consequences of the increased labour mobility to the Nordic countries appear to be largely positive. During the recent period of strong upturn in demand in all the Nordic countries, the increased supply of labour has contributed to enhancing the capacity for growth, reducing cost inflation, halting interest rate growth and enhancing the freedom of action for economic policies. By solving problems related to bottlenecks in a situation of increasing scarcity of labour in some markets, migration has contributed to “greasing the wheels” of the labour market and increasing employment opportunities for national workers as well, while unemployment has been reduced. The high degree of short-term migration and service mobility among migrants from the EU-8 has to a large extent served as a “spare reserve” of temporary labour and has thereby

contributed to increasing the volume flexibility of the enterprises' workforce. In addition to this function as a labour reserve in a period of boom, there are indications to the fact that the new supply of labour from the EU-8 has given some enterprises improved flexibility in terms of both working hours and wage costs. This observation emerges clearly from Fafo's study among Norwegian enterprises, not only with regard to posted and contracted labour from the EU-8, but also among a significant proportion of the enterprises that have hired new EU citizens on the conditions stipulated by the transitional arrangement (Dølvik et al. 2006). Among economists, it is a commonly held opinion that the increased competition and labour mobility from the EU-8 is one of the main explanations for the fact that wage growth during the last year's Norwegian boom has remained the lowest in the last ten years.

(46) In spite of the mainly positive consequences outlined above, the fairly rapid growth in the supply of labour and services from countries that have much lower levels of wages and incomes than the Nordic countries has obviously not taken place without problems. Earlier reports from this project have pointed out that the service mobility in particular is concentrated in certain regions, industries and professions that are undergoing significant growth. Even though the mobility on the whole is not very large, it means that the volume and the conditions related to the supply of foreign labour and services in certain partial markets – e.g. the construction industry – have given rise to dishonest practices, undesirable distortion of competition, downward pressure on prices and social dumping. In addition to circumvention of regulations and agreements related to hiring, wages and working conditions, HES regulations, taxes and duties – that are damaging to both common societal interests and *bona fide* enterprises – this has served to exert a pressure on the norms and standards associated with the Nordic labour markets in some fields. To the extent that a secondary labour market, existing parallel to the organised working life, emerges in some sectors, it will be a challenge, not only to competing national enterprises and workers. If an increased supply of low-cost subcontractors and labour leads to a shift in the competitive relations in an industry, this could contribute to changes in the enterprises' labour strategies, leading to more outsourcing, an increased proportion of atypical forms of affiliation, and more marked barriers between core and peripheral labour, i.e. a more segmented domestic labour market. Increasing acceptance of low-wage competition within high-cost countries such as the Nordic could thereby serve to establish more inequality in job opportunities and increase the obstacles for vulnerable groups to enter the labour market, this being a key precondition for ensuring a sufficient supply of labour in the coming years. While professional groups who possess skills that are complementary to the new supply of labour will usually benefit from increased labour migration, international studies indicate that groups who have skills that are similar to or competing with those of

the labour migrants may stand to lose in terms of wages and employment.²⁸ Still, during periods of economic boom when there are prospects for scarcity of labour, migration may nevertheless contribute to higher rates of growth and improved employment opportunities in comparison to what otherwise would have been possible for most groups, while the relationship between growth effects and displacement effects may look different during periods of recession. So far, most studies indicate that the major part of the labour mobility from the EU-8 has taken place within professions/industries that have relatively limited requirements regarding formal skills; most are employed in jobs for unskilled and semi-skilled work, and very few are found in more skill-intensive jobs. This is probably a consequence of the relatively compressed wage structure in the Nordic countries, meaning that the wages are particularly high in unskilled professions compared to the countries of origin and alternative countries of destination. In addition, the transitional arrangements have ensured wages in accordance with prevailing host country standards for many of the migrants.

(47) The core issue in the debate over the future requirements to be set regarding wage levels and labour conditions for labour migrants from the new EU member states – both those who come as service providers and those who are employed in domestic enterprises – is not whether to protect national employees from competition or to bar foreign workers from finding a better livelihood than they can find at home. The issue mainly concerns the tools to be chosen to achieve inclusion on equal terms, and to prevent the emergence of a new underclass that without adequate measures may be defined according to ethnic, national characteristics, and as a further consequence partially according to skills, health and capabilities in the domestic labour force. In principle, the issue concerns the kind of working life that is seen as desirable and the conditions for inclusion. It is in view of such reflections and the host countries' legitimate interest in protecting their social standards and labour market regimes against eroding regime competition that the EU's insistence on the host country principle as a norm for defining wage and labour conditions for posted labour should be interpreted. The conditions for use of foreign labour may also entail implications for the business community's strategies for developing value creation and competitiveness. A shift in labour supply that entails increased domestic use of low-cost operators can surely enhance the profitability of individual enterprises in the short term, but might have negative effects in the longer term for the most exposed industries, in the form of skill formation and recruitment of domestic labour, and entail a shift towards more labour-intensive and less productive forms of production. This scenario does not sit well with the Nordic desire to choose "the high

²⁸ Preliminary estimates from a project implemented by Marianne Røed (2006) at the Institute for Social Research (ISF) in Oslo may indicate that similar patterns can be traced in historical Norwegian registry data.

road” to global competitiveness through increased efforts towards innovation, skills, quality and productivity.

(48) It is our assessment that the agenda for the further debate on the phasing out of the transitional arrangements and adaptation of the regimes for regulation, control and enforcement of service mobility in the Nordic countries should be based on such long-term assessments of how the conditions for increased labour mobility affect the functioning of the labour market, enterprise competitiveness and labour strategies, wage formation, stratification and the preconditions for social inclusion. In this perspective, the previous reports from this project have pointed out the unfortunate effects of different conditions for mobility and disparate wages and employment conditions associated with the movement of labour and services. Finland has taken this into account, repealed the restrictions on movement of labour, and introduced comprehensive legislation with a view to ensuring equal conditions for posted labour. Whether these measures will lead to a better balance between the flows of labour and services remains to be seen, and will depend on whether the measures for control and enforcement of rights for posted workers are successful. As mentioned above, the triangular game between, for example, builders, service purchasers and foreign sub-contractors, entails considerable financial temptations related to circumvention of the host country’s regulations. And even if the parties play by all the rules, there will still be strong, positive incentives to hire sub-contractors from the EU-8 instead of employing personnel directly in the enterprise: Access to specialised skills in relation to the assignment in question, increased flexibility, stronger cost competitiveness – enterprises from the EU-8 are likely to have lower overhead costs, lower tax burdens, etc. – and less uncertainty than by direct hiring. It is therefore far from certain that an equalisation of the real competitive terms and establishment of orderly conditions will entail a marked shift in service mobility. But the distribution of benefits, disadvantages and social risks would certainly shift in favour of the workers and the countries of origin, which will receive higher incomes and tax revenues. Assuming equal competitive terms, increased service mobility will have many positive effects, both for the host countries and countries of origin. In addition to increased labour market flexibility on both sides, the conditions for circulation of skills, competence transfer and learning across borders are probably better than in the situation of permanent labour migration, which entails a higher risk of brain-drain and fewer immediate financial returns for the countries of origin. For the recipient countries, the potential costs of integration, family reunification and associated welfare benefits will be smaller (as will tax revenues), while labour market adjustment will be spontaneous and the long-term issues pertaining to matching of supply and demand in the labour market will be less relevant, in the same manner as in the intra-Nordic market. Therefore, there are many significant arguments in favour of developing control and

enforcement regimes that can direct the increasing service mobility in the Nordic countries into orderly and legitimate forms. If this is successful, a foundation will have been established for more rational decisions in the enterprises with regard to the use of foreign labour and a more balanced debate on the kinds of labour migration which will be appropriate for solving various types of labour market problems, both in the recipient countries and in the countries of origin. The same applies to the question how the countries can develop more targeted instruments for facilitating desired forms of mobility. (Until now, we are sorry to have ascertained that these discussions have to a significant extent been marred by conflicts and debates on defensive limitations of the negative aspects of the sudden wave of migration subsequent to EU enlargement). In this framework, one may assume that labour migration will be the object of less unrest within the enterprises and between the social partners, and that the conditions for cooperation with the countries of origin on measures to promote and control future mobility are strengthened, in the same manner that has been the tradition in the Nordic labour market. A positive scenario could thus be that the labour market in the Baltic Sea region, as a result of growing integration, can fill many of the same functions as the common Nordic labour market has done so far.

(49)The Nordic countries face different challenges with regard to the implementation of the EU's Posting of Workers Directive and ensuring the same conditions for posted workers as for national employees. In Finland and Iceland, which in principle have stringent and comprehensive regimes based on legislation and extension of agreements, the main task is to ensure effective control and enforcement. The challenges are greater in Norway, where the influx is strongest, and where general application of collective agreements presupposes that one of the social partners demands a generalisation, is able to produce evidence that unequal treatment has taken place, and gains support on the Tariff Board. So far, this has been observed only in the construction industry, but posting is becoming widespread also in other sectors, e.g. in manufacturing, often on conditions that according to national standards must be regarded as social dumping. The autonomous, agreement-based model in Sweden and Denmark seems to have functioned largely according to the intentions, even if the responsibility for implementation that is placed on the trade unions is highly resource-intensive and face problems of legitimacy, and the market for labour in private households could develop into a growing arena for dishonest operators. The Laval/Vaxholm case represents a certain factor of uncertainty, but is not expected to entail dramatic consequences for the Swedish model. The key issue in the forthcoming Nordic debate will not be to identify the most effective system, but rather how the countries on the basis of the strengths and vulnerabilities in their respective regimes can develop a coherent set of instruments for implementation, control and enforcement that can ensure credibility, accuracy and legiti-

macy for those operating in the field. Much can be learned from each other's experience. Finland is clearly at the front in terms of development of tools for control and enforcement, but the results will depend on the practical aspects of implementation, which places requirements on responsibilities, attitudes and cooperation between the enterprises, the social partners, the users of labour, various governmental bodies and the general public. In this perspective, the development of the national regimes is less concerned with the individual tools used for regulation than with the ability to create societal support for a set of unequivocal norms – underpinned by sanctions – as well as attitudes and priorities that can strengthen the capacity and will of the actors in the labour market to keep order in their own ranks. Accordingly, the politicians have a key role to play in raising awareness of the importance of an open, well-organised and inclusive labour market built on equal treatment irrespective of nationality. The EU's focus on increased mobility, the implementation of the service directive and the evaluation of the Posting of Workers Directive also mean that the coming year will represent a window of opportunity for raising the Nordic perspectives on these issues at the European level, and for influencing the political and legal rules of the game in the growing European labour and service markets.

(50) During the first year after EU enlargement, public debate in most of the Nordic countries focused on transitional arrangements and control of the conditions for individual labour migration, while less attention was devoted to the conditions for service mobility. With the phasing out of the transitional arrangements and a stronger focus on circumventions and social dumping in the service market, this situation has largely turned on its head. The realisation that the main problems are not associated with individual migration but rather with service mobility should not, however, lead to a negligence of the challenges faced by some countries when phasing out the transitional arrangements. In countries that nearly have universal coverage of collective agreements or regulations for extension of collective agreements – such as Sweden, Finland and Iceland – the free movement of workers is unlikely to generate particular problems associated with wage discrimination or social dumping. Experience from Sweden indicates that legalisation has strengthened the situation of the labour immigrants. In the other countries a possible shift from service mobility to labour mobility will in itself serve to reduce the problems of circumvention. In Denmark and especially Norway – where the coverage of collective agreements in private sector is lower than in Sweden (see Figure 3 and 4) and extension of collective agreements is not habitual – the phasing out of the transitional arrangements' regulation of wages for citizens from the EU-8 may give rise to new challenges in some industries. Especially in Norway, a significant number of the private sector enterprises is not covered by collective agreements, in particular in service industries where contracting immigrants is most common.

(51) Even if the EU's anti-discrimination directives have been implemented into the work environment regulations in all the Nordic countries, these regulations apply only to instances of unequal treatment in the same type of occupation/job within the same enterprise. Because these provisions form part of the labour legislation that pertains to individuals, a violation of the regulations can only be proven if an individual worker launches a complaint through the civilian courts of law. Previous experience indicating that immigrants often become concentrated in particular industries, often with low unionisation rates, such as cleaning, hotels and catering, and the fact that recently arrived immigrants rarely possess the resources and ability to undertake costly and time-consuming lawsuits, may cast doubt on the efficacy of these regulations with regard to prevention of wage discrimination among recently arrived immigrants. One may also envisage the emergence of a new stratum of enterprises that base their competitive strategies on one-sided recruitment of low-paid labour from the new EU member states. In spite of the transitional arrangement, Fafo's enterprise study revealed a surprising element of enterprises that have (temporary) employees from the EU-8, mainly from Poland. Given the economic disparities between the countries and the benefits to be gained from this kind of migration, the establishment of such enterprises has the potential to serve as a flexible channel for organising migratory networks and as a springboard into the Nordic labour markets that can easily be combined with assignments associated with the household sector, sub-contracts and contracting of labour. In the same manner as in the volatile markets for sub-contracts and service mobility, a potential growth of such "ethnic" small enterprises can be difficult to trace for the trade unions and governmental authorities that often have to concentrate their efforts on controlling the large and economically important enterprises.

(52) In Finland and Iceland, where they have statutory regimes for minimum wage regulation, the phasing out of the transitional arrangements primarily gives rise to new tasks associated with control and enforcement. The task of the trade unions will first and foremost be to brief the authorities, inform the workers about their rights, and help them obtain their statutory benefits. In the areas of the Norwegian construction industry that are comprised by generally valid collective agreements, the trade unions have seen that this role as "advocate" has entailed easier contact, confidence and new members among workers from the EU-8. In Sweden and Denmark, the trade unions are facing a more complicated task, as they are both expected to trace the enterprises and negotiate agreements, if necessary using industrial action, that may sometimes entail a burden on the migrant workers and a certain risk for losing the job or the assignment. The trade unions' role as enforcement agency in the Danish service market has given them a high profile and has vitalised the team of union officials around the task of maintaining "the Danish model". However, the combined roles of "wage police", organiser and advo-

cate for vulnerable labour migrants have also entailed challenges in terms of explaining and gaining support for the function of the trade unions in relation to foreign workers who are exposed to the compound pressures between the loyalty to their national employer, the desire to keep their jobs/assignments, and the demand for solidarity with Danish workers in the struggle against social dumping. The strength of the Danish – and Swedish – model however, is its placement of the responsibility for enforcement of national rules and agreements on the social partners, and its integration of this activity in the ongoing cooperation between the labour market partners. By doing so, the model ensures awareness, visibility and mobilisation “from below” around the political consensus on the importance of ensuring equal conditions for labour migrants, this being a decisive precondition for the establishment of an effective system of enforcement under any circumstances. However, a condition to be fulfilled for the trade unions to be able to fill their key role in this kind of regime is that they receive sufficient support and legitimacy for the burdensome tasks placed on them from the political authorities and the other parties in the world of labour. Ambiguities, dissociation and repudiation of liability from the other parties to the tripartite cooperation to defend the national model may easily undermine the credibility and efficiency of the system.

(53) In large sections of the Norwegian labour market, as well as in those parts of the Danish labour market that are not covered by collective agreements, the situation will be a different one following the phasing out of the transitional arrangements. Without any reference to statutory minimum wages, generalised collective agreements or a generally valid standard pay in the area, the union work required to prevent emergence of a low-wage segment among labour migrants from the EU-8 may prove to be demanding. In Norway, the trade unions’ influence over wage formation in certain segments of the labour market with a high share of immigrants and young workers is already significantly weakened. In the context of the phasing out of the transitional arrangements, this accentuates the need for debate on how the social partners and the authorities can jointly develop measures and incentives to enhance the coverage of organisations and collective agreements in the most exposed parts of the labour market. This responsibility mainly rests on the social partners, but historic experience indicates that this challenge is difficult to meet without the support of an active governmental third party. At a time when the Nordic model is highly profiled in Europe it would not be unreasonable for the authorities to assume a substantial co-responsibility for ensuring that the benefits of this model are also made effectively available to workers from poorer European neighbouring countries. If the parties should prove unsuccessful in ensuring sufficient coverage of collective agreements and equal conditions in those parts of the labour market where the labour migrants from the new EU member states find jobs, the authorities and the social partners will have to search for new tools to

strengthen the national models to make them withstand the pressures from the open and growing European labour market. In that case, it is today difficult to envisage that this can be achieved without considering development of a new and more effective minimum wage regime in the most exposed industries, probably presupposing a regulatory interplay between statute and agreements. The trade unions in both Norway and Denmark regard any legislation on issues pertaining to wage formation as a threat to core principles in the national models. We do not want to speculate on the solutions that can emerge if the defence of these principles comes into conflict with another axiom in the models – such as the demand for equal pay for equal work on the site. However, in this situation one will have useful experience to draw on from other national variants of the Nordic models.

(54) In this report we have outlined a number of topics that the Nordic contact group has considered core issues on the agenda of labour market policies associated with the EU enlargement:

- Establish more equal conditions/a level playing field for labour mobility in the form of service provision and via the ordinary labour market
- Further development of the national regimes for regulation of wages and employment conditions for posted workers (implementation of the Posting of Workers Directive)
- Improve national regimes for control, enforcement and sanctions:
 - Develop more effective arrangements for registration and/or declaration of posted workers as a key precondition for enforcement
 - Develop better and more comparable statistics
 - Clarify conditions for access to information on wages and employment conditions in sub-contractors and manpower supply agencies
 - Further develop the responsibility of builders and subscriber liability, including rules for public tenders
 - Adapt the regulations for suppliers of temporary workers/manpower suppliers to an open labour market
 - Strengthen the functions of labour inspection authorities – by developing skills, coordination and administrative cooperation with neighbouring countries and countries of origin
 - Develop forms of sanctions that have real preventive effects
 - Maintain and develop of national systems of partnership and agreements
 - Influence European conditions and rules of the game for control and enforcement

- Assess the need for measures to counteract unequal treatment and the emergence of a low-wage segment in the labour market following the phasing out of the transitional arrangements

Even though the Nordic countries have differing arrangements and traditions in some areas, many of the challenges and many of the basic pre-conditions remain identical. We are convinced that the parties can learn a lot from each other through systematic exchange of information, knowledge and experience gained from the variety of measures undertaken in this field. The main idea is not to undertake benchmarking or identify best practices in various partial fields, but to make use of each other's experience with a view to clarifying the room of manoeuvre and developing a coherent chain of national regulations, measures and initiatives. The ability to monitor, control, and enforce the rules of the game constitutes a critical factor. These issues will be at the centre of the project's attention during the coming year. A major challenge in this context is likely to be the establishment of targeted coordination, cooperation and identification of responsibilities between the public and social agencies involved in this field. This applies not only to the national and the Nordic levels, but also in relation to the new EU member states and with a view to influence the development at the European level.

Sammendrag

(1) To år etter EU-utvidelsen har det tegnet seg et visst mønster i arbeidsvandringene fra de nye EU-landene til Norden. Den individuelle arbeidsmigrasjonen har variert sterkt mellom de nordiske landene, men fortsetter å øke. Ved å dekke økende behov for arbeidskraft, har arbeidsinnvandringen bidratt til økt vekst i produksjon og sysselsetting, dempet pris- og renteutvikling, og utvidet handlefriheten i den økonomiske politikken. Veksten i arbeidsinnvandring har vært sterkest i Norge og på Island, mens Sverige og Finland har sett en viss nedgang i den registrerte migrasjonen. Det er ikke registrert tegn til sosial turisme. Arbeidsmobiliteten knyttet til *tjenesteyting* har økt kraftig og synes i viktige sektorer klart større enn den ordinære arbeidsmigrasjonen. Dette har reist nye utfordringer når det gjelder regulering, håndheving og kontroll.

(2) I likhet med de fleste «gamle» EU-land, valgte Danmark, Finland, Island og Norge i 2004 å innføre *overgangsordninger* for bevegelse av arbeidstakere fra EU-8. Sverige og i praksis Storbritannia og Irland åpnet sitt arbeidsmarked fra første dag. Fra 1.mai 2006 opphevet Finland, Island, Hellas, Portugal og Spania sine overgangsordninger, nylig etterfulgt av Italia. Danmark foretok en oppmykning og gjorde det mulig å forhåndsgodkjenne bedrifter med tariffavtale og vil i likhet med Norge seiest oppheve sin ordning 1.mai 2009. Dessuten har andre EU-land varslet en gradvis åpning av arbeidsmarkedet i tiden framover, slik at det med unntak for Østerrike og Tyskland dermed trolig vil være et åpent arbeidsmarked i det nåværende EU/EØS fra 1.mai 2009. Mye tyder imidlertid på at flere land vil benytte retten til overgangsordning hvis/når Bulgaria og Romania blir medlem.

(3) De nordiske erfaringene har understreket vanskene med å ha ulike regimer for *individuell arbeidsmigrasjon* og *arbeidsmobilitet via tjenesteyting*. Forskjeller i vilkårene for lønnsdannelse, arbeidsforhold, skatt/avgifter, kontroll og håndheving, har gitt opphav til *strategiske omgørelser* og *vridningseffekter*. Dette har bidratt til redusert regulær arbeidsinnvandring og konkurransevridning, lønnsdumping og uryddige forhold i deler av arbeids- og tjenestemarkedene. Man har også sett økende tegn til illegal sysselsetting av migranter, blant annet i husholdssektoren.

(4) Ved utfasingen av overgangsordningene utvides de legale mulighetene for sysselsetting av arbeidstakere fra EU-8 i bedrifter med lavere lønn enn det som er gjengs i det nasjonale arbeidsmarkedet. Spesielt i land/sektorer med begrenset avtaledekning og/eller uten ordninger for allmenngjøring av tariffavtaler/minstelønn, kan dette åpne for forskjellsbehandling, økt lavlønnskonkurranse og press på avtalesystemet og lønns- og arbeidsvilkår. Når grensekontrollen opphører, skjerpes kravene

til det interne regulerings- og kontrollregimet i arbeidsmarkedet. utfordringen er å utvikle en *politikk for arbeidsmigrasjon* som sikrer likeverdig samspill mellom tjeneste- og arbeidsmigrasjon, likebehandling av utenlandske arbeidstakere, og tar høyde for – og kan påvirke – vilkårene for fri bevegelse i det åpne europeiske markedet.

(5) Med et høyt velferdsnivå og aldrende befolkning, reiser det åpne europeiske arbeids- og tjenestemarkedet krevende *dilemmaer* for de nordiske land. Behovet for arbeidskraft øker og vil på sikt neppe kunne dekkes innen Norden. I de nye EU-landene vil aldersbølgen bli sterkere og lønns- og velstandsveksten øker. I årene framover vil man trolig se tiltakende *kamp om arbeidskraft* i Europa og «selgers marked» for tjenestoppdrag. Etterspørselen etter arbeidskraft fra 3.land og presset langs EU/EØSs yttergrense vil antakelig øke. Dette vil stille krav til utforming av en mer helhetlig og langsiktig politikk for arbeids- og tjenestemobilitet både nasjonalt, i Norden og på europeisk plan.

References

- Ahlberg, K., Bruun, N. og J. Malmberg (2006), 'The Vaxholm case from a Swedish and European perspective'. I: *Transfer- European Review of Labour and Research* 2/2006
- Arbejdsmarkedsstyrelsen i Danmark (2006), Notat. Bilag til møte i forligskredsen den 5. april 2006
- ASI (2006), Icelandic Labour Law. A summary of basic rights and obligations in the Icelandic labour market. Icelandic Confederation of Labour. <http://www.asi.is/upload/files/Icelandic%20labour%20law3.pdf>
- Beskæftigelsesministeriet (2006), Registrering af udstationerede – inden for EU-rettens rammer. Notat 24.02.06.
- Boeri, Tito og Herbert Brücker (2003), *Potential Migration from Central and Eastern Europe – an update*. (<http://www.europa.eu.int/comm/employment>)
- Bruun, Niklas (2006), Posting of workers: do the EU-rule work? A Nordic perspective. Mini-hearing, European Parliament, 20.04.2006
- European Commission (2003) Report (...) on the implementation of the Directive 96/71/EC (...) concerning the posting of workers in the framework of the provision of services.
- ____ (2003) Communication (...): The implementation of Directive 96/71/EC in the Member States, COM (2003) 458 final.
- ____ (2006) Report in the Functioning of the Transitional arrangements set out on the 2003 Accession Treaty (period 1 May 2004-30 April 2006).
- ____ (2006b) Guidance on the posting of workers in the framework of the provision of services, COM (2006) 159 final,
- Cremers, Jan (2006), 'Free movement of services and equal treatment of workers: the case of construction'. I: *Transfer- European Review of Labour and Research* 2/2006
- Dølvik, Jon Erik og Line Eldring (2006), 'Industrial relations responses to migration and posting of workers after EU enlargement: Nordic trends and differences'. I: *Transfer- European Review of Labour and Research* 2/2006
- Dølvik, J.E., L. Eldring, J.H. Friberg, T. Kvinge, S. Aslesen og A.M. Ødegård (2006), [EU-utvidelsen: Endringer i norske bedrifters arbeidskraftsstrategier?](#) Fafo-notat 2006:14
- Dølvik, Jon Erik og Line Eldring (2006), [Statusrapport Januar 2006: EU-utvidelsen og konsekvensene for arbeidsmobiliteten til Norden](#). Halvårsnotat fra Arbeidsgruppe under Nordisk Ministerråds Arbeidsmarkedsutskott
- Dølvik, Jon Erik og Line Eldring (2005), [Arbeids- og tjenestemobilitet etter EU-utvidelsen. Nordiske forskjeller og fellestrekk](#). Sluttrapport for en arbeidsgruppe under Nordisk Ministerråd. TemaNord 2005:566
- EU Commission (2006), Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (period 1 May 2004–30 April 2006) http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0048en01.doc
- EU Commission (2006), Transitional measures for the free movement of the workers forming the subject of the accession treaty of 2003, Memo/06/176: <http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/06/176&format=HTML&aged=0&language=EN&guiLanguage=no>
- European Foundation for the Improvement of Living and Working Conditions (2006), Temporary agency work in an enlarged European Union. Dublin. <http://www.eurofound.eu.int/pubdocs/2005/139/en/1/ef05139en.pdf>

- Evju, Stein (2006), Evaluering av allmenngjøringsordningen – høring. <http://odin.dep.no/filarkiv/269805/Evju.pdf>
- Friberg, J.H. (2006), [Individuell arbeid-sinnvandrings. utfordringer to år etter EU-utvidelsen](#). Fafo Østforum/Fafo-notat 2006:07
- Erling Hjelmeng og Olav Kolstad (2005), Allmenngjøringsloven og innsynsrett – EØS-rettslige problemstillinger, http://odin.dep.no/filarkiv/269459/NHO_-_vedlegg.pdf
- Lismoen, H. (2006), 'Low-wage regulation in Scandinavia'. I: Schulten, T. et al (ed.), *Minimum wages in Europe*. Brussels: ETUI-REHS
- Maier, Lena (2005), [Utstationering av arbeidstagarer og det svenske kollektivavtalssystemet. En rettslig analys](#). Stockholm: SACO
- Ot.prp.nr. 92 (2005–2006), Om lov om endringer i lov 4. juni 1993 nr. 58 om allmenngjøring av tariffavtaler m.v. og lov 24. juni 1988 nr. 64 om utlendingers adgang til riket og deres opphold her (utlendingsloven). <http://odin.dep.no/filarkiv/283827/Otp0920506-TS.pdf>
- Røed, Marianne (2006), Foredrag om lønnsvirkninger av migrasjon, konferanse Norges Forskningsråds program for Arbeidslivsforskning, Voksenåsen 29.mai 2006.
- Seriøsitet i byggenæringen (2004) <http://www.fellesforbundet.no/upload/NYHETER/Svartvedlegg.pdf>
- SOU 2006:28, Nya opphandlingsregler 2 <http://www.regeringen.se/content/1/c6/06/03/33/447d389e.pdf>
- SSB (2006) 'Høyeste nettoinnvandring noensinne', www.ssb.no/emner/02/02/20/innvutv
- Statsrådet (2006), Redogørelse til riksdagen om verkningarna av lagen om övergangstid samt verkningarna av arbetskraftens och tjänesterna fria rörlighet på arbetsmarknadsläget inom olika branscher. Finland
- Stien, K., T. Lødemel og B. Johannesen (2006), 'Innvandring løser ikke problemet', Horisont – Næringspolitisk tidsskrift, NHO: Oslo.
- Stokke (2005) Allmenngjøring og minstelønn i Norge og EU, Foredrag på seminar i Fafo Østforum 29.9.05, Oslo.
- Stokke (2006) Allmenngjøring, minstelønn og innsynsrett i Norge og EU, Innledning på seminaret Allmenngjøring under press?, Institutt for privatrett, UiO 15. mars 2006, Oslo.
- Stortingsmelding nr. 9 (2005–2006) Om overgangsordningane for arbeidstakarar frå dei nye EØS-landa mv.
- Sveriges Ambassad, Dublin (2006), Promemoria 2006-06-16
- Sveriges saksframlegg til EF-domstolen (2006), Regeringskansliet, Utrikesdepartementet, 2006-01-30.
- UDI, 27.6.06 EØS-utvidelsen – tillatelser med formål arbeid.
- UDI, Tall og fakta 1. tertial 2006 <http://www.udi.no/upload/Statistikk/Tallogfakta-1terial06.pdf>
- Udlændingestyrelsen juni 2006, Familiesammenføringsansøgningsantal <http://www.udlst.dk/NR/rdonlyres/e6kr3ge46gzp36obsg2kgvmes7ahj4lqrgowevsclj553ug6cemmug5c5ldnb7lajjb7cjjqfyi2g5gwjhzuumkae/Familiesammenføring!A1>
- Utrikesdepartementet (2006-01-30) Skriftlig yttrande. Mål C-341(05 La-val un Partnerei. Regeringskansliet, Stockholm.

Appendix 1: Transitional arrangements in the Nordic countries

Transitional arrangements in the Nordic countries for individual job-seekers from the new EU member states

COUNTRY	TRANSITIONAL ARRANGEMENTS 1 May 2004 -31 April 2006	AMENDMENTS TO THE TRANSITIONAL ARRANGEMENTS AFTER 1 MAY 2006
Denmark	<p>Workers can travel to Denmark and apply for work at their own cost for up to six months.</p> <p>The worker cannot start working before residence and work permits have been granted.</p> <p>Permits will be granted, provided that the job is full-time and performed on conditions defined by a collective agreement or at prevailing wage levels and labour conditions for an employer who is obligated to withhold income tax according to the Taxation Act, and who is not engaged in a legal industrial conflict.</p>	<p>Amendments to the transitional arrangement:</p> <p>Enterprises having a collective agreement can receive advance approval of employment of citizens from the EU-8. Workers employed by these enterprises thereby do not need residence and work permits prior to employment, but notice must be given to the immigration authorities when the worker takes up employment. Opportunities for part-time work are expanded, commuters and students from the EU-8 are granted work permits automatically, and workers may remain employed while applications for renewal are being processed.</p>
Finland	<p>Work permits are issued by the labour agencies according to the same requirements as for non-EEA citizens. The need for labour and the possibility that the immigrant displaces Finnish labour must be assessed. The employer must append a confirmation to the application that the labour conditions comply with prevailing regulations and collective agreements, or correspond to practices applicable to workers in similar jobs. If the labour agency so demands, a confirmation that the employer has fulfilled and will continue to fulfil his obligations as responsible employer must be appended. The employer must keep information on all employed foreigners on file, along with information on the background for their work permit (to be kept for four years after cessation of employment, so that the labour regulatory authorities can access this information easily on demand). No residence or work permit is required for seasonal work that lasts up to three months in agriculture.</p>	<p>Transitional arrangement repealed.</p> <p>Act on registration of information for work performed by certain citizens of the European Union went into force on 5 June 2006, and is valid until 30 April 2009.</p> <p>Bill on the user's reporting obligation and responsibility when hiring external labour to be deliberated by the Riksdag.</p>
Iceland	<p>Maintains immigration regulations for the new EU member states, and the same rules apply as prior to 1 May. The employer must apply for a work permit before the worker arrives in Iceland. General labour considerations apply, meaning that no workers from Iceland or other EEA states are available to perform the work. It is a precondition for granting of a work permit that the work will contribute to the worker's maintenance.</p>	<p>Transitional arrangement repealed.</p> <p>Until 1 May 2009, the employer must inform the Directorate of Labour that a person from the EU-8 has been employed, and a copy of the labour contract must be appended, which must be in conformity with wage conditions defined by legislation and collective agreements.</p>

Norway	<p>Workers can travel to Norway and apply for work at their own cost for up to six months . Must have a residence permit that allows for work before employment can start. Workers can apply for permits at Norwegian foreign service stations and at Norwegian police stations. The employer can apply on behalf of the worker. A specific offer for full-time employment must be available. Wage levels and labour conditions must be equal to those offered to Norwegian workers in the same type of job (wages according to collective agreements or at levels prevailing in the relevant region or profession). An employment contract documenting wage levels and labour conditions in conformity with regulations must be appended.</p> <p>All EEA citizens who shall perform work/provide a service must be registered, but the provision is not implemented.</p>	<p>The transitional arrangement prolonged without amendments .</p> <p>Package of measures against social dumping</p>
Sweden	<p>No transitional arrangement. (Residence permit required for periods of stay exceeding three months. Employment contract containing information on the duration and form of the employment must be submitted).</p>	<p>No transitional arrangement.</p>

Appendix 2: Statistics

Table 1: Work permits granted to job-seekers from the EU-8 in the period 1 May 2004 – 30 April 2006, by Nordic recipient country

	Category of approvals/ applications	2003 (1 May – 31 December)	2004 (1 May – 31 December)	2005 All year	2006 1 January – 30 April	TOTAL 1 May 2004 – 30 April 2006
Denmark	Residence and work permits granted	776	2 097	4 923	3 651 (Jan–May)	10 671
Finland	Decision by the labour agency	6 747	2 169	2 633	803	5 605
Iceland	Work permits granted (Temporary work permits)	230	515 (+666 renewals)	2 764 (+844 renewals)	2 566 (+1 180 renewals)	5 845 (+2 690 renewals)
Norway	EEA permits granted	12 404 (+784 renewals)	16 975 (+3 558 renewals)	19 301 (+17 902 renewals)	5 455 (+5 799 renewals)	41 731 (+27 259 renewals)
Sweden	New EEA applications received – work	2 096	3 963	4 805	1 830	10 598
Total		22 253 (+784 renewals)	25 719 (+4 224 renewals)	34 426 (+18 746 renewals)	14 305 (+6 979 renewals)	74 450 (+29 949 renewals)

Sources and definitions

Renewed permits can both include prolongations of current permits and permits for migrants who have previously worked in the host country and initiate a new period of work in that country after having stayed elsewhere in the meanwhile.

Denmark: Arbejdsmarkedsstyrelsen/Udlændingestyrelsen. Figures for 2003 are for the entire year. Self-employed cannot be defined for 2003, but it is assumed that these are not very numerous. Figures do not include renewals. Figures for 2006 include May.

Finland: Arbetsministeriet. Work of less than three months' duration is not registered after 1 May 2004. Statistical follow-up has become considerably more complicated following the transfer of responsibility for processing of cases from the Finnish labour agencies to the immigration authorities.

Iceland: Arbejdsmarkedsstyrelsen Island (Vinnumatlastofnun). Figures for 2003 are for the entire year. Figures for new permits in 2006 include 2,510 new temporary work permits, 23 "specialised permits" and 33 "au pair" permits. Figures for renewals in 2006 include 911 prolonged permits, 70 permanent permits and 199 "new workplaces" (comprises persons who have changed their workplaces or have been granted a new permit).

Norway: Utlendingsdirektoratet (UDI). A total of 784 renewals were granted in 2003, and 3,558 in 2004. We have no information of whether these were granted prior to 1 May, but we have chosen to assume that they were granted after 1 May. A total of 7,493 of the permits granted in 2004 had a validity of more than three months, for the entire period (1 May 2004 – 31 December 2005), 40 per cent of the permits had a validity of more than three months. As regards the category "renewals" after 1 May 2004, a renewal does not necessarily entail a continuous prolongation. If a person travels back to his/her country of origin and applies for a new work permit this will be classified as a "renewal", similarly to if the person had resided continuously in Norway. UDI emphasises that all figures for 2006 are provisional.

Sweden: Migrationsverket. Does not include work of less than three months' duration after 1 May 2004. Does not include renewals; a total of 2,261 "prolongations" were granted to all groups of applicants (including students, family members, etc. in the period 1 May 2004 – 31 December 2005, but the authorities assume that the bulk of prolongations apply to work and single-person firms. The figures comprise applications, not permits granted. Approximately 95 per cent of the applications are approved. Persons who have employment contracts that are valid until further notice, or are valid for one year or more, receive a five-year permit. Those who have employment contracts that are valid for less than one year receive a permit with the same period of validity as the contract.

For all countries: Permits from 2003 have different titles that are not described here, but are regarded as comparable to those currently comprised by the EEA category (with varying designations in the different countries). Seasonal work and work with a duration of less than three months is included wherever registered. Differences in registration practices are likely to result in some bias that cannot be controlled for. All figures are subject to reservations in that categories may differ because of the use of different sources.

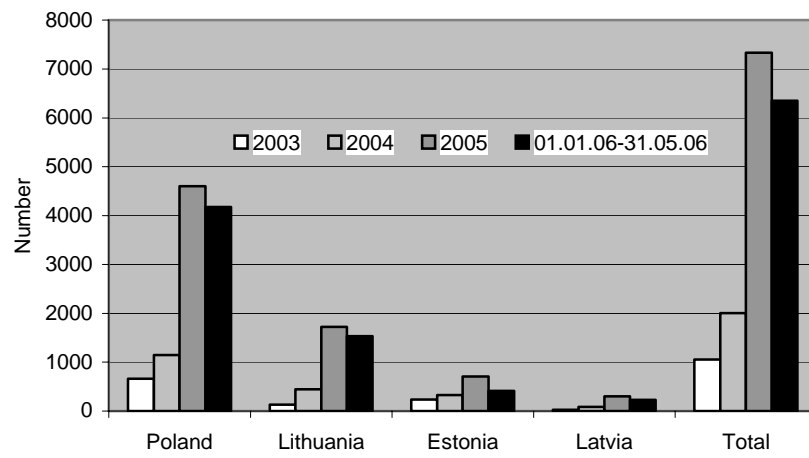


Figure 6: Registered workers from Poland and the Baltic countries in foreign enterprises who have assignments in Norway, 2003-31.05.2006 (Source: Foreign Tax Affairs Office)

Appendix 3: List of contact group members

With certain changes over the year, the following persons have been part of the contact group:

Name	Address	Telephone	E-mail
René Høyer Jørgensen	Nordisk Ministerråd Store Strandstræde 18 1255 Kbh K, Danmark	+45 33 96 03 60	rhj@norden.org
Ole Bondo Christensen	Beskæftigelsesministeriet Ved Stranden 8 1061 København K	+45 33 92 73 21 Fax: +33 12 13 78	obc@bm.dk
Louise de Brass	Beskæftigelsesministeriet Ved Stranden 8 1061 København K	+45 33 95 44 73	ldb@bm.dk
Lisbet Møller Nielsen	Beskæftigelsesministeriet Ved Stranden 8 1061 København K	+45 33 92 58 92	lmn@bm.dk
Mirkka Mykkänen	Arbetsministeriet Postbox 34 FIN-00023 Government Finland	+ 358 9 160 47019 + 358 400 703984 (mobil)	mirkka.mykkanen@mol.fi
Olli Sorainen	Arbetsministeriet Postbox 34 FIN-00023 Statsrådet Finland	+358 10 604 8022	olli.sorainen@mol.fi
Sinikka Hyypä	Arbetsministeriet Postbox 34 FIN-00023 Statsrådet Finland	+358-9-10 60 47 019	sinikka.hyypa@mol.fi
Gissur Petursson	Vinnuálastofnun Hafnarhúsinu v/Tryggvagötu 150 Reykjavík, Island	+354 515 4800	Gissur.petursson@vmst.is
Egill Heiðar Gíslason	Vinnuálastofnun Hafnarhúsinu v/Tryggvagötu 150 Reykjavík, Island		egill.gislason@vmst.is
Anna Fanebust	Arbeids- og sosialdepartementet Pb 8019 0030 Oslo, Norge	+47 22 24 47 23	anna.fanebust@aid.dep.no
Eli Mette Jarbo	Arbeids- og sosialdepartementet Pb 8019 0030 Oslo, Norge	+47 22 24 69 39	emj@aid.dep.no
Ola Ribe	Arbeids- og sosialdepartementet Pb 8019 0030 Oslo, Norge	+47 22 24 47 10	ola.ribe@aid.dep.no
Anna Santesson	Näringsdepartementet 10333 Stockholm Sverige	+46 84 05 12 34	anna.santesson@industry.ministry.se
John Pettersson	Enheten för arbetsrätt och arbetsmiljö på Näringsdepartementet		john.pettersson@industry.ministry.se