

TEMPORARY MIGRATION OF FOREIGN WORKERS¹

- Illustrated with Special Regard to East-West Migrations -

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¹ This paper is a revised version of a report commissioned by the Council of Europe and its responsible working group 'European Committee on Migration' (CDMG). It mainly focuses on foreign seasonal workers, project workers and guest workers. However, many of the statements are equally valid for other types of temporary migration of foreign workers. The Council of Europe published the report in its document entitled 'Temporary Migration for Employment and Training Purposes'. Report and guidelines, Strasbourg 1996, CDMG (96) 18E

1 Background of the report

With the opening up of the borders to the Central and Eastern European states a new migration situation has arisen. People are not only flowing into the industrialised countries of Europe from southern developing countries, but also from Central and Eastern Europe. This pressure to migrate results from the pronounced differences between the economic development and incomes in these countries and in the western European industrialised countries. Furthermore the frontiers cannot be hermetically sealed - undesirable illegal immigration and employment cannot be prevented. For this reason, it is argued, legal methods of enabling temporary migration for workers should be found (Council of Europe 1993:4; Commission of the European Communities 1994:23). The idea of temporary migration is to ease the pressures of migration and to channel it. At the same time this could contribute to the development of the Central and Eastern European countries. Temporary employment in a western country could provide the country of origin with foreign exchange and purchasing power, while in addition, employment abroad would provide vocational know-how. The receiving country, on the other hand, might also profit from such short-term employment.

At the Vienna Conference in 1991 the Conference of Ministers of the Council of Europe dealt intensively with the issue of temporary migration of foreign labour, especially from Central and Eastern European countries. At that time the existing possibilities were uncertain, while the extent and consequences of such immigration were unclear. It was suggested, therefore, that a study about existing bilateral agreements on temporary employment of foreign workers be compiled. In addition to describing the advantages and disadvantages of the different forms of temporary immigration, these should be examined and suggestions made, such as how bilateral agreements could be designed to ensure maximum benefits for all the parties involved. The author was requested to compile a report and discuss it in the Council of Europe's responsible working group. A substantial part of the present paper is based on this report. Where necessary, the research results from migration research were included to permit the assessment of possible consequences of short-term immigration.

The paper starts with a brief description of the factors determining labour migration to explain the mechanisms of migration processes. Next a typology of migration movements is set out to permit an assessment of the range and potential of temporary immigration to be made. Then the interests of the parties involved in such short-term immigration are listed, including the advantages and disadvantages of the same. This is followed by a chapter providing an overview of the existing bilateral agreements on short-term migration for seasonal work, project-tied contract work and occupational trainees. Since the liberalisation of trading with services within the context of the agreements of the World Trade Organisation permits short-term employment under certain conditions we will also briefly touch on that. The paper ends with a summary and conclusions.

2 Labour migration

2.1 Determinants of labour migration

An economically motivated potential for migration arises when varying levels of economic development and thus of income exist between countries. More specifically, we can identify push factors in the emigration countries and pull factors in the immigration countries. Pull factors are the prospects of higher pay and the availability of jobs in the respective destination country. Push factors might be lack of employment prospects, unemployment or low income in the

home country. If both respective factors are present in two countries, there is a basic potential for migration. Before migration actually can take place further conditions have to be met: transparency/information, legal admissibility (illegal migration left aside) and the absence of other barriers such as language, cultural differences, excessive distance.

In the early 1970s most industrialised EC countries pursued a more or less generous policy of acceptance of foreign workers due to their demand for labour. When immigration and employment policy of the receiving countries are generous and while the differences in development levels and thus earning potential between home and receiving country are very pronounced, the influx from the less developed countries will continue and may even reinforce itself. Böhning called this the 'self-feeding process of migration' (Böhning 1984: 68ff). The reasons for such self-feeding migration were twofold. When migration started the foreign workers took jobs that had been unattractive for the national labour force. After a while - in the case of a favourable economic situation - they took the jobs unwanted by nationals for reasons of status or prestige. Since it was easy to recruit more foreign labour, new workers came in, taking the jobs that had become socially undesirable for the foreigners that had come earlier. Thus the employment of foreigners improved vertical mobility for nationals. On the other hand this migration is self-feeding, because foreign workers are followed by their families and friends (chain migration).

As long as considerable differences between the wages in the home and the receiving country persist, migration pressure will continue. Generally this may apply even when the labour market in the potential receiving country is saturated, as is proved by the current migration from less developed countries. The key word here is 'economic refugees'.

The emigration push does not depend solely on the absolute difference between income levels in the country of origin and the target country. If the income is low, but still reaches a level acceptable by this society and is above the poverty line, the income threshold to emigrate is bound to be high, that is, the absolute earnings differential must be considerable to cause labour to move. This phenomenon of less migration has occurred in the course of European integration, although the legal barriers to migration have been abolished (free movement of labour) (Werner 1994b:239). With increasing economic interrelations, trade and industrialisation, prosperity in all EU countries has grown. Although there are still considerable income differentials between EU countries, a "socially acceptable" income can be obtained in most EU countries. In the EU "peripheral" countries, regions with a high standard of development have emerged - e.g. northern Italy - southern Italy. In this case migration tends to take place within a country. These developments have diminished one of the decisive international incentives for migration. We shall illustrate these facts with an example (Stalker 1994: 156): the average wage difference between the southern EU countries and the economically better-off EU countries is about 1 to 4. Still relatively few workers migrate from the Mediterranean, although the rules of free movement make it formally very easy for them. In other parts of the world such differences are enough to cause mass migrations as people hope to escape poverty. An example is the average wage difference between Columbia and Venezuela which is 1 to 3. Next to the difference in wages, prospects for the future are also decisive for migration. If there are prospects for economic improvement, the immediate, short-term (material) advantages of emigration are offset against expected, improved conditions which might mean deciding against emigration.

The above considerations may also become relevant in the context of east-west migration. In view of the currently existing considerable differences in wages we can expect that significant

numbers of people will move away from eastern Europe. But if the restructuring process gains momentum and positive growth rates materialise, an increase in wages towards a "socially acceptable" level of income may get under way in those countries and reduce the pressure to migrate.

Once the mobility process has started, networks develop which affect the level and direction of migration (Gurak 1992: 150 ff and Castles/Miller 1994: 23). Although each migratory movement has its own specific historical patterns, it is possible to generalise on the way migrations evolve. For example it may be observed that most migrations have started with young, economically active men. They want to stay for a limited period and save enough money in a higher-wage economy to improve conditions at home by buying land, building a house, setting up a business, etc. After having spent some time in the receiving country, a proportion of these "primary migrants" return home. But others stay and bring their family and friends. Social networks develop among those that came first and those that came later. For the newly arriving migrants they are a kind of bridgehead providing information about housing, jobs, etc. and making it easier to settle. The existence of such networks explains why a migration process, once initiated, tends to develop its own dynamics and why a certain group of migrants goes to one country rather than another. For example, it explains why most people from North Africa migrated to France, while Turks preferred Germany.

The pattern of the process of migration can be summarised in a four-stage model (Castles/Miller 1994: 25f.):

Stage 1: temporary labour migration of young or middle-aged workers, remittance of earnings and continued orientation towards the homeland;

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

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

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

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

The west European countries have reservations against admitting any sizeable new immigration mainly because of the uncertain outcome of the last stage of the migration model sketched above and the deterioration of the labour market situation (Commission of the European Communities 1994:4). Temporary migration, it is argued, would avoid those long-term effects, could channel migration according to the labour market needs and provide benefits for all parties - the foreign worker, the sending and the receiving countries. These arguments will be dis-

cussed in more detail later on in the report. At first we will present a classification of labour migration to permit an assessment of the range of temporary immigration.

2.2 Classifying migration movements

There are several possibilities of classifying economic migration (Salt 1995:8). One can classify migration movements by referring to the policy perspectives of sending (emigration) or receiving (immigration) countries or, alternatively, by reference to individual migrants' intentions. Problems of delineation arise because individuals who originally planned to stay for a short time stay permanently.

The following is the classification of the UN agencies (ILO/IOM/UNHCR 1994:3 ff.), which focuses on the substance and form of the migrations.

Migration for education: Migration for education does not, strictly speaking, involve economically active persons but it is included here because the motivation is ultimately economic. This kind of migration includes international exchanges of academics and higher education students for studies abroad.

Migration for training: Occupational trainees or experienced skilled workers (so-called guest workers) spend a certain period of time abroad to get to know the receiving country's more advanced technology, production or marketing procedure and to benefit therefrom after their return.

Migration for professional or business purposes: This type concerns mostly people with higher levels of education or training whose skills transfer easily from one country to another. Among these are many managers and technicians moving across borders within transnational enterprises (inter-company transfers) for certain periods.

Increasing migration of highly qualified personnel and specialists can be observed everywhere in the world (Findlay 1993: 149 ff.). It reflects the global nature of production. Socially they constitute an 'invisible' group of immigrants in Europe, in contrast to the 'typical' foreign workers, and the public becomes hardly aware of this form of migration. They belong to the middle class; in many ways they are international citizens. Most countries place no barriers to their entry (Salt 1993:10; Groenendijk/Hampsink 1994: 94; Findlay 1995: 521).

Contract migration: Contract workers usually are unskilled or semi-skilled foreign workers who are admitted on the understanding that they will work for a limited period. There are the following types:

* Temporary contract migration first took place on a large scale when workers from lesser developed Mediterranean countries moved north in the 1960s and 1970s. They arrived on the basis of temporary work permits and work contracts with time limits but which were often renewable and finally gave way to unrestricted duration of employment and permanent residence permits for themselves and their families. Right now about 17 million foreigners are living in Western Europe, not counting those that have been granted citizenship meanwhile.

* Seasonal migration for employment is a subform of international contract migration. Seasonal workers are commonly employed during seasonal peak demands, e.g. in tourist-dependent industries or in agriculture.

* Project-tied migration occurs when a migrant worker is admitted to a State of employment for a defined period to work solely on a specific project - such as a construction project - being carried out in that State by his or her employer. They remain employed with their company. In such cases disagreements about payment may occur. If foreign contract workers are paid the considerably lower wages of their home country, competition between national and foreign labour and between companies which can employ such cheaper labour and such that cannot ensue which is considered unfair.

Migration for settlement: This type concerns people who enter a country to live there permanently. In the past they have headed for countries like the United States, Canada and Australia. This category also includes specific ethnic groups, 'returning' to a homeland where they have been granted an automatic right of settlement, e.g. the German "Aussiedler" who receive citizenship and a number of start-up subsidies.

Illegal migration: Irregular migration involves illegal (unauthorised) entry, stay or economic activity. Most illegal immigrants in fact enter the host country legally and then become illegal by overstaying, usually by taking employment (Salt 1993: 10). Visitors or contract workers may stay on after the expiration of the authorisation and continue or take up paid employment in precarious and low-paid jobs. Western Europe had nearly 3 million illegal non-nationals in the early nineties, according to an estimate by the ILO (Stalker 1994: 146).

Asylum seekers and refugees: These are people who have left their country to escape danger due to political persecution. Many seek to escape extreme poverty at home without being persecuted.

3.1 Characteristics of temporary migration

How can temporary migration be integrated into this classification scheme? First of all, there is no uniform definition of what can be understood by "temporary" in migration literature. Second, temporary migration may occur among the different types of economic migration mentioned above.² Third, the duration of stay may vary according to type of migration. Moreover, a clear-cut distinction between temporary and permanent stay is often not possible because in the course of the migration and integration process a temporary work permit may be extended and a short-term stay may finally develop into a permanent one.

The major characteristic of temporary work is that it is limited in time and cannot be a preliminary step for a foreign worker to settle permanently in the host country. This implies: 1) a temporary worker must always have a fixed-term contract of employment, specifying the authorised occupation, the geographical area in which the activity may be carried out and the employer. This means that foreign temporary workers may not freely change their employer, activity or area; 2) temporary workers must leave the country on expiration of their contract; 3) the facilities for family reunion do not apply to them.

In practice the following types of temporary work permits exist:

² John Salt (Salt 1995, p.8), for instance, thinks that a large part of current migration of labour is only temporary and concentrated on a few qualifications. On the one end there are the poorly paid workers in households, agriculture, construction, industry or services such as catering, tourism, cleaning. On the other end there are experts and managers working for multinational companies. A third heterogeneous group might be added which might receive temporary work permits such as students, interns, asylum seekers.

1) Most countries' legislation on foreigners include a provision granting a work permit limited to one year for foreign workers who enter the country for the first time. This type of work permit is usually only granted to the persons whose employment is in the interest of the receiving country (e.g. experts and executives) and whose employment is compatible with the labour market situation (OECD 1994b:3).

2) Persons working across the border keep their residence in the border region of the neighbouring country and return to their country of residence every day or at least once a week. Their families stay in the neighbouring country. Most of the time work permits for workers commuting across the border are granted for a limited time only, can be extended, though.

3) Seasonal workers work in seasonal activities occurring only at certain times of the year. Their employment contract is temporary (less than one year) and relates to one specific activity.

4) Project-tied contract workers are foreign workers coming to another country from the home country with their employer to work for a defined project (e.g. a construction project) and for a defined period. The employment contract exists between the foreign employer and the worker from his home country.

5) occupational trainees are admitted to the host country for a defined period to improve their vocational knowledge and skills, including language. They should be able to use the knowledge they acquired profitably after their return.

3.2 Survey of the different interests in temporary labour migration of the parties involved

Below we are sketching the interest of the actors involved in temporary migration which will enable us to determine whether interests converge or diverge. This permits to balance these interests and propose designs for temporary migration ensuring maximum benefits for all.

3.2.1 Interests of the receiving country

(1) Meeting manpower requirements: Manpower supply bottlenecks are overcome by tapping the labour pool of other countries. The imbalance on the national labour market can be of a cyclical, regional, sectoral (e.g. construction industry), qualification (e.g. nurses) or seasonal (tourism, agriculture) type. The numbers admitted and the skills' structure of the foreign workers can be adjusted flexibly to the prevailing labour market situation. Foreign workers are more mobile as they do not yet have a permanent residence in the host country.

(2) Cutting the cost of labour: Benefits arise out of lower labour costs due to cheaper or better qualified foreign labour which increases efficiency and strengthens the competitive position of individual companies and the national economy. Usually overall wage costs of contract-tied workers are lower than for domestic labour, since the social security contributions are borne by the foreign company. Under the aspect of keeping social peace one should attempt to pay a wage which is roughly equivalent to the collectively bargained or regular wage in this location, to avoid the displacement of national labour.

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

(4) Equal access to employing migrant workers: All companies should have equal opportunities to employing foreign workers. Otherwise conflicts between such companies which can hire (cheaper) foreign labour and such that cannot might arise.

(5) Reducing illegal migration: Immigration cannot be banned when a high migration pressure between countries of high wage differentials exist. Irregular immigration will occur. Illegal immigration implies risk of exploitation and marginalisation of the foreign worker because wage dumping and unfair competition between foreign and national workers. By opening the gate of short-term migration illegal employment with its undesirable effects can be reduced. The various forms of temporary migration constitute a means to channel migration and to relieve the pressure of migration in the potential emigration country.

(6) Avoiding consequential follow-up cost of immigration: The receiving country and/or the company located there, benefit without consequential social costs being incurred for the firm or the society of the receiving country. Such consequential cost arises, e.g. when the family follows the worker. In this case the national population might perceive it as an excessive burden on the social and educational system when foreign workers claim child allowances, unemployment benefits or subsidised housing or when the school system may be overtaxed by the number of foreign students. Such consequential cost hardly occur in the case of temporary stays, it is more characteristic for permanent settlement with family reunion.

(7) Supporting the restructuring process in the reform countries in Central and Eastern Europe: The restructuring process can be supported by temporary migration. It is important for the immigration countries to contribute to the economic development of the reform countries in order to maintain political stability and ease the pressure to migrate in the long run (also see below).

3.2.2 Interests of the country of origin

(1) Alleviating a tight labour market situation: The restructuring process, e.g. from planned to market economy, produces high unemployment. The available funds will not suffice to ensure adequate social cushioning during unemployment. In such a situation of lacking job opportunities temporary employment abroad can mean escape from unemployment and a reduction of unemployment in the home country, at least for some time. The income earned abroad and the knowledge acquired can be used to set up one's own business after returning home. This might be additionally supported by offering e.g. advice, cheap loans or tax exemptions.

(2) Acquisition of vocational skills and know-how: It is important for the home country to obtain knowledge and skills which can be used after the migrant workers return home. This includes production techniques, customer-oriented behaviour in sales and marketing, with people of different cultural backgrounds and foreign languages. The reform countries have an economic structure which has not evolved from the competitive relationships of a market economy. Range of products, methods of production, quality requirements and sales methods were different from those of the market economies. Learning of vocational abilities and skills, including knowledge of the language may play an important role. This will be the case for subsequent

jobs in subsidiaries of companies in the country providing temporary employment or for jobs for which the stay abroad has a vocationally enriching effect (e.g. in gastronomy, fashion, art) or for self-employment after the return home. In the latter case the experience gained and the business relations established may be an asset for running one's own business.

(3) Remittances: Foreign exchange is necessary for the purchase of goods to develop industrialisation. Due to the transfer of earned income the flows of foreign currency can be strengthened. However, it also depends on how the earnings are used: what goods are bought, domestic goods or imported ones? Are they consumer goods or capital goods?

(4) Support for the restructuring and development processes in the countries of origin (also see the points mentioned above): Temporary employment abroad reduces excessive unemployment and permits the individual migrant to obtain a higher income. Remittance of his earnings may contribute to the economic development of his home country, depending on whether the transferred capital is consumed or invested. Furthermore, it is argued, skills acquired abroad can be put to good use after returning.

(5) Control of the outflows: The country of origin will also be interested in keeping a check on the temporary emigration of its nationals. This can best be done if migration is carried out in co-operation with the host country in the form of bilateral agreements. The check on the type and level of emigration concerns the interests of the country of origin for two reasons: on the one hand the social welfare of the migrants is to be secured. This can be done in the form of bilateral agreements or by applying national regulations, laying down the terms of employment, e.g. equal treatment of nationals and foreigners with regard to wages, working hours and other working conditions. On the other hand the countries still want to have a certain say in the selection of workers to prevent a situation in which only well qualified labour leaves.

(6) Planning certainty: The potential emigration country wants long-term agreements without complicated clauses. The country providing employment will prefer a procedure which can react flexibly to changes in the labour market situation, for example, in order to be able to curb immigration in the event of a deterioration of the labour market situation.

(7) Protection from exploitation: The migrant worker needs protection from exploitation as he/she is in a weak position. Remuneration far below the usual local pay level, worse or more dangerous working conditions in comparison with the indigenous workforce, excessively long working hours, lack of social security etc. should not be permitted. The latter of these aspects are not of primary importance for temporary stays though, because the worker is striving to earn as much money as possible during the time available.

3.2.3 Weighing up interests

After describing the different interests of the parties involved it is obvious that the advantages of temporary employment of foreign labour are accompanied by major disadvantages which give rise to a collision of interests.

(1) Cutting the cost of labour: Benefits arise out of lower labour costs due to cheaper or better qualified foreign labour which increases efficiency and strengthens the competitive position of individual companies and the national economy. In the medium and long-term focusing on cutting cost alone is not the correct strategy to pursue (Rürup/Sesselmeier 1995: 94), though.

Although, social consequential costs do not arise, as would be the case for unemployment and permanent residence with family reunion, due to the principle of rotation, but the cost for induction training incurs again, whenever trained labour leaves and new workers come. The shorter the time periods allowed, the lower companies will try to keep their cost for familiarisation. Induction cost can only be kept low, if the foreign labour is either specialised in this activity or if it is a simple, low qualification activity. This will only require little familiarisation and thus generate little cost. In this case the intended know-how and knowledge transfer will be kept within narrow limits. This might well lead to a collision of interests between the worker or his/her country of origin and the employer or the host country.

(2) Labour market compatibility: Access by foreign labour must take place in a way that is compatible with the labour market. This might mean that local wages are paid in order not to displace national workers. For a number of reasons it is difficult to check what wages are actually paid. As the wage differences between country of origin and host country are considerable and as the migrant worker finds himself in a precarious situation he/she is frequently prepared to work also below the usual local wages. It is important for him/her to have a job where wages are high in comparison with his country of origin. The wages finally accepted can be far below the collectively agreed or usual local wages of the country providing employment. The danger of wage dumping and unfair competition between companies which employ such manpower and those which do not may be the consequence. Furthermore, competition with national workers and the danger of displacement can easily arise. This danger is particularly great in times of recession. Because of competition and falling sales, companies will try to rationalise and cut costs. They will do this by recruiting cheaper foreign employees working on a contract for services basis.

(3) Equal access to foreign workers: Among the companies equal access to the employment of foreign workers should be possible. Otherwise conflicts may develop between companies which can recruit (cheaper) foreign labour and those that cannot. Such conflicts are not uncommon between larger, flexible, interregionally operating companies and smaller ones which only act locally.

(4) Illegal employment: After a certain time, the foreign employee is integrated into the production process and familiarised with the requirements of his job. After that his contract expires. The employer cannot be interested in letting trained staff go and replacing them by new members which in turn have to be given new induction training. This takes time and incurs costs. Therefore pressure will arise from the employer's side to be able to continue to employ the foreign manpower already trained, possibly illegally. Temporary employment can also act as a bridge-head for illegal employment. The differences between home country and country of employment are realised, contacts for employment possibilities can be made and work can be obtained. Since borders cannot be hermetically sealed and employment cannot be checked 100 per cent, illegal employment may result from temporary employment.

(5) Reducing unemployment in the country of origin: The contribution of emigration to alleviating labour market problems is likely to be limited. First, western industrial countries will have little inclination to admit many temporary workers in the present economic situation. Second, labour migration is a selective process. Migration research tells us that neither the poorest nor the richest tend to leave, but in general those of intermediate social status from regions which are already undergoing changes (Castles/Miller 1994:21). It is the enterprising

and more dynamic workers, those who are not necessarily unemployed.³ As a consequence and because the numbers of the workers admitted will remain too small, the effect on unemployment will remain limited.

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

(6) Acquisition of knowledge and skills: One must say that the possibilities of acquiring vocational skills and knowledge depend to a large degree on the specific circumstances. One-sided specialisation, restriction to only unpleasant jobs or segregation from native workers at the workplace can very much limit the acquisition of vocational skills. Moreover, it is not certain whether the skills and knowledge acquired can be used in this form at a later date in the country of origin. But results of migration research obtained so far suggest that the use of skills acquired in the host country back home should not be overestimated (Ghosh 1996: 103 ff.).

In certain circumstances a collision of interests between the host country and the country of origin can arise. The companies in the receiving country are primarily interested in readily available and inexpensive labour. Long induction-training periods or additional training elements are not profitable. Therefore companies will either want to have foreign temporary workers specifically for simple jobs or they will be interested in workers who are already specialised and highly qualified. Thus - also because of the usually not very sound command of the language - mostly only learning by doing will be involved, i.e. on-the-job training. These jobs are simple or very specialised jobs which in general do not yield additional benefit in terms of skill for the country the worker returns to.

(7) Social and health problems: Social and health problems may result for temporarily employed foreign workers. They must live separately from their families. As their stay is restricted they will try to earn as much money as possible and at the same time cut costs. They can only do this by working overtime, accepting more difficult working conditions, living in cramped, cheap accommodation etc. The consequences can be health risks and social segregation and isolation. Due to the precarious situation, e.g. because they want to extend present employment at all cost, the foreign employee with a fixed-term contract of employment can easily be put under pressure to accept unfavourable working conditions or working hours.

There are a number of international conventions concerning the protection of migrant workers. The most important provision is the principle of equal treatment with regard to pay and other working conditions between national workers and foreign workers. In particular the International Labour Organisation adopted Conventions and Recommendations relating to migrant workers, including temporary migration.⁴ However, the conventions are only binding on the

³ The US Commission for the Study of International Migration and Co-operative Economic Development (1990): *Unauthorised migration: An economic development response*, Washington, p. 9 writes: 'A consistent finding is that those most prone to emigrate are neither the poorest nor least educated but are among the most aspiring and energetic members of their communities. They generally have jobs at home when they decide to leave, although these jobs are often low-paying and with little potential for advancement. They chose to go abroad to improve their economic well-being'.

⁴ Convention (No. 97) concerning migration for employment (revised 1949); Recommendation (No. 86) concerning migration for employment (revised); Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, 1975; Equality of opportunity and treatment and the elimination of abusive conditions; Recommendation (No. 151) concerning migrant workers, 1975; Convention (No. 118) concerning the equality of treatment (social security), 1962; Convention

countries which ratify them. The ILO-Convention No. 97 (revised 1949), which shall ensure equality of treatment for migrant workers in certain respects has been ratified by many countries. But the "Convention No. 143 (1975) Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers" has so far not been ratified by the majority of the European countries. The comprehensive 1990 UN "Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families" has been ratified by only a few countries up to now.⁵

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

(8) Transfer of capital: There is a long debate in migration literature on the economic effects of remittances, for example, the question of whether and how much of the transfers is spent on consumption or used for productive investment. Remittances obviously boost the earnings of the migrants' families, and since - unlike government-to-government aid - these transfers go directly to the final recipients, they can significantly promote welfare at the household level. A series of studies have shown that "where the macro-economic environment is stable and other conditions are conducive, remittances can raise the level of domestic investment" (Ghosh 1996:100).

3.3. Bilateral agreements providing for short-term migration between European countries

3.3.1 Introduction

As already mentioned, short-term employment of foreign workers need not depend on the existence of a bilateral agreement, because the laws of the different states on work permits and residence permits already provide for this. As a rule newly immigrating foreign workers will receive only temporary work permits -usually limited to 1 year, which may be extended thereafter.

Thus bilateral agreements are no prerequisite for allowing temporary employment. In some cases they are, however, desirable, for example, whenever co-operation between the labour market authorities is required. If, e.g. only labour with a certain qualification is needed, a selection must be made in order to be able to achieve placement of the required workers. A further reason is when migration is to be controlled and channelled. This may be in the interest of both parties. The summary of the interests of the different parties involved showed that the interests of the country of origin and the host country do not necessarily coincide. Therefore bilateral agreements might help to clearly define the issues of common interest and to determine how these should be implemented.

(No. 157) concerning the maintenance of social security rights, 1982; Recommendation (No. 167) concerning the maintenance of social security rights, 1983. Source: ILO (1992): Migration, Geneva

⁵ A document published jointly by ILO/IOM/UNHCR comments (ILO/IOM/UNHCR(1994), p. 13-14: 'The small number of ratifications is worrying. There is no need for new standard-setting activities in the field of international economic migration. What is needed is strict application of the standards that have been voted into existence. Countries that have not ratified these instruments are called upon to do so in order to cut down on irregular migration or employment and to secure minimum level of rights for temporary migrants.'

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

3.3.2 Bilateral agreements providing for temporary training of foreign workers

Under these agreements foreign workers should get the opportunity to improve their vocational and language skills in companies in another country. Agreements with such objectives have existed between a number of countries for a long time. Often it is an expression of good will towards friendly states. The number of foreign workers admitted under those schemes is very low so that usually no compatibility analysis for the labour market of the receiving country is included. Placement into traineeships is managed via the competent public employment service of the receiving country, the selection of the workers to be trained is carried out by the authorities of the country of origin.

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

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

In many cases it is unclear to what extent and in what way vocational skills have actually been improved. A detailed laying down in the contract or a tightening of the training requirements makes the employment of foreign "trainees" unattractive for the company. All the more so, because their stay is limited in time. It means expenditure for them in terms of time and money. For companies to make such 'traineeships' available they must have a special interest in these workers, e.g. special corporate requirements, training for future co-operation with a company in the country of origin etc. In reality vocational further training will merely take the form of on-the-job training. There might be a governmental interest in further training and education. For example the foreign worker is to act as a multiplier or is to be trained for self-employment after his return home, in this case more training opportunities must be offered and paid for.

As mentioned above the quotas are very low. Moreover, they are not fully utilised. Thus, for example, only half of the 1993 and 1994 quotas of around 10,000 foreign occupational trainees in Germany were utilised (Table 1). Roughly the same applies to Switzerland (Table 2): with a total quota of 3,370 in 1993 only 972 occupational trainees were counted in Switzerland. The degree of utilisation fluctuates with the labour market situation, although the labour market check is not examined. It likewise depends on the conditions for eligibility such as age (usually under 35), payment of a regular wage for this location, equal treatment as local workers in labour issues, language abilities, administrative input etc.

An entrepreneur is normally interested in a worker who can start work immediately without long instruction. This is the case with simple jobs or if the qualifications required are already available. The first case (simple job) does not match the intention of work training agreements. Neither does the second case, because no additional training is required.

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

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

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

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

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

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

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

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

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

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

Switzerland: with 21 states (see annex). In 1992 1609 and in 1993 972 young workers were employed in Switzerland within the scope of these bilateral agreements. The quota amounted to 3,370 in 1993.

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

3.3.3 Bilateral agreements concerning seasonal workers

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

The possibility of seasonal employment is often already provided for in the general system of the work permit law (e.g. France, Spain, Sweden, Switzerland) and not tied to a particular bilateral agreement. However, there are also bilateral agreements which govern employment of foreign seasonal workers. In this way economic sectors in particular with seasonal manpower requirements (such as the building sector, hotel and catering industry as well as agriculture) tap manpower resources which are not available or not sufficiently available in their own country's labour market. However, there are also bilateral agreements covering the employment of seasonal workers (Table 3).

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

* Stays limited to 3 months (for example Germany), 6 months (for example France) or 9 months (for example Spain or Switzerland).⁶ Seasonal employment in Sweden is restricted to the period from May 15 to October 15 to ensure that the activity is of a seasonally-related nature;

⁶ Seasonal employment is widespread in Switzerland. It is permitted for up to 9 months a year. After four consecutive years the seasonal work permit can be changed into a so-called annual residence permit. This claim after four years has given rise to a controversy: lacking other alternatives, because there are strict quotas for new foreign workers for the different regions, access via seasonal employment is taken as an option. After four years the seasonal and sectoral limitations are lifted. The seasonal worker can then get employment throughout the year in another sector. It might be, though that the companies require foreign workers of different qualifications. As no newcomers are available due to the strictly observed quotas the companies must use the former seasonal workers available in the country who now have annual residence.

* Seasonal work permits may be limited to employment in particular industrial sectors such as agriculture or tourism;

* As a rule the work permit is only issued if no national manpower is available for the work required;

* The procedure to fill a seasonal job can be handled in two ways: firstly, the domestic company establishes first direct contact with the foreign worker. After that it requests the foreign employee known to it by name through the employment services. Secondly, the company can contact the employment services and state the number and qualifications of the workers required, i.e. make an anonymous request;

* As a rule, payment of collectively agreed wages or of the usual local wages is laid down. A similar ruling applies to the bearing of the cost of board and lodging and possibly of the cost of travel;

* The agreements are, in general, not based on reciprocity;

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

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

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

Since early 1991 it has been possible for foreign workers from non-EC states to work in Germany for up to 3 months in any one year. For this purpose the Federal Republic of Germany has made procedural agreements with the employment services of Croatia, Poland, Rumania, Slovakia, the Czech Republic, Hungary and Bulgaria (for the latter country only occupations in the hotel and catering industry) for placement in short-term employment (seasonal workers). The agreements were concluded in the early 90s. The numbers of placements developed as follows (Table 4): (1991) 129,000; (1992) 212,000; (1993) 181,000; (1994) 155,000; (1995) 193,000. The actual numbers were 10% lower, since some jobs were cancelled or the prospective employee does not take up employment. The vast majority was made up of so-called requests by name by the companies. This shows that in general contact between the foreign worker and the German firm was already established before the company applied for a work permit.

Originally there were no regional or sectoral restrictions concerning the employment of seasonal workers. Due to ample use of this type of short-term employment and the meanwhile deteriorating economic situation of Germany restrictions have been introduced: as from the second quarter of 1993 the employment office has to check for 4 weeks whether a German employee can be found or not. From May 1993 on, a placement fee of DM 100 per foreign seasonal worker is to be paid. From September 1993 on, the 3-month-contracts of employment

are restricted to typical seasonal work⁷. This was mainly done to exclude the construction industry to avoid distortions of competition.

3.3.4 Bilateral agreements concerning project workers

The agreements on the temporary employment of project workers are a relatively new form of bilateral agreements.⁸ They deal with the following situation: A foreign company concludes a contract with a domestic company for the performance of a specified work (contract of service). To perform that service the company can bring its employees. The foreign firm works as a sub-contractor for a domestic company with a contingent of its own labour. In bilateral governmental agreements the framework conditions are laid down, such as reciprocity, maximum duration of the stay of the project workers, maximum numbers (quotas) to be employed each year, consideration of the labour market situation when fixing the annual quotas or the handling of the procedure between the authorities. In principle, the wage and working conditions of the receiving country apply. However, wages are paid by the foreign sub-contractor who also bears the cost of social security for the project workers.

Such agreements exist above all between the Federal Republic of Germany and a number of Central and Eastern European countries and Turkey (Table 5). Due to the large numbers and the scope of those agreements they will be dealt with in more detail in a separate chapter. The agreements were concluded between 1989 and 1993.

The quotas agreed upon are often sub-divided into sub-quotas and additional quotas. For example there are special quotas for the construction industry, for certain occupations (restoration specialists) or for medium-sized companies in the FRG and the partner country. The latter stipulation is introduced to avoid that only large companies profit from the agreements and thus get a competitive edge. The number of project workers employed reached its peak in 1992 when an annual average of 95,000 workers (84,000 of these from Eastern Europe) worked in Germany. Since then their number has been falling, after a series of restrictions were introduced. In 1994 it amounted to 41 000 in the yearly average (31,000 from Eastern Europe). An increase is expected for 1995. Table 6 contains the corresponding figures.

Further agreements on project workers are:

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

In Sweden the employment of foreign labour is in principle possible within the scope of a contract for services of a foreign company. For that purpose a work permit is necessary. The competent authority, the Immigration Board, contacts the employment services, the Labour Market Board. The latter checks whether the labour market

⁷ In agriculture, forestry, hotel and tourism, processing of agricultural products and saw-mills

⁸ Project contracts have been possible under international law all along and were used in particular in case of assemblies of machinery abroad.

The kind of project workers we are considering here must be distinguished from 'project workers' from EU countries. These do not need a work permit under the rules of free movement for labour, if they work as an employee of their firm at a German construction site. The states cannot limit the duration of their employment. The problem here is that employers from the EU low wage countries bring their own employees to perform a project at a German construction site and are not obliged to pay German negotiated wages according to current law. This is to be changed by an Act on the Seconding of Workers (Entsendegesetz).

situation allows work permits to be issued. Furthermore the Labour Market Board checks whether the contract of employment corresponds to the current Swedish collectively bargained wage agreements. For this purpose the trade unions are involved which, finally, must give their approval for a work permit to be issued. According to information from the Swedish Ministry of Labour the number of foreign project workers in Sweden is very small.

At this point the following agreements should also be mentioned:

Poland, the Czech Republic and the Slovak Republic concluded agreements in 1992 concerning the employment of their citizens in the respective other countries in 1992. These were not necessarily project workers. People looking for work can contact the employment services or get in touch directly with the potential employer. The employment service checks whether the labour market situation allows the issuing of a work permit. No quota has been laid down. In 1992 approx. 6000 Poles were employed in the Czech Republic and in the Slovak Republic, about 300 Czechs were working in Poland.

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

3.3.5 The special case of agreements on project work of the Federal Republic of Germany with the countries of Central and Eastern Europe.

Because of the special significance of the project work agreements for the Federal Republic of Germany their provisions and their impact shall be explained in more detail. The FRG has concluded the vast majority of agreements for the employment of project workers with the Central and Eastern European countries from 1989 on.

The aim of the agreements is to promote co-operation between German and Central and Eastern European companies and mutual benefit of the countries concerned. In Germany sectoral or regional manpower demands, especially for skilled workers, can thus be met. The intention is to reduce the pressure to migrate by offering the alternative of legal temporary employment. The foreign worker will have at least temporary employment and may save a certain amount of capital for his return. The co-operation of German and Eastern European firms is to promote the economic development and the restructuring efforts in the reform countries.

The basis of co-operation is a contract for services between a German and a foreign firm in which the "service" (task, project), to be performed is laid down. The foreign company providing the service carries out the necessary work with its own staff. The foreign company is thus a sub-contractor for a German firm. The contracts for services do not envisage that the customer (the German company) exerts influence on the number and quality of the workers involved in the performance of the service agreed. The international agreements do suppose, though that normally qualified workers are employed. It is not envisaged that the project workers are integrated in the operations or production process of the customer. The foreign company providing the service retains the right to give instructions to its employees working on the customer's premises.⁹

⁹ Therein lies the difference as compared with so-called hiring-out of employees. Employees are hired out when the foreign employee is placed by his employer (the lessor), for the performance of work, at the disposal of another employer (the lessee) who employs him in his company according to his own company requirements. The hiring-out of employees is not permitted within the scope of the contracts for services.

In the bilateral agreements quotas of project workers by countries are fixed which determine the maximum number of work permits issued. In general it is an overall quota and for all economic sectors. But with some countries sub-quotas for small and medium-sized firms as well as additional quotas for the construction sector with a three-year limit have been agreed upon. The quotas refer to annual average figures which may be exceeded in individual months. If at the end of the year the annual quota is exceeded, the numbers must be balanced during the following year.

Within the scope of the quotas no checks on whether a domestic worker is available or not, are carried out. However, for the protection to the domestic labour market the agreements contain an escalator clause: the quotas can be changed depending on the labour market situation. Thus a change in the unemployment rate of a certain percentage results in a corresponding reduction of the quotas.

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

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

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

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

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

* Contracts for services will not be authorised if the average unemployment rate for the last six months has been 30% above the national average in the respective employment office district.

* Foreign employees are not permitted if domestic workers are on short-time in the company of the German project partner or if the latter is dismissing workers or planning to do so.

* For each project worker a fee of DM 1,200 - DM 2,000 is to be paid.

The steep increase of the employment of project workers in combination with the deterioration of the labour market situation has led to criticism of the agreements:

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

* companies with up to 50 employees can employ up to a maximum of 10 project workers.

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

* in the case of more than 200 employees the percentage is 15, but no more than 200 project workers.

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

In order to avoid unequal access to the contract of service quotas and in order to base the distribution on "market prices" it was proposed (Institut der deutschen Wirtschaft 1993: 37 ff) to set up a kind of exchange (clearing house) for contracts of services. The services are to be offered and sold by auction to the highest bidder via a kind of clearing office.

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

(3) The agreements on the employment of project workers are seen as being the entry gates for

illegal employment, i.e. being employed without work permit or if authorised project workers remain in the country after the completion of the project - and after the expiration of the work permit. In 1994 checks carried out by the employment offices on construction sites (80 % of all checks cover that sector) resulted in 13,000 preliminary investigations by the public prosecutor (15,000 in 1993) because of the reasonable suspicion of illegal employment of foreigners, i.e. there was no work permit or no valid work permit. Four fifths of these investigations had to do with the performance of contracts of services.

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

In the case of a contract of services the contractor undertakes to perform a service which can consist in the production of a tangible good or in the provision of a service. The criteria for the existence of contract of services can be summarised as follows (Institut der deutschen Wirtschaft 1993: 37 ff): (a) the result of the service must be clearly defined, (b) the contractor must be able to perform the service properly, (c) the contractor must have entrepreneurial freedom of action for the performance of the service, (d) the contractor must have the authority to issue instructions to his employees on the premises of the other company (employing company), (e) the contractor performing the service pays his employees and (f) the contractor performing the service assumes the warranty.

The difficulty is to be seen in the fact that the line between the contract of services and the hiring out of employees as temporary workers can in fact be drawn in legal terms but that in practice the transitions are hazy and can only be checked by a very complex process. During checks by the employment offices on construction sites in 1994 in about 5,700 cases legal proceedings were initiated because of the reasonable suspicion of the hiring out of employees as temporary workers. Approximately a third of the cases were related to the performance of contracts for services.

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

In concluding this chapter it can be said that the agreements on the employment of project workers between the Federal Republic of Germany and a number of Central and Eastern European countries must be understood from the prevailing political situation. With enormous labour cost discrepancies and, in principle, open borders with the eastern neighbours since 1989 the agreements on the employment of project workers represented a possible way to reduce the immigration pressure, to channel immigration and at the same time made a contribution to

economic development by permitting foreign companies to perform service contracts. In times of good economic development the competition with domestic companies and labour does not become particularly noticeable and foreign workers can be absorbed by the labour market. The situation changes when the labour market is strained. Competition is intensified by the fact that contracts of services concentrate on certain sectors (e.g. construction industry), regions (e.g. near the border, cities), or types of companies (e.g. large companies). In a pluralistic society labour cost competition by means of the short-term employment of foreign workers will only be accepted when the labour market situation is taken into consideration. Thus the labour market compatibility in the employment country becomes the most important criterion for accepting contracts of services. This assumes flexible as well as simple handling. The former is not in the interest of the emigration countries since it does not provide certainty for planning. The latter might mean that the contracts cannot be adequately monitored and thus have unintended effects. As the description of the German situation has shown, increasingly complicated regulations made to prevent abuse have led to new evasion and circumvention strategies. Finally over-regulation can occur which renders the instrument of contracts of services no longer useful or viable, turns it 'almost into a strategy of prevention' (Fuchs 1995:45). It must also be pointed out that the quantitative relief effect on the labour markets of the reform countries remained small. However, the transfers of capital, which had an effect on the balances of payment were important.

3.3.6 Outlook: temporary stay to perform a service under the agreements of the World Trade Organisation (WTO)

For the first time the freedom of trade in services was agreed within the scope of the liberalisation of international trade. This permits staying in another country to perform a service under certain conditions. We should like to explain this briefly.

After lengthy negotiations the General Agreement on Trade in Services (GATS) entered into force at the same time as the new World Trade Organisation (WTO, formerly GATT) was established. In essence the liberalisation efforts for trade in services of the WTO mean that services can be offered and performed in another country by a non-national firm.

The overall agreement of GATS includes all types of trade in services: performance of services by persons or via means of communication and the establishment of companies across borders. The concessions actually made by the signatories do not result from the agreement itself, but from separate schedules of specific commitments. These commitments are to be progressively expanded according to the mechanism entailed in GATS and renegotiated every five years at the minimum. A distinction is made on whether someone is 1) going to work personally or 2) is attached to a legal entity (e.g. a joint stock company, a plc) in order to decide on the admission of natural persons (Fuchs 1995:56).

Regarding 1): No prior labour market check is made for temporary stays abroad of representatives, such as sales representatives of service companies who do not perform services themselves, but merely initiate business.

In July 1995 the EU proposed the admission of so-called three month personnel, i.e. foreign service providers may enter the country for up to three months to perform certain services based on a specific contract, i.e. without a company's commercial presence. This proposal concerns certain services of the professions and is very limited, since a) the admission is restricted to certain sectors: legal advice, auditing, tax consulting, management consulting, technical tests and analysis, surveying and examination of real estate for construction, travel

agency/tour guide, b) admission usually requires university graduation and three years of vocational experience, c) the person seconded must have worked for the employer seconding her/him for at least one year and d) the foreign company must be a legal entity.

Regarding 2): Personnel of legal entities may stay in another WTO member state without a prior labour market check, if these are a) management executives or specialists required to establish a commercial presence in Germany (or another EU country) and are not performing the service themselves; b) personnel which is assigned to another office or branch of the company in another WTO country, i.e. sent there. The conditions are that the worker must have been working for at least one year for the same employer in the country of origin and he/she must be a key executive or specialist with particular knowledge for the company or the service to be performed and considerable vocational qualifications; c) seconding: 'A person reassigned within the company is a natural person who is working for a legal person established in the territory of a WTO member state, with the exception of non-profit organisations, and is temporarily assigned to the territory of a EU member state. The legal entity must have its main seat in the territory of a WTO member state outside the Community and its member states and the reassignment must be to a branch (office or subsidiary) of a legal entity which does in fact perform the same service in the territory of a member state to which the EEC Treaty applies' (Fuchs 1995:57). Here it must be noted that the service may be performed by the admitted person himself.

4 Summary and conclusions

The report tried to give an overview of the problems related to temporary immigration of foreign workers. It emphasised the analysis of existing bilateral agreements concerning stays for training purposes to improve vocational skills, seasonal employment and temporary employment as a project worker. The major results and conclusions are as follows:

(1) Most countries have opened various 'doors' for temporary migration in the form of seasonal employment, short-term employment for a few months, occupational trainee agreements and agreements on the employment of project workers. Project worker agreements were concluded by the Federal Republic of Germany with a number of Central and Eastern European countries.

(2) The occupational trainee agreements have a long tradition and have been concluded between quite a number of member countries of the Council of Europe. They are meant to give young foreign workers the opportunity to get to know the practice of their occupation and the field of work in a different country. The quotas are normally low, prior examination of the labour market is dispensed with therefore. In general the quotas are not fully utilised. It is often difficult to find appropriate employers willing to provide vocational training. They are primarily interested in labour. In their view too much educational input will not pay, because the worker will have to leave the country after 1 or 1 ½ years.

(3) The possibility of seasonal employment is often provided for in the general work permit system. However, there are also bilateral agreements which govern employment of foreign seasonal workers. The quotas and the number of foreign workers are, however, with few exceptions, not significant. In general, seasonal employment depends on prior examination of the labour market situation by the labour market authorities, i.e. a check is made whether local labour is available for the work in question. Thus control is decentralised and in accordance with

the local labour market situation. Labour market compatibility provides a flexible control mechanism for admitting foreign workers to the labour market.

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

(5) A considerable south/north and east/west migration pressure will continue to exist in Europe.¹⁰ Temporary immigration, it is argued, could help reduce the migration pressure between countries with different levels of economic development and simultaneously contribute to the development of the less developed economies. Ideally temporary migration could serve the interests both of the countries of origin and of the receiving countries. A comparison of the interests of the parties involved in temporary migration did not always show matching goals and that expectations are frequently too high. We shall summarise this below.

(6) From an economic point of view the receiving country is interested in alleviating labour market bottlenecks of a seasonal, cyclical, sectoral or skill nature by means of temporary employment of foreign nationals. The country of origin hopes to reduce its high unemployment by temporary employment abroad. A word of caution has to be added concerning the improvement of the labour market situation in the country of origin. We know from migration research that in general the younger, more dynamic workers tend to migrate. They are often not among the unemployed. Thus the effect on the level of unemployment should not be overestimated. Furthermore, the number of temporary workers admitted will remain too small to have a sizeable effect. But for the individual worker it can mean an escape from poverty.

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

¹⁰ It should be noted that the much feared massive and uncontrollable influx of migrants from the Central and East European States has not yet occurred. Whether a pressure to migrate really materialises in the form of the migration of labour depends, among other things, on how people perceive the future. The latest forecasts by OECD in the annual Economic Outlook and Employment Outlook give room for some hope.

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

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

(9) For a number of reasons temporary employment of foreign workers tends to result in an extension of the originally temporary employment. As the companies are interested in keeping trained foreign workers they will exert pressure to get their contracts of employment extended.

(10) Temporary employment can also act as a bridge-head for illegal employment. The differences in income between the home country and the country of employment are realised, information and contacts for work opportunities can be obtained and employment can be continued - on an illegal basis.

(11) The bilateral agreements aim at controlling the in- and outflow of foreign workers. At the same time these agreements should provide a flexible tool to react to the labour market requirements in the receiving country. The agreements should allow for a flexible response to the requirements of the labour market. If the economy slows down while the number of foreign project workers increases there is a danger that national workers are displaced by them. The German example has shown that in this case more and more complex regulations were introduced which were hard to control.

(12) The purpose of limiting the employment in time was to avoid it becoming a preliminary step to settle in the employment country permanently. This implies that a temporary foreign worker

- * must always have a fixed-term contract of work, specifying the authorised occupation and the employer, which means that the foreign worker may not freely change employer, occupation or region;

- * he/she must leave the country on expiration of the contract; and

- * cannot profit from family reunion.

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

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

- * access to employment should be compatible with the prevailing labour market situation in the receiving country;

- * examination of the labour market situation should take place at the local level;
- * equal treatment concerning wages and other working conditions in comparison with domestic workers;
- * conditions of access should be formulated clearly, kept simple and transparent and should not be subject to frequent changes made by the country of employment;
- * action to combat clandestine short-term work must include strict and regular checks;
- * some kind of sanctions, e. g. fines for employers who continue to employ migrant workers after their contract expired, must be possible¹¹;
- * both countries should closely cooperate to avoid illegal employment.

(15) International organisations such as the International Labour Organisation or the Council of Europe adopted a number of conventions which are, however, only binding for the signatory states.

¹¹ For possibilities of controlling and sanctioning illegal immigration see Steineck, S.: Der europäische Schwarzmarkt für Zuwanderer: Effektivität und Effizienz von Kontrollinstrumenten, in: Aussenwirtschaft, Heft IV (1996), p. 571-592

5 Tables

Table 1: Guest Workers in Germany 1993, 1994

| Country of origin | Annual quota | Utilized (= Placements) | |
|--------------------|--------------|-------------------------|--------------|
| | | 1993 | 1994 |
| Albania | 1.000 | 247 | 133 |
| Bulgaria | 1.000 | 176 | 323 |
| Czech Republic | 1.400 | 1.557 | 1.209 |
| Hungary | 2.000 | 1.370 | 1.450 |
| Latvia | 100 | 57 | 16 |
| Lithuania | 200 | 2 | 89 |
| Poland | 1.000 | 943 | 1.002 |
| Romania | 500 | 562 | 531 |
| Russian Federation | 2.000 | .. | 65 |
| Slovakia | 700 | 837 | 711 |
| Total | 9.900 | 5.771 | 5.529 |

Note: There is an agreement with Switzerland dating back to 1955 which includes an annual quota of 500. An agreement was signed with Estonia in 1995 which allows for a quota of 200 workers

Source: Bundesanstalt für Arbeit

Table 2: Guest workers in Switzerland 1993

| Country of origin | Annual quota | Utilization |
|--------------------|--------------|-------------|
| Austria | 150 | 42 |
| Australia | 50 | 8 |
| Belgium | 100 | 19 |
| Canada | 150 | 74 |
| Germany | 500 | 294 |
| Denmark | 150 | 54 |
| Spain | 50 | 5 |
| France | 500 | 233 |
| Finland | 150 | 15 |
| United Kingdom | 400 | 29 |
| Ireland | 200 | 38 |
| Luxembourg | 50 | 0 |
| Norway | 50 | 9 |
| Netherlands | 150 | 56 |
| New Zealand | 20 | 7 |
| Sweden | 100 | 31 |
| USA | 150 | 58 |
| Others | 450 | |
| Poland | 150 | |
| Russian Federation | 200 | |
| Total | 3370 | 972 |

Source: Volkswirtschaft 4/94, S. 65 ff.

Table 3: Bilateral agreements on seasonal employment

| Country | France | Germany | Switzerland |
|---|------------------|-------------------|---------------------|
| Bulgaria | | x | |
| Croatia | | x | |
| Czech Republic | | x | |
| Hungary | | x | |
| Italy | | | x |
| Marocco | x | | |
| Poland | x | x | |
| Romania | | x | |
| Slovenia | | x | |
| Slovak Republic | | x | |
| Spain | | | x |
| Tunesia | x | | |
| Workers affected by such bilateral agreements | 14.300 (1992) | 181.000 (1993) | 18.800 (1992) *) |

*) There were a total of 93.100 foreign seasonal workers in Switzerland in 1993

Source: Europarat (Umfrage)

Table 4: Foreign seasonal workers in Germany

| Country of origin | 1993 | 1994 | 1995 |
|-------------------------------|---------|---------|---------|
| Poland | 143.861 | 136.659 | 170.576 |
| Czech Republic | 12.027 | 3.465 | 3.722 |
| Slovak Republic | 7.781 | 3.939 | 5.442 |
| Hungary | 5.346 | 2.458 | 2.841 |
| Romania | 3.853 | 2.272 | 3.879 |
| Slovenia | 1.114 | 601 | 600 |
| Croatia | 6.948 | 5.753 | 5.574 |
| Bulgaria | 71 | 70 | 131 |
| Total (requests) | 181.037 | 155.217 | 192.766 |
| After deducting cancellations | 164.377 | 140.656 | 176.590 |

Source: Bundesanstalt für Arbeit

Table 5: Agreements on quotas by the Federal Republic of Germany for the employment of project workers from Central and Eastern European Countries - as in January 1995

| Country | Total quota | Of these can be used in construction | Comments |
|--------------------|---------------|--------------------------------------|---|
| Bulgaria | 1.660 | 1.660 | |
| Czech Republic | 2.890 | 1.940 | |
| Slovak Republic | 1.570 | 1.070 | |
| Yugoslavia | 1.650 | 560 | banned/embargo |
| Bosnia-Herzegovina | 990 | 570 | |
| Croatia | 5.010 | 2.790 | |
| Macedonien | 480 | 290 | banned (temporarily) |
| Slovenia | 1.920 | 1.210 | |
| Poland | 22.560 | 12.610 | |
| Romania | 4.150 | 4.150 | banned (partial lifting of ban perceivable) |
| Lativa | 370 | 370 | |
| Turkey | 5.800 | 5.800 | |
| Hungary | 6.870 | 2.610 | |
| | | | |
| Total | 55.920 | 35.630 | |
| | 100,0 | 63,7 | |

Note: The agreements with Russia and Lithuania did not enter into force.

Source: Bundesanstalt für Arbeit

Table 6: Average number of project workers employed in Germany

| Year | Total | of these construction | Percentage of these working in construction |
|------|--------|-----------------------|---|
| 1986 | 9.411 | 2.347 | 25 |
| 1987 | 12.318 | 3.312 | 27 |
| 1988 | 14.594 | 4.331 | 30 |
| 1989 | 16.587 | 5.825 | 35 |
| 1990 | 27.198 | 13.123 | 48 |
| 1991 | 53.095 | 32.975 | 62 |
| 1992 | 94.902 | 69.610 | 73 |
| 1993 | 70.137 | 53.430 | 76 |
| 1994 | 41.218 | 26.586 | 65 |
| 1995 | 49.411 | 27.201 | 55 |

Source: Bundesanstalt für Arbeit

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