VI. Foreign Labour Admission Policies

When devising admission policies for foreign labour, in addition to the application of methodologies for assessing labour shortages, policy-makers also have to put in place mechanisms to gauge to what extent such shortages should be filled by foreign labour and how this labour should be channelled into the employment sector or region in question. Further, they have to decide whether to prioritize temporary labour migration, increasingly a valuable option for many destination countries, or migration channels which lead to a secure residence status or permanent settlement.

This *Handbook* focuses on temporary labour migration schemes, since these are common in many countries and are thought to be the best solution in terms of meeting labour market shortages in countries of destination, while ensuring that countries of origin are not deprived of valuable human resources, particularly skilled workers. Various forms of temporary labour migration, including concrete policy examples from individual countries, are described and analysed in Section VI.4.3 below.

While the primary objective of this exercise is to describe the most effective policies with reference to pertinent examples, it is important to emphasize that the effectiveness of any specific policy is often difficult to assess in the absence of agreed criteria and appropriate mechanisms for its evaluation. However, policies in this area are generally recognized as failing if they become, inter alia, overly bureaucratic to administer, too costly for all stakeholders in the labour migration process, or risk placing migrant workers in exploitative situations. Therefore, when attempting to identify good policies and practices, it is also important to highlight those which are or have been less successful and generally recognized as such by authorities in the destination countries concerned.

If policy-makers and administrators elect to focus on designing temporary labour migration schemes, there are a number of policy angles that should be taken into account with a view to ensuring that operation of these programmes is linked to the objectives for which they were established. Important issues include ways to manage efficiently the "temporariness" of labour migration so that it remains temporary and to ensure equitable treatment for migrant workers entering under such programmes. It has been contended that the increasing complexity of these schemes in a number of countries has led to a proliferation of different temporary statuses. As a result, it is increasingly likely that these migrant workers will find themselves in illegal situations, and consequently become exploited (Anderson and Rogaly, 2005: 47-49; Morris, 2002; Samers, 2004). Resolution of such questions is crucial if countries of origin seek to obtain greater access to labour markets in destination countries, particularly for lower-skilled jobs.

While the admission of foreign workers is an important feature of state sovereignty, policy-makers' capacity to act accordingly is also dependent on the existence of bilateral labour arrangements with the countries of origin or of systems of regional integration, such as a free movement of workers regime or a free trade regime facilitating the movement of certain categories of persons. These aspects are discussed in Part VIII of the *Handbook* on inter-state cooperation.

VI.

VI.1 Permanent versus Temporary Migration

As noted above, authorities in destination countries have to decide whether to opt for permanent or temporary labour migration. Given the extent of the demographic deficit (Section II.2.2 above), employment-based immigration is increasingly a serious option in a number of European countries. Whether migrant workers should be granted a more secure residence status, which might eventually lead to permanent residence in the country concerned, is partly dependent on whether the host country prefers an admissions policy limited to temporary migrant workers or whether it may also wish to contemplate permanent labour migration. The international legal framework pertaining to labour migration, examined in Chapter I, does not generally interfere with the sovereignty of states in deciding upon rules and policies for first admission.[1] Nevertheless, there are some persuasive arguments for supporting an incremental improvement in the residence status of migrant workers (including the removal of all employment restrictions) for the following reasons:

- While employers clearly benefit from a flexible workforce, particularly in lower-skilled sectors where temporary workers are preferred, it may also be to their advantage to retain good workers rather than bear the cost of re-training workers.
- The longer migrants stay in the host country, the case for granting a more secure residence status becomes stronger for humanitarian reasons, and particularly if they are accompanied by close family members.
- Affording migrant workers a more secure residence status facilitates their integration into the host community and assists in their social inclusion. Clearly, it is detrimental to social cohesion and stability in the destination country when workers are marginalized from mainstream society.
- An incremental improvement in the residence status of migrant workers is consistent with their establishment of economic and social ties in the host community.

Traditional countries of immigration, such as Australia, Canada and the United States, have determined that an element of permanent immigration is necessary to ensure economic growth and to sustain basic social welfare provision. As observed in Section VI.3.1 below with reference to Canada, the decision to admit permanent migrants is based on their employment prospects and their ability to integrate in the country concerned. They are then granted permanent residence status on arrival.

Most European countries, however, still emphasize facilitation of temporary labour migration, although, as noted in Sections VI.3.3 and VI.3.4 below, permanent immigration of migrant workers is supported, under certain conditions, in a number of European countries, and policies have been put into place to this effect. In such instances, the acquisition of permanent residence status for these migrant workers is facilitated usually after a certain period of employment and residence, which can serve as a test of their integration potential. European countries normally also distinguish between skilled and lower-skilled migrant workers in respect of access to a more secure residence status. This approach is based on the premise that

highly skilled workers are more likely to find alternative employment in an economic downturn and thus less likely to become a burden on the host country's social welfare system. But the greater ability of highly-skilled migrants to adapt to and to integrate in a changing labour market does not necessarily mean they will be better integrated in the host society. Highly-skilled persons often constitute a transient population and usually have limited interest in learning the local language and familiarizing themselves with the host community's culture.

VI.2 Assessing Foreign Labour Demand

This section considers the different means by which government policy-makers, often in consultation with other interested stakeholders such as employers, workers' organizations and regional authorities, can assess the need for foreign labour in the country or in a particular region or employment sector.

VI.2.1 Quotas and ceilings

Quotas and ceilings set fixed numerical limits for the admission of labour in a country and are seen in certain countries as important tools of labour migration management. Quotas are usually established annually, often at a high level of government (e.g. Korea); are based on a number of sources, such as economic forecasts, employer reports, or regional unemployment rates (e.g. Italy); and are reached in consultation with the social partners (employers and unions), regional governments (e.g. Spain), and civil society.

Quotas can set an actual fixed number of migrant workers to be admitted or as a percentage of the total labour force. Croatia, Italy, Spain and the Russian Federation operate the first method (see Textbox VI.1).

In the Russian Federation, the labour migration quota is established on a regional basis, taking into account the state of the labour market, based on employer applications and their approval by the local Employment Service (Rostrud), and the demographic situation in the region concerned. However, the quota is only applicable to foreigners needing a visa to enter Russia and therefore mainly relates to citizens from distant countries, the Baltic States, and Georgia and Turkmenistan, as these countries are not covered by the visa-free regime in the CIS (Section IX.1.5 below). The quota is approved annually by a decree of the Federal Government and has been set as 329,300 as compared to 214,000 for 2005.[2]

Austria sets its quota as a percentage of its total labour force, which, over the last few years, has been fixed at approximately 8-9 per cent. Kazakhstan also adopts a quota system for labour migration based on the total percentage of the work force (Textbox VI.2). Some quotas apply to the admission of all migrant workers to the country, while others are only applicable to the admission of migrants to certain geographic regions, employment sectors or industries. It is also possible to set quotas for foreign labour as a percentage of an individual enterprise in the sector concerned.

Although quotas are often associated with temporary forms of labour migration (e.g. the UK quotas for workers in agriculture and food production discussed in Textboxes VI.12 and VI.14), they can also be a feature of permanent migration systems. For example, Norway operates a quota of 5,000 migrants for the facilitated entry of professionals into its labour market (i.e. it does not apply a labour market test) with a view to affording this group permanent residence in the short- to medium-term (Norway, 2002). The Canadian Government considers that between 225,000 and 250,000 immigrants should be admitted for permanent residence in 2006 in order to sustain the population rate. As discussed in Section VI.3.1 below, this is a figure which cuts across various immigrant categories (i.e. economic migrants, immigrants admitted in the family class, and refugees). However, it is not a fixed quota by any means, but only an approximate target to be achieved (Canada, 2005b).

Admission procedures in respect of quotas are usually simplified, although the existence of a quota does not necessarily mean that the labour market test (Section VI.2.2 below) is withdrawn. For example, in the UK, the labour market test still has to be satisfied generally on first admission.

TEXTBOX VI.1

The Quota Systems in Italy and Spain

Italy

Law 40/1998 introduced a system of quotas for non-EU labour migration to Italy. The quotas are issued annually on the basis of Prime Ministerial decrees, and are divided up according to region, type of labour, job category and nationality. Most of quota jobs relate to medium or lower-skilled work, which is a particular feature of labour migration to Italy in contrast to some other European countries. For 2006, the government authorized 120,000 new entries for employment (salaried/wage-earning work or self-employment) and 50,000 for seasonal work. The 120,000 posts were broken down as follows:

- 78,500 of which the following are reserved to: cooperation agreements for migration:
  - 45,000 housekeepers and family care assistants
  - 2,500 workers in the fisheries sector
  - 4,000 workers for study and on-the-job training
  - 2,000 foreign citizens who have completed vocational and language training before departure
  - 1,000 executives and other highly qualified professionals
- 3,000 self-employed workers: researchers, entrepreneurs engaged in activities beneficial to the national economy; professionals; business administrators; well-know artists engaged by private and public organizations;
- 500 workers of Italian origin (of whom at least one great-grandparent is Italian) resident in Argentina, Uruguay or Venezuela:
- 38,000 workers from specific countries:
  - 4,500 Albanian nationals
  - 3,500 Tunisian nationals
  - 4,000 Moroccan nationals
  - 7,000 Egyptian nationals
  - 1,500 Nigerian nationals
  - 5,000 Moldavian nationals
  - 3,000 Sri Lankan nationals
  - 3,000 Bangladeshi nationals
  - 3,000 Filipino nationals
  - 1,000 Pakistani nationals
  - 100 Somali nationals
  - 1,000 Ghanian nationals
  - 1,400 workers from other countries which are to sign bilateral agreements with Italy

Sources: Italy (2003); OECD (2005: 211); IOM Rome (April 2006).

Spain

The Spanish Government establishes fixed quotas after consultation with the social partners as well as regional governments and authorities. Shortage sectors in the labour market are identified according to the region and no labour market test is needed to fill the quota. For 2004, the quota was set at a total of 30,978 of which 10,908 places were for long-term positions and 20,070 for temporary positions. The quota for temporary employment was 48 per cent higher than in the previous year. Originally, the quota was used as a means of regularizing workers in unauthorized situations, but it is now open only to migrant workers coming from outside of Spain.

Sources: Serra et al. (2005); Pérez (2003); Spain (2001).

TEXTBOX VI.2

Labour Migration Quota in Kazakhstan

"Foreign workers are required to have a work permit to work legally in Kazakhstan. Obtaining these work permits can be difficult and expensive. The government cites the need to boost local employment by limiting the issuance of work permits to foreigners. .... The work permits quota system is based on the 1998 Law on Employment of the Population. Under this system, the government makes a limited number of work permits available to foreigners based on the area of specialization and geographic region. Since 2001, the annual number of work permits is subject to a government-established quota. In January 2003 the government issued decree (No. 55) [which] sets forth new procedures for the annual determination of this quota. Local authorities submit to the Ministry of Labour and Social Protection estimates of the required number of foreign work permits for the upcoming year. The Ministry then establishes the quota and issues permits based on it. Work-permit availability is primarily based upon a proven lack of qualified Kazakhstani citizens to fill the positions in question. In 2003, the government set the work-permit quota at 0.14 per cent of the active labour force. The quota has steadily increased; the 2004 quota was 0.21 per cent, and the 2005 quota is 0.28 per cent. The quota assumes an active labour force of 8 million people."

Source: US Department of State (2005).

When policy-makers and administrators consider whether to adopt a quota system as an instrument of labour migration management, they need to take into account the following advantages and disadvantages that have been identified concerning the utility of such a system:

Advantages[3]

- Quotas provide a clear reference framework on the admission of foreign labour for politicians, administrators, employers, civil society and the general public.
- Quotas can serve important political objectives regarding the need for migrant labour and to calm public concerns regarding the influx of migrants.

Disadvantages

- Quota systems are thought to involve a high level of regulation and bureaucracy and therefore are frequently criticized by employers for their lack of flexibility and inability to respond to fluctuating labour demands.[4] Often, by the time quotas were adopted for certain employment sectors, labour market conditions in those sectors had already changed. Consequently, quotas frequently remain unfilled.[5]
- Moreover, even if jobs are readily available in quota-specified sectors, it is often difficult to match potential migrant workers with employers, thus creating ripe conditions for unscrupulous foreign labour intermediaries or agents who take advantage of vulnerable workers. For example, in the Ukraine, it was reported in 2004 that agents charged US$1,000-2,000 per worker for recruiting agricultural workers to the UK's Seasonal Agriculture Workers' Scheme (TUC, 2004).

VI.2.2 Labour market test

Most destination countries in Europe apply a labour market or resident worker test to applicants for a work permit for the first time and also to migrant workers seeking to change jobs if they have not met minimal time period requirements for free access to employment (Section VII.1.1). These tests assess whether there are workers available for the work in question on the domestic labour market.

The labour market test usually requires employers to advertise the post with the national labour authorities for a specified period (e.g. between 4 and 5 weeks as in the Netherlands) or demonstrate that they have taken active steps to recruit for a specified period of time (e.g. 4 weeks in the UK) (UK, 2006a: 6). In the Netherlands, application of the labour market test is particularly strict, since both advertising the post *and* active recruitment efforts are necessary. EU Member States are required to apply the EU preference principle and governments must ensure that employers do not hire non-EU or third country national workers before satisfying the authorities that no suitable EU workers can be found, including third-country nationals lawfully resident in their territories (Textbox VI.3). Labour market tests are also applied in Canada and the United States and these are discussed below in the wider context of the admission policies of these countries (Sections VI.3.1 and VI.3.2).

Several countries make exceptions to the labour market test in respect of admission of highly skilled workers or of categories of workers where there are shortages, such as health workers, engineers, and IT specialists, either by not applying the test or by relaxing the rules. Clearly, this more liberal approach has considerable economic advantages, since it enables a more speedy and efficient admission of migrant workers who will fill shortages in important employment sectors.

In many instances, the labour market test is lifted when an application for a work permit is made. However, the length of the period for obtaining free access to the labour market (Section VII.1.1.2 below) normally depends on the conditions or rules governing the initial admission of migrant workers, which frequently distinguish between skilled and less-skilled migrants. Moreover, most work permits are limited to a specific employer and may apply to a specific region in the destination country. There are clearly disadvantages in creating such inflexible systems, since a migrant worker's dependency on a particular employer or enterprise may result in an unproductive employment relation-

TEXTBOX VI.3

The EU Preference Principle

In European Union Member States, the EU preference principle encompasses the entire EU labour market and preference in the hiring process should be accorded to nationals, EU citizens and lawfully resident third-country nationals.

The EU preference principle is best summarized in a non-binding Council Resolution:

"Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State's regular labour market" (EU, 1994).

Moreover, the EU Accession Treaty contains transitional arrangements (Section IX.1.3.2 below) permitting Member States to maintain their national rules for admission to employment of citizens from the new EU Member States for a period of two years in the first instance (with a possible extension to five and then seven years) and has added additional criteria in this respect. Member States' authorities applying these transitional arrangements are now required to give preference to nationals from new EU Member States over third country nationals wishing to be admitted for employment into the Member State concerned.

ship or, at worst, exploitative conditions. Consequently, migrant workers should be able to change jobs, at least within the same employment sector. These issues are considered in more detail in Section VI.4.2 below.

VI.3 Admission Policies: Employment-based Immigration

Broadly-speaking, admission policies for the recruitment of migrant workers can be divided into two types: employment-based immigration and temporary labour migration. While the *Handbook* focuses on the latter because of its prevalence in most OSCE states, this section will examine employment-based immigration, which is of growing relevance as policy-makers in a number of European countries are now considering the introduction of permanent economic migration, as a means for meeting immediate or projected labour market needs and for addressing certain demographic and welfare imbalances.

Employment-based immigration is a well-established feature of immigration systems of Canada and the United States. Some European countries are now also promoting the admission of migrant workers with a view to their settlement, specifically in Germany (Textbox VI.4) and the UK.[7]

TEXTBOX VI.4

Permanent Labour Migration Opportunities in Germany

Under the Immigration Act, highly skilled workers, such as senior academics, researchers, and senior managers in business and industry, may be granted permanent residence upon arrival in Germany. Self-employed foreigners may also immigrate to Germany if their business is of economic interest and can be expected to have a positive economic impact.

Source: Germany (2006).

The Czech Republic has also recently introduced employment-based immigration for highly-skilled migrant workers. This country is, in effect, a new country of immigration experiencing labour shortages in a number of key sectors and considerable demographic decline, particularly in its working population. Implementation of this policy may therefore be of interest to other countries in Central and Eastern Europe and Central Asia, particularly the Russian Federation.

The principal characteristics of employment-based immigration systems are described in some detail below. It is difficult to identify which systems constitute a best practice because of the differences in labour market needs and demographic circumstances in the countries examined, but it is evident that the establishment of a points system based on objective criteria is

the fairest and most transparent way of admitting permanent migrant workers.

VI.3.1 Canada

Policies on immigration and settlement are the responsibility of Citizenship and Immigration Canada (CIC). CIC regulates the number of immigrant applications, selection criteria, and visa requirements. With Human Resources Development Canada (HRDC), it is also responsible for skilled and temporary migrant workers entering Canada. An independent body, the Immigration and Refugee Board, hears applications for asylum and appeals from CIC decisions. The Immigration and Refugee Protection Act (IRPA) 2001 replaced the 1976 Immigration Act and brought in simpler and more coherent legislation, reflecting contemporary Canadian values (Canada, 2001a). It provides the basis for Canadian immigration rules. Agreements between the federal government and provincial governments have given provinces (particularly Québec) an important role in the selection of independent migrants,[8] such as skilled workers or business immigrants, for permanent residence and in the administration of programmes related to temporary workers, such as seasonal agricultural workers and domestic workers, known as live-in caregivers (Textbox VI.16).[9]

Canada accepts approximately 230,000 immigrants for permanent residence annually. There are three main classes of entry for permanent status: *"economic"* (skilled workers, business immigrants, provincial nominees, live-in caregivers, and their immediate family); *"family"* (spouses, partners, children, parents and grandparents of the sponsor); and *"protected persons"* (government-assisted and privately sponsored refugees, people recognized in Canada as Convention refugees (UN, 1951) or as in need of protection, and those granted protection through the pre-removal risk assessment process) (Canada, 2004). In 2004, 235,824 persons became permanent residents of Canada (all three classes included) (Canada, 2005b). Economic migrants constituted 57 per cent of all landings, and 113,442 skilled workers and their dependants (47,889 principal applicants and 65,553 spouses and dependants) and 9,764 business immigrants (2,708 principal applicants and 7,056 spouses and dependants) were admitted for permanent residence in 2004 (Canada, 2004).

Unlike the USA, Canada does not have a set quota for admitting immigrants. However, the Minister for Citizenship and Immigration annually issues a statement on the planned level of migration intake for the following year.[10] On average, there are between 225,000 and 250,000 arrivals each year and the government has met its admissions targets in the annual immigration plans for the past five years. Before 2000, however, the level of immigration was lower than projected, causing Canada to be described as one of the few countries constantly receiving fewer immigrants than anticipated or desired. Canada's open immigration policy can be attributed to sluggish population growth and a desire to boost its economy.

Canada's points system was established under the 1976 Immigration Act. It assesses economic migrants against a set of criteria, including level of education, previous work experience and age. During the 1990s, it was thought that a high percentage of immigrants were too dependent on welfare, despite passing the points test. The system was reviewed in 1998, following evaluation by an independent commission on citizenship and immigration. Some of the commission's recommendations were included in the IRPA.

IRPA introduced significant changes in the selection procedure for skilled workers, especially for the provinces (with the exception of Québec, since selection criteria were included in the 1991 Canada-Québec Accord). The new selection process placed more emphasis on education, previous work experience and language ability. These modifications included:

- allocating more points for applicants with a second degree or a professional qualification;
- increasing the maximum number of points allocated for proficiency in English and French;
- awarding points for applicants with one or two years of work experience in order to attract young migrants with high levels of education but limited practical experience;
- adjusting the age scale to award maximum points to applicants between the ages of 21 and 49;
- reducing the pass mark to 75 points in response to concerns that too high a pass mark would exclude many skilled immigrants (IPRA; Canada, 2002a; 2002b).

In addition, IRPA regulations also affect other categories of skilled migrants, by applying new definitional requirements for the business and entrepreneur categories, emphasizing that the applicant's wealth must be legally acquired (Canada, 2002c: para.88). For self-employed applicants, the requirement of a degree of experience was also included.

VI.3.1.1 Skilled workers

Skilled workers are people who may become permanent residents because they have the ability to establish themselves economically in Canada. To qualify as a skilled worker, prospective migrants have to meet the minimum work experience requirements; at least one year's full-time work experience within the last ten years in a category specified on the Canadian National Occupational Classification.[11] Certain occupations are sometimes placed on a restricted list to protect the Canadian labour market, and are therefore not available to potential applicants despite prior work experience in these fields. They must also demonstrate that they have sufficient funds to support themselves and their family after arrival in Canada, unless they have already secured employment. Finally, such applicants must earn 67 points or more in the six selection criteria: education; proficiency in the two official languages (English and French); work experience; age (a maximum 10 points is awarded to applicants aged between 21 and 49 at the time of the application); secured employment in Canada; and adaptability, assessed according to whether the applicant has, *inter alia*, previously studied or worked in Canada or has family members living there.[12]

It is also possible to immigrate as a skilled worker to the province of Québec under the 1991 Canada-Québec Accord on Immigration, which enables Québec to establish its own immigration criteria and to select immigrants who will adapt well to living in the province, although the Canadian government remains responsible for their admission (Canada, 1991: 3). To immigrate to Québec, migrants must meet the requirements for one of the three programmes for workers established by the Québec Government:

- the assured employment programme where the prospective migrant has been offered a job by a Québec employer, which cannot be filled by a Canadian citizen or permanent resident;
- the occupation-in-demand programme where the applicant possesses a minimum of six months work experience in a listed occupation;
- the employability and occupational mobility programme where the applicant and his or her spouse, if applicable, have an employability and occupational mobility profile enabling them to adjust readily to changes in the Québec labour market.[13]

In addition to the separate immigration selection criteria for skilled workers operated by the province of Québec, it is also possible to migrate as a permanent resident to a particular Canadian province in the Provincial Nominee Class. Prospective migrants must first apply to the competent provincial authorities to be nominated for immigration by that province on the basis that they meet the province's particular immigration needs and that they have a genuine intention to settle there. Once a provincial nomination is obtained, a separate application must be submitted to CIC. Applicants for permanent residence as provincial nominees are not required to satisfy the six selection criteria for skilled workers established under the Federal Government programme.[14]

VI.3.1.2 Business immigrants

This entry route is aimed at business immigrants (Canada, 2002c: 88-109),[15] who are classified as investors, entrepreneurs and the self-employed who are expected to develop the Canadian economy through investment and the creation of jobs. They can be accompanied by their dependents.

The qualifying criteria for investors are:

- prior business experience, i.e. the management of a business and control of a percentage of the equity or the management of at least five full-time job equivalents per year for at least two years in the period beginning five years before the date of application for a permanent resident visa;
- a legally obtained minimum net worth of CDN $800,000;
- a written indication to an immigration officer that they intend to make or have made an investment of CDN $400,000 in Canada.

This investment is placed with the Receiver General of Canada and is used by participating provinces to create jobs and help develop their economies. CIC will

return the investment to the applicant, without interest, approximately five years after the applicant becomes a permanent resident.

The qualifying criteria for entrepreneurs are:

- prior business experience;
- a legally obtained minimum net worth of CDN $300,000;
- control of a percentage of the equity of a qualifying Canadian business equal to or greater than one third;
- provide an active and ongoing management of the qualifying Canadian business;
- create at least one incremental full-time job equivalent for Canadian citizens or permanent residents, other than the entrepreneur and their family members.

Applicants must meet these conditions for a period of at least a year and comply with them for three years after they become permanent residents.

The qualifying criteria for self-employed migrants are:

- relevant experience in cultural activities, athletics or farm management, i.e. at least two years in the period beginning five years before the date of application for a permanent resident visa;
- the intention and ability to establish a business that will, at a minimum, create employment for the applicant; and
- a significant contribution to cultural activities or athletics or purchase and management of a farm in Canada.

Although there are no specific immigration conditions for this category per se, applicants must have enough money to support themselves and their family members after their arrival in Canada.

VI.3.1.3 Family class

The rules relating to family reunion for migrants admitted as permanent residents are generous on the whole. Migrants with permanent residence in Canada can be joined by family members, provided that they agree to sponsor them for a period of between three to ten years depending on the relationship. Persons eligible for family reunion are:

- spouses, common-law or conjugal partners 16 years or older;[16]
- dependant children up to the age of 22, including adopted children; intended adoptees under the age of 18;
- parents and grandparents;
- brothers, sisters, nieces, nephews, or grandchildren who are orphans, under the age of 18, and unmarried or not in a common-law relationship (IRPA: ss.12(1) and 13 (1); Canada, 2002c: 116-137).

The family class constituted the second largest immigration category after skilled workers (including dependants) in 2004.[17]

VI.3.2 United States

Immigration, perhaps more than any other social, political or economic process has shaped the United States over the past century. The current 'employment-based' entry categories for both permanent ("immigrants") and temporary ("non-immigrants") admission are defined in the Immigration Act of 1990 (IMMACT 1990). While the absolute numbers of employment-based migrants admitted were fairly high between 2000 and 2004, ranging from 82,000 to 179,000 immigrants, they accounted for only 11.6 per cent to 16.8 per cent of all immigration[18] to the US. Persons admitted as permanent residents are granted the "green card," a document giving the right to an indefinite period of stay, and may be naturalized as US citizens after five years' residency.[19]

VI.3.2.1 Employment-based preferences

A minimum of 140,000[20] employment-based immigrant visas are available each year, including both the principal applicant and his or her spouse and children. The US quotas are set at the same maximum number of admissions every year. However, this limit can be adjusted by use of a complex calculation.[21] The preference for employment-based migrants is skills-oriented. Even in years when the numerical limit rises above 140,000, the number of immigrant visas granted on the basis of unskilled labour is capped at 10,000 worldwide.[22]

The preference system gives an advantage to certain categories of workers and imposes overall limits on ad-

TEXTBOX VI.5

The Employment-based Immigration Preference System in the United States

Preference 1: Priority Workers (40,000 visas)

- Persons with extraordinary ability (proven by sustained national or international acclaim) in the sciences, arts, education, business, and athletics. No US employer is required.
- "Outstanding" (internationally recognized and having at least three years of experience) professors and researchers seeking to enter in senior positions. No labour certification is required, but a US employer must provide a job offer and file a petition with the US Bureau of Citizenship and Immigration Service (BCIS) for the worker.
- Executives and managers of multinational companies (requires one year of prior service with the firm during the preceding 3 years). No labour certification is required, but a US employer must provide a job offer and file a petition with the BCIS for the worker.

For these workers, the number of visas available must not exceed 28.6 per cent of the worldwide level, plus any visas not required for Preferences 4 and 5.

Preference 2: Members of the Professions with Advanced Degrees and Aliens of Exceptional Ability in the Sciences, Arts, or Business (40,000 visas)

- Professionals holding an advanced degree or bachelor's degree and having a minimum of five years experience in the profession;
- Persons with exceptional ability in the arts, sciences, or business, as demonstrated by a significantly above average level of expertise.

All applicants must have a labour certification approved by the US Department of Labour (DOL), or a Schedule A designation (Section VI.3.2.2 below) or establish that they qualify for one of the shortage occupations in the Labour Market Information Pilot Program. A job offer is required and the US employer must file a petition. The US Attorney General can waive the requirement of a job offer and labour certification if he deems it to be in the national interest. The number of visas available will not exceed 28.6 per cent of the worldwide level, plus any visas not required for the classes specified for Preference 1.

Preference 3: Skilled Workers, Professionals, and Other Workers (40,000 visas)

- Skilled workers with a skill level equivalent to at least two years vocational training or experience;
- Professionals with a bachelor's degree;
- Other workers (unskilled workers) capable of filling positions requiring less than two years training or experience. This sub-category is limited to no more than 10,000 visas per year.

All applicants must have a labour certification approved by the DOL, or a Schedule A designation, or establish that they qualify for one of the shortage occupations in the Labour Market Information Pilot Program. The US employer must file a petition for a visa. The number of visas available will not exceed 28.6 per cent of the worldwide level, plus any visas not required for the preferences in categories 1 and 2.

Preference 4: Special Immigrants (10,000 visas, no more than 7.1 per cent of the world wide level)

This category includes ministers of religion and persons working for religious organizations, foreign medical graduates, alien employees of the US government abroad, alien retired employees of international organizations, etc. No more than 5,000 such visas may be allotted to persons pursuing religious vocations and no more than 100 may be allotted to applicants seeking to work as broadcasters or as grantees for the Broadcasting Board of Governors. A petition for Special Immigrant is required for all applicants except overseas employees of the US Government.

Preference 5: Employment Creation (Investor) Visas (10,000 visas, no more than 7.1 per cent of the world wide level)

This category applies to investors, who invest at least US$1 million. However, a minimum of 3,000 visas are reserved for investors, who invest US $500,000 in rural or high unemployment areas. The investment must create employment for at least 10 US workers. Investors are granted only conditional lawful permanent resident (LPR) status for two years, and the law contains extensive anti-fraud provisions.

missions. The total number of visas available to nationals of a single foreign state may not exceed 7 per cent of the total number of family and employment-based immigration visas (US, 2006b).[23] By law, the 140,000 employment-based immigrant visas are distributed in accordance with five preferences (Textbox VI.5).

VI.3.2.2 Procedures

All prospective immigrants planning to obtain immigrant visas through employment in the US must obtain an approved immigrant visa petition from the US Citizenship and Immigration Services (USCIS).[24] Where required, labour certification must be granted by the US Department of Labour (DOL) before the employer can submit the petition, and is subject to DOL establishing that there are no US workers who are able, willing, qualified and available for the employment offered to the alien and that the wages and working conditions of similar employed US workers will not be adversely affected.[25] Approval by the DOL does not automatically guarantee visa issuance. The US Department of State (State Department) issues immigrant visas to foreign workers on the condition that the applicants establish their admissibility to the US under the provisions of the Immigration and Nationality Act.[26]

The certification process is normally handled by an immigration lawyer, and can take several years. Employers and immigrants are frustrated by the delays, and tend to use temporary visa categories to bridge the gap between the decision to hire the worker and the government's grant of permanent resident status. As a result, the recruitment process is often academic, the employer having already hired the foreign worker.[27] At present, because of the unwieldy bureaucratic processes for approving labour certifications and applications for admission, the permanent immigration quotas for skilled workers are not filled in any one year, despite a growing backlog of applications waiting for approval.

VI.3.2.3 Conclusion

The economic prospects of the US will remain strongly tied to immigration forces. Immigrants comprise 14.3 per cent of the population aged 16 and over, and account for roughly the same percentage of the labour force (US, 2003; 2005b). During the late 1990s, all legal immigrants contributed a net 35 per cent to total growth in population, while the number of foreign-born workers increased by nearly 25 per cent compared with just 5 per cent of all native-born workers. Furthermore, as immigrants and immigration flows in general have become part of the debate on national security, immigration will continue to be an issue of high-level foreign policy and diplomatic attention. Ultimately, however, the US' ability to capture the benefits of immigration will depend on its capacity to integrate immigrants in a meaningful way. This is as true in America's big cities, as it is in the heartland.

VI.3.3 Czech Republic

Migration management is a relatively new policy issue for the Czech Republic and presents challenges of facilitation, rather than of deterrence. The Czech Republic became a Member of the European Union on 1 May 2004 and began to tackle issues of migration during its accession process. Currently, migrants represent roughly 2 per cent of the Czech population and the rate of immigration is significantly lower than that of other EU Member States (Czech Republic, 2005). Due to low birth rates and anticipated ageing of its population, the Czech Government hopes to prevent labour shortages and other ill effects of these downward demographic trends through increased immigration (Drbohlav, et al., 2005). The Czech Ministry of Labour and Social Affairs (MLSA) is responsible for managing migration and labour policies and programmes.

VI.3.3.1 Permanent residence: general criteria[28]

Under Czech law, migrants can apply directly for permanent resident status, or must first obtain temporary status in the country (Pechová, 2004). The first group comprises three categories:

- close relatives of Czech citizens;
- individuals in need of humanitarian protection or worthy of special consideration;
- minors or dependent students seeking to live with a permanent resident parent.

Other foreigners only become eligible for permanent residence after a designated period of residence in the Czech Republic on a temporary visa. This period is set at 8 uninterrupted years for spouses, dependent children, and single parents (over the age of 70) of for-

eigners already possessing permanent resident status. Any alien present in the Czech Republic for 10 uninterrupted years on a long-term visa may also apply for permanent resident status. Long-term visas are required for stays exceeding 90 days. Such visas are valid for one year, but may be renewed without submitting a renewal application on condition that the specific purpose of the visa remains the same. Any change in employment (employer, location, or position) will invalidate the visa.

An individual wishing to work in the Czech Republic must first secure a work permit through his or her employer, who must also have a permit to hire foreigners. Both work and hiring permits are subject to application fees. A local labour office will then assess the applicant's eligibility, using a labour market test to ensure that no Czech citizen, permanent resident, or EU citizen registered with the office is available for the position. Once an applicant has obtained an application number, he or she can apply for a long-term visa.

VI.3.3.2 Pilot project for permanent labour migration: active selection of qualified foreign workers

MLSA launched a pilot project for the recruitment and selection of applicants for permanent immigration in 2003 (Czech Republic, 2004). This is a preliminary effort to boost the country's professional workforce and make significant reductions in the time requirement for permanent residence eligibility. The pilot phase of the project will operate until 2008 and several hundred migrants are expected to be admitted each year.[29]

The project grants permanent resident status to participants after a period of employment in the Czech Republic. If participants lose their job, without being the cause, they are also given 30 days to secure a new position. Currently, the project includes nationals from: Bulgaria, Belarus, Canada, Croatia, Kazakhstan, Moldova, Serbia and Montenegro, and the Ukraine.[30] Recently, eligibility was extended to most persons grad-

TEXTBOX VI.6

Pilot Project for Permanent Labour Migration in the Czech Republic – Points Criteria

Employment (3 points required)
- 1 point per every 2 months for which the work permit is valid, during the first year
- 1 point for every 6 months of validity during the second year
- 1 point for 12 months of validity during the third year

Professional Experience (1 point required, except for graduates of Czech universities and secondary schools)
- 1 point for every six months of full-time employment prior to his/her current position

Completed Education (2 points required)
- 2 points each for completed secondary vocational or higher education
- 3 points for a Bachelor's degree
- 4 points for a Master's degree
- 4 points for a PhD

Age
- 4 points for persons aged 22 years and under
- 8 points for persons aged between 23 and 35 years
- 1 point is subtracted from 8 for each year over 35

Previous Experience with living in the Czech Republic
- 1 point for every six months of continuous time spent in the Czech Republic, prior to selection for the pilot project

Language Skills
- 6 points for certified knowledge of the Czech or Slovak language
- 3 points for English, French or German

Family Evaluation
- Up to 6 points for the points allotted to a spouse applicant, under the above criteria, multiplied by 6 and divided by 56
- 2 points for every minor child or dependent child, not to exceed 6 points

Source: http://imigrace.mpsv.cz/?lang=en&article=criteria

uating from Czech universities after 1995 and from Czech secondary schools after 2000, regardless of citizenship (Ivanovičová, 2006).

All applicants must first secure a job in the Czech Republic and obtain both a work permit and a long-term visa for the purpose of employment, valid for at least 6 months, although they do not have to begin working before applying to join the project.[31] Under the project application's points system, applicants must obtain at least 25 points (out of the 66) to be eligible for participation. Individuals may apply at any time once they believe they have enough points. Applications which fail to score the minimum number of points are kept in the database and applicants may resubmit their application if, for example, their language ability improves. Applicants are judged on the basis of a number of criteria (Textbox VI.6).

Every two months, applicants with the highest points are selected from a computer database of applications and invited to become project participants. After the participant has worked two and a half years in the Czech Republic, the government conducts a "social check". If the participant and his family are deemed well integrated, they will be recommended for permanent residence.

TEXTBOX VI.7

A Points-Based Migration System for the United Kingdom

Five Tiers
Underpinning the new system will be a five tier framework, which will help people understand how the system works and direct applicants to the category that is most appropriate for them.

- **Tier 1:** *Highly skilled individuals to contribute to growth and productivity*
- **Tier 2:** *Skilled workers with a job offer to fill gaps in UK labour force*
- **Tier 3:** *Limited numbers of low skilled workers needed to fill specific temporary labour shortages*
- **Tier 4:** *Students*
- **Tier 5:** *Youth mobility and temporary workers: people allowed to work in the UK for a limited period of time to satisfy non-economic objectives*

Points and structured decision-making
For each tier, applicants will need sufficient points to obtain entry clearance or leave to remain in the UK. Points will be scored for attributes which predict a migrant's success in the labour market, and/or control factors, relating to whether someone is likely to comply with the conditions of their leave.

Points will be awarded according to objective and transparent criteria in order to produce a structured and defensible decision-making process. Prior to making their application, prospective migrants will be able to assess themselves against these criteria, reducing the number of speculative and erroneous applications.

Sponsorship [See also Textbox VI.9]
All applicants in Tiers 2-5 will need to provide a certificate of sponsorship from an approved sponsor when making their application. The certificate of sponsorship will act as an assurance that the migrant is able to do a particular job or course of study and intends to do so. The sponsor's rating, an expression of their track record or policies in sponsoring migrants, will determine whether applicants receive more or fewer points for their certificate.

In order to sponsor migrants, employers and educational institutions will need to make an application to the Home Office, satisfy the requirements for the particular tier in which they wish to sponsor migrants, and accept certain responsibilities to help with immigration control.

Financial Securities
In due course, financial securities will be required for those whose personal circumstances or route of migration suggests that they present a high risk of breaching the immigration rules.

Next Steps
The new system will be introduced in a phased manner tier by tier.

Source: UK (2006b: 2).

VI.3.4 United Kingdom

While the United Kingdom has not yet implemented comprehensive measures on employment-based immigration, the ordinary work permit scheme (Textbox VI.9) contains relatively generous criteria for permanent residence. The Immigration Rules (UK, 1994) provide that work permit holders can apply for indefinite leave to remain (permanent residence) after they have been in work permit employment for a continuous period of five years, although the grant of this status is not viewed in terms of "a right" and is subject to the discretion of immigration officials.[32] However, the UK is moving towards a partial employment-based immigration system based on a general points scheme comprising objective criteria, on the lines of those discussed above in respect of Canada and the Czech Republic. From July 2005 to November 2005, consultations on implementation of such a scheme took place between interested stakeholders in the UK, followed by publication of the government proposals for a new economic migration system in March 2006 (Textbox VI.7) (UK, 2006b), although this system is unlikely to be implemented before late 2007 or 2008 (Harvey, 2006:2). However, a prototype points-based scheme for the selection of highly skilled migrants has been in operation for over four years (Section VI.3.4.1 below).

VI.3.4.1 Highly Skilled Migrant Programme (HSMP)

The Highly Skilled Migrant Programme (HSMP) was introduced as a pilot scheme at the end of January 2002. Over 2,500 applications were received in the first phase of the scheme and more than 1,500 were granted. Given the positive response to the HSMP, it was revised and incorporated into the formal UK Immigration Rules (UK, 1994: paras. 135A-135H).

In contrast to the ordinary work permit system (Section VI.4.1 below), the HSMP is supply-driven. Migrant workers can enter to seek employment and no labour market test is applied. The HSMP is operated on the basis of a points system, and 65 points are required to qualify for admission (Textbox VI.8).

Applications from doctors (general practitioners) under the HSMP are given priority. Successful applicants are admitted for an initial period of 12 months, which can be extended for a further 3 years. After a total of 5 years stay in the UK, HSMP migrants may apply for indefinite leave to remain (permanent residence).

In due course, the HSMP will be replaced as the first tier in a new points system, which the UK Government announced in March 2006 (Textbox VI.7) (UK, 2006b: 21-24).

TEXTBOX VI.8

UK Highly Skilled Migrant Programme

Points are awarded for:

- education (30 points for PhD; 25 points for a Master's (e.g. MBA); 15 points for a Graduate degree (e.g. BA or BSc);
- work experience (25-50 points);
- past earnings over the 12 months prior to the application (25-50 points);
  - the earnings threshold was divided into two categories: applicants 28 years of age and those under 28 years of age, with a view to facilitating the entry of young professionals who are required to meet a lower earnings limit);
  - countries are divided into five categories A-E, the income level the applicant is required to demonstrate is adjusted according to the category of their country;
- achievement in the chosen field (15 points are awarded for significant achievement and 25 for exceptional achievement);
- partners' achievements (an additional 10 points is also available for a skilled partner who has lived with the applicant for two years or more).

Applicants must also demonstrate:

- ability to continue to work in their chosen field in the UK;
- possession of sufficient savings and/or potential income to accommodate and support themselves and their families without recourse to public funds while they look for work; and
- willingness to make the UK their main home.

Source: HSMP (UK, 2006d).

VI.4 Admission Policies: Temporary Labour Migration

Globalization has fuelled the growth in temporary migrant worker programmes in many destination industrialized countries (Martin, 2003), which is one of the consequences of the growth in "flexible" labour markets. Given the increasing dependence of employers on temporary migrant labour, particularly in low-skilled sectors such as agriculture, construction, the food industry and services, these programmes are likely to grow in number and complexity as policy-makers attempt to devise innovative ways to channel the lawful admission of migrant workers, on a short-term basis, into the sectors concerned.

There is also a renewed interest in the concept of temporary circular labour migration (GCIM, 2005: 17, 31), considered by some stakeholders as constituting a "win-win" situation for

- destination countries seeking to meet labour market needs and avoid the economic and societal problems connected with the integration of migrants on a long-term basis;
- countries of origin to address 'brain drain', promote the transfer of know-how, and gain from the transfer of remittances;[33]
- migrant workers and their families.[34]

The principal policy questions, however, are how to design viable temporary migrant worker schemes with a view to ensuring that the programmes offer the benefits identified and that workers are treated in a decent and equitable manner.[35] These questions are discussed in Section VI.4.5.2 below after providing an overview of the work permit system and the different forms temporary labour migration may take with reference to specific country examples.

Temporary labour migration can apply to a number of worker categories, from highly skilled labour for specialized jobs to, more frequently, lower-skilled workers into certain shortage occupations, which few national workers are able or willing to take, such as seasonal work (e.g. agriculture, tourist industry), construction, food production, or domestic and care sectors.

However, care must be taken when discussing the concept of "temporary" labour migration. It is important to make a distinction between:

- government policies which admit migrant workers for a limited period with the clear objective that they will return to their country of origin at the end of the specified period;
- more open labour migration schemes which allow for the possibility of settlement by the migrant worker in the destination country.

Section VI.4.3 below discusses the first type of temporary labour migration policies, with reference to country-specific examples. However, many migrant workers, especially those with higher than average skills, are admitted through more regular admission channels, which can be described as the "ordinary work permit system" (Section VI.4.1 below).

VI.4.1 The work permit system: general characteristics

The rules applicable to the work permit system differ from country to country but broadly-speaking, the following procedures normally apply:

- Application for admission is usually made outside of the country in response to a formal job offer, although sometimes applications for employment by foreigners within the country are also considered.
- Permission for admission to the destination country to take up the employment concerned, normally after satisfying a labour market test (Section VI.2.2 above), is granted by officials in the consulate or embassy of the country concerned, often with the assistance of officials with expertise in labour matters.
- An employment/work permit is granted to the employer or worker, or sometimes to both (see critique of the work permit system in Section VI.4.2 below).
- The worker often also has to obtain separate permission for residence (i.e. residence permit);
- The employment/work permit is time-limited, but can usually be renewed if the job is still available.
- A change of job by the migrant worker (called "switching" in the UK), whether to another

TEXTBOX VI.9

The Ordinary Work Permit Scheme in the UK

The Ordinary Work Permit Scheme, like the HSMP, discussed in Section VI.3.4.1 above, is aimed at skilled persons. Both provide an avenue to permanent residence after a stay of five years in the UK. The work permit scheme in the UK is based on a demand-driven system because it is the employer who applies for a work permit. The scheme is divided into two parts: Business and Commercial work permits and Training and Work Experience work permits.

Business and Commercial work permits are divided into two tiers:

- **Tier 1** includes Intra-Company Transferees (ICT), board level posts, positions related to inward investment, sponsored researchers, and skills shortage occupations. As of January 2006, the skills shortage occupations included: health care workers (all nurses, general practitioners (GPs) and most medical consultants); engineers; actuaries; veterinary surgeons; school teachers in posts covering compulsory education; and a general category including pharmacists, senior physiotherapists and social workers. IT workers were removed from the skills shortage occupations list in September 2002, because of a significant downturn in the IT sector. No labour market test is applied in respect of Tier 1 work permits.
- **Tier 2** encompasses all other posts and a work permit can be granted to the applicant if the job offer cannot be filled by a UK or EEA national. A labour market test is applicable and the employer has to advertise the position for at least four weeks before submitting a work permit application.

Business and Commercial work permits are also subject to the following skills, qualifications and experience criteria:

EITHER the job must require the following qualifications:

- a UK equivalent degree level qualification; or
- a Higher National Diploma (HND) level qualification which is relevant to the post on offer; or
- a HND qualification, which is not relevant to the post on offer plus one year of relevant full time work experience at National/Scottish Vocational Qualification (N/SVQ) level 3 or above;

OR the job must require the following skills:

- 3 years full-time experience of using specialist skills acquired through doing the type of job for which the permit is sought. This should be at N/SVQ level 3 or above.

Source: UK (2005b).

employer in the same employment sector or an employer outside that sector, may or may not be permitted under national rules without the need to leave the country, but, if permitted, may require satisfaction of a further labour market test.

- Free access to employment of their choice can be granted to migrant workers admitted under a regular work permit scheme after a certain number of years (e.g. two to five years) of work or residence in the country.
- The worker may also qualify for a more secure or permanent residence status in accordance with the foreigners' legislation of the country concerned.

As can be seen, while at the outset the above procedures foresee temporary employment, their application may lead eventually to free access to the labour market for migrant workers and a secure or permanent residence (settlement). In practice, they may operate as an employment-based immigration system. The ordinary work permit scheme in the UK is a good example of a system which may also lead to more permanent labour migration (Textbox VI.9), although, as discussed above, it will be replaced in the next few years by a points-based system.

In Spain, there are essentially two migration routes leading to settlement. The first is the normal work permit route. The employer must satisfy a labour market test that s/he cannot find other Spanish, EU or EEA nationals for the job in question. Once granted, the work permit

can be renewed for so long as the job remains available. No labour market test needs to be satisfied on renewal (Spain, 2001: Arts.69-72). Permanent residence can be obtained after five years consecutive employment on the basis of a 1+2+2 year formula.[36] The second route is through the quota (contingente) (Textbox VI.1).

In Italy, most labour migration opportunities are temporary in nature, given that they are mainly for lower-skilled employment. However, it is possible to obtain more secure or permanent status. After a period of 6 years continuous lawful residence in Italy, migrant workers can obtain a residence card (permanent residence), provided they are able to demonstrate that they have sufficient resources to maintain themselves and their families.

VI.4.2 Critique of the work permit system

A number of important questions arise regarding the work/employment permit system, which impact on its operation in practice and the treatment migrant workers receive. The disadvantages of granting the work permit to the employer, rather than to the migrant worker, would appear to outweigh any advantages. If the employer holds too much authority over the worker, this may lead to abusive situations, particularly if it is difficult or impossible for the migrant to change employment while he or she is within the country. Consequently, one way of affording protection generally to migrant workers in ordinary work permit employment is to ensure that they hold the work permit and also that they have an unlimited right to change employer and occupation after a short period of, for example, three months. However, there should be no qualifying period for migrants employed in temporary lower-skilled schemes where employer abuses are likely to be more prevalent (Ryan, 2005: 40-41, 122).

The work permit system as a whole is not without criticism. For example, in October 2005, a report by the Irish Labour Relations Commission concluded that the work permit system in Ireland, where the work permit is held by the employer, leads to exploitation (Textbox VI.10) and serves as an obstacle to the migrant's access to dispute-resolution mechanisms.

TEXTBOX VI.10

The Irish Work Permit System as an Obstacle to Migrant Workers' Access to Dispute-Resolution Mechanisms

Evidence from a study by the Irish Labour Relations Commission indicates that the work permit system, as it currently operates in Ireland, is an impediment to migrant workers achieving full parity with Irish nationals, particularly in terms of access to dispute resolution services

This view is shared by many working within the system and by organizations helping migrant workers. The Equality Authority sees the work permit system as the crux of the problem of exploitation of workers. The Migrant Rights Centre Ireland (MRCI) believes that the work permit system should be abolished and replaced by a 'green card' system, which would give similar rights to all migrant workers. The Immigrant Council of Ireland has called for changes in the work permit system so that the permit is held by the employee and not by the employer. This is a view also put forward by the UN Committee on the Elimination of Racial Discrimination which called on the Irish Government to consider issuing work permits directly to employees to help combat the exploitation of foreign workers.

Meanwhile, the Chamber of Commerce of Ireland has stated that it considers the current Irish immigration system to be unsatisfactory for both employers and employees. It called on the government to bring forward its plans to introduce a comprehensive immigration system that is responsive to labour market needs and which ensures equity for all workers and their partners.

Source: Ireland (2005a).

Furthermore, excessively bureaucratic procedures impair the efficiency of the work permit system. As observed above in Section VI.3.2.2, the US labour certification procedure is particularly cumbersome with the result that the employment-based immigration system has effectively ground to a halt.

In the Russian Federation, the system for hiring foreign labour is based on complex administrative procedures involving the establishment of an annual quota (Section VI.2.1 above) and a dual permit structure. This is a system, which appears to hinder rather than smooth the admission of much needed foreign labour into shortage sectors in the economy. Licences to employ foreign workers are issued to employers by the local employment service *(Rostrud),* while employment permits are also issued to the migrant worker. This procedure is difficult to manage for both employer and employee, and also involves significant fees: the employer pays a tax of RUB 3,000 for each foreign worker and the worker pays RUB 1,000 for his or her work permit. A further complication lies in the process, and raises the problematic issue mentioned earlier: only employers apply for both permits and this often leads to abuse, particularly since migrant workers must obtain a new work permit to change employer, even if this does not entail a change of employment sector or place of residence.

Proposals to introduce changes and to liberalize the work permit system in the Russian Federation include:

- extending the duration of the employer's permit for hiring migrant workers from 1 year to 3 years, with a possible renewal for a further year;
- allowing the worker to be employed for a period of up to 4 years;
- enlarging the categories of foreign workers not currently covered by the permit procedures;
- introducing a "one-step" permit system for hiring migrant workers;
- establishing a more favourable regime which will attract highly-skilled migrants;
- creating a centralized database for registration of foreign citizens and stateless persons;
- developing an on-line information system for foreign citizens located outside the Russian Federation who may be interested in taking up temporary employment in Russia.[37]

In the UK, one of the reasons for moving to a points-based system was the bureaucratic and uncertain procedures of the established work permit system:

> [I]t is apparent that the design of the work permits scheme is found to be inefficient by employers. Employers said that the process is time-consuming, bureaucratic, cumbersome and difficult to understand. In addition, employers commented that there is no guarantee of success, so that time and effort spent applying for a work permit where the applicant is then turned down for a visa is frustrating. Even where applications were successful the procedure was still deemed to be lengthy and inefficient (UK, 2006b: 7; Dench et al., 2006: 8).

VI.4.3 Forms of temporary labour migration

In contrast to the ordinary work permit system, these schemes are clearly temporary in that migrant workers are expected to return home after completion of their employment. Consequently, the arrangements for hiring temporary migrant workers are normally much more flexible than those under ordinary work permit procedures.

VI.4.3.1 Seasonal labour migration schemes

The most common temporary labour migration programmes concern seasonal labour migration schemes, for which arrangements have been established in many OSCE countries. A common definition of a "seasonal worker" is: "a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year" (ICRMW, Art.2(2)(b)). In many OSCE countries, these arrangements apply mostly to the agriculture sector, although the tourist industry also benefits from seasonal labour migration schemes.

The key features of these schemes can be summarized as follows:

- These can be a significant source of temporary migrant labour to the country. For example, in 2003, under bilateral agreements, Germany admitted over 300,000 migrants for seasonal employment (Textbox VI.11), while the UK quota is set at 16,250 for agricultural migrant workers for 2006 (Textbox VI.12); and the largest group of migrants in Norway (15,700 in 2002) were seasonal workers, mostly from Poland and other countries in Central and Eastern Europe (OECD, 2005: 246).
- They operate for short periods, normally between 3 and 9 months.

TEXTBOX VI.11

Seasonal Migrant Workers in Germany

Seasonal workers from Central and Eastern Europe may be employed in agricultural and forestry occupations and in the hotel and restaurant industry for up to four months to fill temporary labour needs. In 2003, 318,549 foreigners (mostly Polish citizens) were legally employed in these occupations in Germany (In 2002, there were 307,182 foreigners lawfully employed as seasonal workers).

Source: Germany (2006).

TEXTBOX VI.12

Seasonal Agricultural Employment in Europe

United Kingdom

The Seasonal Agricultural Workers Scheme (SAWS) enables farmers and growers to recruit seasonal agricultural workers for low-skilled work from outside the EEA. As with the ordinary work permit scheme, SAWS is managed by Work Permits (UK), which contracts with a number of organizations and operators to administer the scheme on its behalf. There is a SAWS quota of 16,250 places for 2006. Migrant workers can be recruited for a period of between 5 weeks and 6 months and employers are responsible for providing clean and sanitary accommodation.

The key admission and other criteria for SAWS are:

- applicants must live outside the European Economic Area (EEA), be 18 years of age or more and be students in full-time education;
- applicants must approach the operators directly, or through their university or college;
- successful applicants receive a work card (similar to a work permit);
- entry clearance must be obtained from the nearest British diplomatic mission;
- no switching into work permit employment is permitted;
- dependants cannot accompany the SAWS worker.

Source: UK, Home Office Immigration and Nationality Directorate, http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits/saws.html

Italy

The principal temporary labour migration opportunities are in seasonal work, for which the largest quota is set (Textbox VI.1). The sectors for seasonal employment are agriculture, tourism, services and industry. The procedural criteria and conditions for seasonal work include:

- duration of seasonal work permit can range between 20 days to a maximum of 9 months;
- seasonal migrant workers have priority for re-entry into Italy;
- after two years of employment, migrant workers may obtain a three-year work permit (though a visa is required for each season);
- family reunion is limited to spouses and minor children.

Source: Italy (2003: 155, 158).

Spain

In Spain, Type "T" permits are issued for seasonal work. While seasonal work is subject to a labour market test, there are usually no Spanish, EU or EEA nationals willing to undertake the tasks concerned. Seasonal employment is located mainly in the agricultural and temporary services sectors and is also facilitated by bilateral agreements (Section IX.1.1 below), and the maximum duration of such employment is 9 months within a 12-month period. A particular feature of seasonal employment in Spain under the Type "T" permit is the route it provides to a more secure residence status after 4 years of employment. In addition, migrants holding type "T" permits must present themselves to the same diplomatic mission or consular office where they lodged their original application within a period of one month of the end of their stay in Spain. Non-fulfilment of this obligation can constitute grounds for refusal of subsequent applications for other types of work permit.

Source: Spain (2001: Art.78(2)).

TEXTBOX VI.13

Seasonal Agricultural Workers Project: Guatemala-Canada

The Seasonal Agricultural Workers Project Guatemala-Canada is a result of joint efforts by the Ministry of Foreign Affairs and the Ministry of Labour and Social Welfare, with cooperation from IOM.

The Project was established in 2003 through an agreement with the Province of Québec's *Fondation des Enterprises de Recruitment de Main-D'ouevre Agricole Étrangère* (FERME, Foundation of Recruiting Enterprises of Foreign Agricultural Labour), under the supervision of the Department of Human Resources and Skills Development Canada (HRSDC).

The Government of Guatemala and FERME agreed to promote migration of seasonal agricultural workers, with the objective of benefiting the country of origin and the host country, while reducing irregular migration and the associated risks. The Government of Guatemala requested technical cooperation and implementation of the agreement by IOM:

- assistance with selection of candidates to meet the Canadian needs for seasonal agricultural workers;
- coordination with the Ministry of Labour to assure compliance with work procedures and immigration requirements for seasonal workers;
- travel arrangements for seasonal migrant workers.

IOM has signed a Memorandum of Understanding with FERME for this Project.

Guatemalan workers are also protected by Canadian labour laws and have life insurance and medical insurance. The Project is monitored by consular representatives of Guatemala in Canada who supervise the farms where Guatemalans work, with the aim of supporting Guatemalan workers as well as Canadian employers.

Main Procedures

Demand: Associated farms in Canada submit requests for seasonal workers to FERME, which are then processed and assessed for approval. Once requests have been approved, they are sent by FERME to IOM Guatemala with copies to the Guatemalan Embassy in Canada. Each request includes the number of workers, expected date of arrival in Canada, duration of the work contract, and type of farm crop.

Recruitment: Recruiting is carried out in different communities and municipalities in Guatemalan departments. This process involves interviews and assessment of workers to see if they fulfil requirements for the Project and completion of a form with general information for their possible selection. Some Canadian entrepreneurs also participate in the recruiting process. Workers then visit the IOM office and submit the documents required for inclusion in the Project. Once these documents have been received, a visa application is completed and the respective file is created.

Visa Application: The visa application and all the appropriate documents are sent to the Canadian Embassy for the issue of Medical Examination Forms. The test results are issued in Trinidad and Tobago indicating whether workers are fit to carry out seasonal agricultural work in Canada.

Work Permit Application: If medical examinations are approved, workers are assigned to a request for seasonal agricultural workers and a work permit from HRSDC is requested through FERME. Once the Canadian Embassy has the HRSDC work permits, the visas are issued.

The Journey: Workers are invited to visit the IOM office a few days before the journey for instructions regarding the journey, appropriate behaviour and discipline norms with which they will have to comply during work, and relations with other people on the farms. Each worker receives a folder with all travel documents on the first day of the journey. These documents are classified to facilitate Migration clearance in Guatemala and Immigration in Canada, and include those documents to be handed to the employer.

Main Results

The Project is successful. The number of beneficiaries is continually increasing and the inter-institutional coordination mechanisms between national institutions (Ministry of Foreign Affairs, Ministry of Labour) are being strengthened with technical cooperation from IOM. Project evaluations carried out with the participation of national authorities and Canadian employers confirm these positive results.

The Project began in 2003 with an initial group of 215 workers: 180 men (84.7%) and 35 women (16.3%). By 2005, the numbers had more than tripled: 675 workers were sent, 611 men (90.5%) and 64 women (9.5%).

Source: IOM Guatemala (February 2006).

- Some require migrants to return home for a defined period of time before re-entering the country (i.e., a "rotation system", as found in the Netherlands, Norway, Spain, and the UK).
- Some are limited to certain migrant workers from specific countries (e.g. the UK Seasonal Agricultural Workers Scheme is limited to full-time agricultural students from Eastern Europe and some CIS countries).
- In some destination countries, specific schemes are limited to nationals of countries with which bilateral agreements have been concluded (Canada and Mexico, Commonwealth Caribbean States[38] and Guatemala (Textbox VI.13); and Germany and Central and Eastern European countries.
- Employers may be required to provide suitable accommodation for migrant workers.
- Family reunion is rarely permitted.

Protection of migrant workers, cooperation between pertinent stakeholders, and assistance with return are distinct, but related, issues that need to be carefully addressed in order to design a successful seasonal labour migration scheme. Migrant workers participating in such schemes are often vulnerable to abuse, given the generally difficult jobs involved, isolation in rural areas common to agricultural work, and their clearly defined temporary legal status in the country. Consequently, such schemes need to contain a number of in-built safeguards, such as:

- facilitated travel to the destination country and on return to the country of origin;
- minimum wage guarantees and safe working conditions;
- access to health care and social protection; the provision (usually by employers) of suitable accommodation (a feature of some schemes discussed above);
- monitoring or inspection mechanisms to ensure that the promised employment and living conditions are being met.

Close cooperation between all stakeholders, including government ministries in countries of origin and of destination and social partners, is also vital. One scheme containing many of these elements is the IOM project facilitating the migration of seasonal agricultural workers from Guatemala to Canada (Textbox VI.13). Moreover, given that irregular migrants are often also found in sectors covered by seasonal worker arrangements, it is important that these arrangements recognize actual demand for labour in those sectors. Assistance with return, discussed in more detail in Section VI.4.5.1 below, can often be achieved by providing migrant workers with incentives, such as reimbursement of social security contributions, attractive terms for savings and investments, and facilitated re-entry to the scheme. While re-entry does not normally lead to a more secure residence status, given the nature of seasonal work, the creation of a route to employed-based immigration after a certain number of years could be considered, as in Spain, where this is possible after 4 years of seasonal employment.

VI.4.3.2 Temporary schemes for specific employment sectors

Some countries have also introduced temporary labour migration schemes to channel migrant workers into specific sectors of the economy where labour shortages are prevalent. For example, in the UK, there is a quota of 3,500 places for migrant workers in the food manufacturing sector for 2005-2006 under the Sectors Based Scheme (Textbox VI.14). The construction industry is another important sector for low to medium-skilled migrant labour in Canada and Germany; and for skilled workers in the Netherlands, Norway and Spain.

In Spain, there are two principal types of temporary labour migration opportunities. The first is seasonal work (Textbox VI.12). The second concerns work carried out under Type "A" permits. These positions are subject to a labour market test; the permit is limited to specific employment activities in the economic interests of Spain (e.g. work on infrastructure, such as electricity and gas utilities, railways, telecommunications, assembly of industrial plants); and the permit is valid for the length of the employment contract and up to a maximum of one year (Spain, 2001: Art.78(1)).

Policy considerations for establishing temporary migration schemes for specific employment sectors are similar to those discussed in the context of seasonal worker programmes above (Section VI.4.3.1).

TEXTBOX VI.14

UK Sectors Based Scheme (SBS)

The Sectors Based Scheme (SBS) is a low-skilled work permit scheme, which was introduced on 30 May 2003 to address labour shortages in the hospitality and food manufacturing (meat and fish processing and mushroom production only) sectors. The SBS was introduced after consultations with social partners and other relevant stakeholders (employers, trade unions and industry representatives). Originally, a quota was set aside for nationals from the then EU accession countries, but this is no longer relevant after 1 May 2004 since nationals from these countries now have free access to the labour market in the UK provided that they register with the authorities (Section IX.1.3.2 below). In June 2005, the scheme was revised and work permits are no longer issued for the hospitality sector. The SBS quota for 2005-2006 is 3,500 permits (600 in fish processing; 2,100 in meat processing; 800 in mushroom processing).

Key Features and Criteria:

- applicants must be aged between the ages 18 and 30 throughout the whole application process;
- entry clearance must be obtained from the nearest British diplomatic mission;
- work permits will only be issued for a maximum of 12 months and migrant workers must leave the UK after this period:
- employers are obliged to inform Work Permits (UK), if they have any doubts as to whether the individual has left the UK;
- switching from the SBS to another work permit scheme is not permitted;
- previous holders of an SBS work permit may re-apply for admission under the SBS for another permit, but only after they have been outside of the UK for at least two months;
- dependants cannot accompany the SBS work permit holder to the UK;
- normal work permit criteria apply (i.e. a labour market test, showing that the employer has ascertained that there are no national or EU workers available by advertising the position for a period of four weeks), although the required skills threshold is much lower than under the ordinary work permit scheme (Textbox VI.9).

Source: UK (2005b).

VI.4.3.3 Trainee worker schemes

Trainee worker schemes are a key source of temporary migrant labour and trainee workers play a significant role in the labour markets of the countries concerned. The main features of these schemes are:

- Work permits are normally granted to trainees, without application of labour market tests.
- Most schemes require the trainee to meet specific qualifications or conditions (i.e. student status or workers sent by foreign employers for work experience).
- Schemes often apply to lower or medium-skilled labour.
- Employment is for a limited period (between 24 weeks and 2 years).
- In some destination countries, trainee worker schemes are aimed at young persons from specific countries.[39]
- Some countries apply a rotation scheme.[40]

If properly organized, these schemes may offer personal benefits to participating migrant workers because they can gain important skills and on-the-job training in the destination country. Such schemes may also benefit countries of origin, thanks to the transfer of skills and know-how on the migrant workers' return home. However, considerable care should be taken to ensure that trainee worker programmes are not abused by employers and that such workers are not exploited as cheap labour.

VI.4.3.4 Domestic work

As observed in Section 3.4 in the Introduction, labour migration has had a generally empowering influence on women in terms of higher self-esteem and increased economic independence, but there are many undocumented women migrants in informal, unprotected, hidden and unregulated labour markets, including domestic workers, whose situation provides cause for concern.

TEXTBOX VI.15

The Training and Work Experience Work Permit in the UK

The Training and Work Experience work permit is issued for temporary positions for training and work experience and beneficiaries are normally not able to switch to Business and Commercial work permits. Workers with these permits must leave the UK for a period of between 12 and 24 months before they can return on a further permit.

Work-permit holders who are non-EEA nationals need to obtain entry clearance for admission to the UK for a period of more than.

6 months. The person concerned must apply to their nearest British diplomatic post (British Embassy, Consulate or High Commission) in their country of residence within six months of the issue of the work permit. If entry clearance is granted, it is usually for the full period of stay stated on the work permit.

Family members or dependants of work permit holders can come with the work permit holder and also have access to employment, if the worker is granted entry clearance for a period of more than 6 months.

Sources: UK (2005c).

Domestic work has been a significant element of the growing phenomenon of migration, particularly in respect of women. Domestic work is mainly performed by internal or international women migrant workers who represent in many destination countries between 50 to 60 per cent of all women migrant inflows. In Italy, 50 per cent of the estimated one million domestic workers are non-EU citizens and in France over 50 per cent of migrant women are believed to be engaged in domestic work (RESPECT, 2000). The lack of legal migration opportunities for women generally is one of the main reasons why there is a concentration of women in domestic work.

ILO defines a domestic worker, household helper or domestic aid as any person employed in or in relation to a private residence either wholly or partly in any of the following capacities: cook, house servant, waiter, butler, nurse, baby sitter, personal servant, bar attendant, footman, chauffeur, groom, gardener, launderer or watch keeper. Existing demand in labour markets for foreign domestic workers is not recognized officially and many nationals are abandoning the domestic sector in their countries. It is unlikely that nationals, who already represent a limited number of domestic workers, would come back to work in the sector.

(a) *Lack of an international convention covering the domestic sector*

In 1965, ILO adopted a resolution concerning the conditions of employment of domestic workers and Member States were urged to introduce "protective measures" and workers' training wherever practicable, in accordance with international labour standards. At that time, consideration was given to research in this sector in order to have a base upon which an international instrument on the employment conditions of domestic workers could be adopted. To date, there is no international convention for these workers, due to a lack of international support.

In many countries, domestic workers are excluded from labour legislation and their working conditions remain unregulated. The employment of domestic workers is not thought to "fit" the general framework of existing labour laws, since most work done by domestic helpers is generally invisible, undertaken in the houses (which are not considered as workplaces) of private persons (who are not considered employers). Because of all these factors, migrant domestic helpers are not normally considered employees and their work is undervalued. Most national labour laws do not take into account the specificity of their employment relationship, thus denying their status as "real workers" entitled to legislative protection. The working conditions of domestic workers remain, in essence, unregulated. In fact, not only do some countries not consider household helpers as workers and exclude them from protection, they also do not provide them with optional protection under any other national law. Many other countries include discriminatory provisions specifically concerning domestic workers or deny them the right to organize in trade unions.

First, it is very important for countries of destination to recognize the high level of demand for foreign do-

mestic workers. Second, it is crucial to recognize the significance of introducing policies. Existing policies have really made a difference to the situation of women migrant workers. Some countries, like Italy and Spain, have recognized the demand in their labour market and have called for regularization schemes and/or have established annual quotas for women migrants coming to work in this sector. A regular migration status can make a real difference in the social cost of women's migration, both for themselves and their family members. Women migrants who enjoy regular status can return to visit their families more often, send a larger share of remittances, and plan to go back home earlier when they have saved enough money to start a business and build a house in their country of origin. They can earn proper wages and obtain social security. On the other hand, where there are no regularization schemes, the human cost is the long-term separation from their families. They may have to forego seeing their spouse, children and other family members for many long years, receive very low wages, no social security and very often suffer from extremely bad working conditions where they find themselves in abusive and exploitative situations.

On the basis of research and experiences from various ILO projects and meetings, a number of fundamental steps for the protection of domestic workers in their countries of destination have been established:

- *Legislation:* ensuring that labour legislation provides the same rights and protection to domestic workers as to any other workers and does not include discriminatory clauses;
- *Policy development:* ensuring that migration-related policy recognizes labour market demand for domestic workers and opens up legal channels of migration for them;
- *Monitoring:* introducing some form of monitoring of working conditions in the work place;
- *Prohibiting abuse:* for example, banning the withdrawal of identity documents of domestic workers;
- *Prosecution:* enforcing prosecution of recruitment agents and of employers and sponsors identified as having violated their contractual obligations or having committed abuses;
- *Flexibility:* increasing flexibility for domestic workers in changing employers (without imprisonment and deportation), in cases of complaints of abuses;
- *Legal protection:* as a minimum, domestic workers should benefit from legal provisions on clearly defined daily hours of work and rest periods; night work and overtime, including adequate compensation; clearly defined weekly rest and leave periods; minimum wage and payment of wages; standards on termination of employment; and social security protection.

Moreover, given that most domestic workers live in the household and that they will therefore lose their place of residence if they lose their job, it is important that they have access to social services and accommodation or at least temporary shelter.

(b) *Some best practices on protection of domestic workers*

In 2003, Citizenship and Immigration Canada established the *Live-in Caregiver Programme* for employers and caregivers based on labour market shortages of Canadian or permanent resident workers to care for children, elderly people or persons who have disabilities. This is the first programme of its kind in industrialized countries.

Prior to 2003, Canada had given permanent residence status to only 216 persons working as housekeepers, servants and personal services, and another 1,721 persons registered as childcare specialists. The *Live-in Caregiver Programme* allows applications for permanent residence in Canada after two years of employment, within three years of their arrival to the country (Textbox VI.16). While the programme clearly provides a legal migration route for this category of employment, it should be emphasized, however, that it has been criticized, specifically on the requirement that the caregiver live in the employer's home and, more generally, on the exclusion of domestic work from the employment-based immigration points system (Section VI.3.1.1 above), given the high demand for this kind of work and that the level of qualifications would normally have enabled these workers to obtain permanent residence status from the outset. It would appear that this approach was adopted in order to ensure that at least two years of care work were provided before these workers were able to attain permanent residence and move on to other employment.

TEXTBOX VI.16

Canada's Live-in Caregiver Programme

The objective of the Live-in Caregiver Programme is to provide opportunities for qualified migrants to work in Canada as carers for children, the elderly or the disabled in a private household where there are no Canadians or permanent residents available to undertake the work (Immigration Regulations, 2002, ss. 110-115). A central feature of the programme is the requirement that the migrant lives in the employer's home. Persons wishing to work as live-in caregivers must apply for a work permit outside of Canada, have a job offer confirmed by the local Human Resources and Skills Development Canada (HRSDC) Centre and meet four conditions: (1) successful completion of the equivalent of a Canadian high school education; (2) successful completion of six months of full-time training in a classroom setting or 12 months full-time paid employment, including at least six months of continuous employment with one employer in a field or occupation related to the job sought as a live-in caregiver within three years of submitting their application for a work permit; (3) sufficient knowledge of one of Canada's official languages; and (4) possession of an employment contract with the prospective employer (Immigration Regulations, 2002, s. 112). As with other kinds of temporary work in Canada, it is possible to change employer whilst in the country provided that the new employment offer is confirmed by the local HRSDC Centre and a new work permit is obtained. However, according to the UN Special Rapporteur on the human rights of migrants, who visited Canada in 2000, it would appear that not all live-in caregivers are aware of this possibility and that finding a new job might prove difficult in the event of a complaint against a previously abusive employer.

After working full-time for a cumulative period of two years as a live-in caregiver within three years of their arrival, migrants can apply for permanent residence in Canada (Immigration Regulations 2002, s. 113(1)(d)). Time spent on extended vacations away from Canada, however, does not count towards the two-year period of employment. Once an application for permanent residence has been assessed favourably, migrants can apply for an "open" work permit granting them free access to the labour market until they are formally granted permanent residence status. In 2004, 4,292 live-in caregivers and their dependants (3,296 principal applicants and 996 spouses and dependants) were admitted to permanent residence.

Sources: Canada (2002d); UN ECOSOC (2000b); Canada (2005b: 6).

In April 2005, the European Trade Union Confederation (ETUC), in cooperation with PICUM and IRENE, organized an international seminar, "Out of the Shadow: organizing domestic workers, towards a protective regulatory framework for domestic work". The objective of the seminar was to examine the potential of European trade unions for organizing and promoting policy-making initiatives regarding domestic workers.

Trade unions in various western European countries are today providing their support to migrant women domestic workers (documented and undocumented). In Belgium, FGTB (Belgian trade union federation) provides migrant women domestic workers with legal and administrative assistance. In Italy, CGIL and UIL trade unions supported the 2002 regularization campaign (Textbox VIII.5) by providing legal and administrative assistance. CGIL went so far as to launch a programme entitled "Active Citizenship for Migrant Women". In Portugal, since the law has recently been modified to simplify and assist the legalization of migrant women workers, the UGT-P (Portuguese trade union confederation) has developed training courses to familiarize union leaders with legalization procedures and support services available to immigrants and organized various congresses on this theme. In Spain, UGT (Unión General de Trabajadores) has undertaken important work on extending protection to undocumented workers in general, and to women migrant domestic workers in particular. In the UK, the Transport and General Workers Union (TGWU) has for many years been encouraging migrant domestic workers to join its ranks, whatever their status. The same scenario has been repeated in Greece, where a domestic workers' trade union has been set up in liaison with the Athens Labour Centre (ICFTU, 2002: 2-3). In Switzerland, SIT (Inter-professional Workers' Union) helps undocumented domestic workers with administrative hurdles, providing candidates with certificates proving that they are defending them, and protecting them from arrest until the end of their procedures. Domestic workers in Switzerland come mainly from Peru, Colombia, Brazil and the Philippines. SIT is trying to develop a system of employment 'cheques', a formula that already exists in France, which allows each employer to declare cleaning women to the social insurance and tax au-

thorities without administrative complications (ICFTU, 2002: 3-5).

VI.4.3.5 Contract workers

A feature of temporary labour migration specific to Germany is the system of secondment under the *Werkvertrag*, where contract workers are posted to Germany for employment, but continue to be employed by their employer in the home country. In 2002, 45,400 contract workers were recruited under bilateral agreements with just under half coming from Poland (OECD, 2005: 195-196).[41] While a work permit is required for the employment in Germany, a feature of this system is that no labour market test needs to be met. Moreover, the employee is only insured for social benefits in his or her own country and not in Germany, which reduces the cost of the worker to employers in Germany. However, such an arrangement can be disadvantageous to the worker, if the benefits in the country of origin are significantly less attractive (as is often the case in the countries from which these workers come).

VI.4.4 Policy issues

Temporary labour migration, if appropriately managed, is claimed to benefit all parties involved in the process (countries of origin, destination countries and migrant workers) (GCIM, 2005: 16, para.25),[42] and an example of how this can be achieved in practice is pro-

TEXTBOX VI.17

Circular Labour Migration and Co-development

In 1999, Unió de Pagesos (Farmers' Union) of Catalonia, together with the farmers' unions of Valencia and Mallorca started to manage the hiring of farm workers from Colombia, Morocco and Romania with a view to meeting the labour needs of farms during the harvest period.

Unió de Pagesos specializes in the management of flows of seasonal farm workers. It defines and evaluates labour needs in the agricultural sector. It manages quotas with the Ministry of Labour, the recruitment of workers, and logistics, such as the issuing of visas, transportation, housing and monitoring of work conditions.

The Hosting Programme, promoted by the Foundation "Agricultores Solidarios" or "Farmers for Solidarity", begins on the arrival of seasonal workers with an introductory training and information course on labour laws, access to the health care system, remittances, basic knowledge of the language and local social resources. It also supports workers in the event of their hospitalization and organizes socio-cultural activities and training on different subjects requested by the workers.

In addition, "Agricultores Solidarios", through the Development Programme, promotes and supports seasonal workers who wish to assist with the development of their communities of origin through collective initiatives. These initiatives look for a social or productive impact in their local communities, which, for example, might involve the establishment of a women's information centre, a group of small milk producers or a cooperative for the marketing and sale of fruits. In addition to obtaining money for their families, migrants, through their empowerment and the support of the "Agricultores Solidarios" network, can also promote socio-economic initiatives in their origin communities.

Co-development begins with the movement of seasonal workers between origin and host communities. They remain, on average, six months in the host society and six months at home. As a result, two parallel flows are created:

- An economic flow: seasonal workers contribute with their work to the sustainability of the fruit sector in the host country. In return, they receive wages, which, to a large extent, become remittances for their families.
- A more intangible flow, namely the interchange of knowledge and experiences. In host countries, the presence of seasonal workers approximates citizenship with the realities of less favoured and vulnerable communities. It promotes the development of these communities with collective projects co-financed by the host communities.

The twinning programmes allow for the stabilization of temporary labour migration and affect in a positive way the impact of the migration process on origin communities.

Source: Unió de Pagesos (April 2006).

vided in Textbox VI.17 with reference to the temporary migration of agricultural workers to Spain.

There are a number of important policy issues administrators and officials should attempt to address before proceeding to the design of temporary labour migration programmes.

First, as discussed in Section VI.3 above, permanent labour migration is increasingly being considered as a viable option in certain European countries, particularly with a view to attracting highly skilled migrants to settle in the country concerned. Policy-makers in destination countries need to consider the advantages of this migration vis-à-vis temporary labour migration and the circumstances under which it might be promoted, while at the same time attempting to ensure, in cooperation with developing countries of origin, that the latter are not deprived of their best talent. Second, while the concept of temporary (circular) labour migration appears sound in theory, increasingly questions are being asked about the design of such programmes in order to operate successfully in the future, in the light of past policy failures of such schemes particularly in North America and Western Europe (Textbox VI.18). There do not appear to be any ready-made solutions in this regard.

TEXTBOX VI.18

Temporary Foreign Worker Programmes (TFWPs) and Past Policy Failures

"The second charge [in addition to ethical arguments based on rights' considerations – see Chapter VII] is that [TFWPs] are simply unfeasible. This argument is based on the fact that many of the past and existing TFWPs, most notably the Bracero Programme in the USA (1942-64) and the Gastarbeiter programme in Germany (1955-73), failed to meet their stated policy objectives and instead generated a number of adverse, unintended consequences. The three most important adverse impacts included the exploitation of migrant workers in both recruitment and employment, the emergence of labour market distortions, and the growth of a structural dependence by certain industries on continued employment of migrant workers and, perhaps most importantly from the receiving country's point of view, the non-return and eventual settlement of many guest workers."

Source: M. Ruhs (2005: 213).

VI.4.5 Making temporary labour migration programmes feasible

Two issues in particular need to be resolved: ensuring that temporary migrant workers return to their country of origin, and guaranteeing fair treatment for them in the destination country, given their less secure employment and residence status. For the first of these concerns, European destination countries operate a diverse number of policies and administrative practices to regulate temporariness and these are mainly connected with ensuring or facilitating return. For the second issue, given policy failures in the past (Textbox VI.18), it is important to prevent the exploitation of temporary migrant workers by proper protection of their rights. A related but distinct issue is the need to avoid labour market distortions and structural dependence of certain employment sectors on foreign labour.

In this regard, it has been proposed that measures should be put into place to ensure that migrant workers are hired only when they are needed. Such measures may include charging the employer a high fee for each worker hired. This should be set at a rate which will give the employer an incentive to seek workers on the domestic labour market or to consider other alternatives, such as mechanization of the production process or outsourcing (Ruhs, 2005: 214).

The imposition of limits or conditions on family reunification is used in some countries as a means of ensuring that temporary migrant workers are less likely to want to stay in the destination country and thus return home at the end of their employment contract. The complex issue of integration is addressed in Section VII.3.2 below, although it is important to emphasize at this juncture that there is considerable disagreement over this issue in the context of family reunion. On the one hand, some European countries (Austria, Germany and the Netherlands) have attempted to impose conditions on the admission of family members

(including family members of citizens) in order to assess whether the persons concerned are suitable for integration into the host community (Groenendijk, 2004). On the other hand, family unity is seen as a vital component of successful integration in society.[43] With regard to temporary migrant workers, family reunion is often not permitted for seasonal work in a number of OSCE countries. In the UK, for example, it is currently not permitted at all in respect of most lower-skilled temporary labour migration to the UK (e.g. SAWS and the Sectors Based Scheme – Textboxes VI.12 and VI.14), and in Spain it is subject to a one-year waiting period, which effectively precludes family members from joining foreign workers who are in the country on a temporary basis.[44] In Canada, family reunification is not possible under the Seasonal Agricultural Workers Programme for Mexican and Caribbean migrants.

VI.4.5.1 Ensuring return

There are a number of policy means by which destination countries may attempt to ensure the return of temporary migrant workers, including:

- border controls on exit from the country of employment;
- reporting obligations for employers or sponsors with respect to migrant workers still in the country;
- reporting obligations for migrant workers when they go back home with a view to facilitating a subsequent return to the country of employment;
- operation of rotation systems which preclude the worker from returning to the same employment, at least for a defined period of time;
- various financial incentives to return;
- more traditional means of ensuring return, i.e. deportation or expulsion.

Controls may exist in the form of checks at the border on exit from the country of employment. Although some countries operate exit controls (e.g. EU Member States participating in the Schengen system are obliged to do so, for both EU citizens and third country nationals (EU, 1990: Art. 6(2)(b)), these controls are not normally conducted with the objective of checking whether migrants have overstayed the period of validity of their work permit in the country concerned. As a result, there are few statistics available on this specific question. However, recent changes to EU border rules now require that passports of all third-country nationals be stamped when entering and departing the EU for short-term visits and this should make it easier to determine who has overstayed, as well as to measure the extent of this problem.[45]

In the UK, under the Sectors Based Scheme (Textbox VI.14), employers are currently obliged to report to Work Permits (UK) if they have any doubts as to whether the migrant worker has left the country after the completion of his or her period of employment (UK, 2005b: 3, para.5(d)). In accordance with the new points-based system announced by the UK Government in March 2006 (Section VI.3.4 above), employers' obligations will become stricter under the sponsorship arrangements (Textbox VI.19). Moreover, Spain has negotiated bilateral agreements which encourage departing migrant workers to register their return to their country of origin with Spanish consular authorities there, if they wish to gain facilitated access to Spain for employment purposes in the future (Textbox VI.12 and Section IX 1.1.3 below).

A number of European countries operate "rotation systems", particularly for seasonal workers, and in Germany and the UK for migrant trainee workers (Section VI.4.3.3 above), which require such workers to leave their territory after completing their temporary employment and prevent them from re-entering for a certain period of time (between 3 months to 9 months for seasonal workers and between one year to three years for workers on trainee schemes).

Migrant workers from a number of destination countries have been offered incentives to return in the past with mixed success. These incentives usually involve financial assistance to help migrants in the socio-economic reinsertion process, or to become self-sufficient or to set up a small business on their return home. Such incentive schemes, however, are more often associated with assisting unsuccessful asylum seekers and irregular migrants to return voluntarily (Section VI-II.4.6 below).[46] Other financial incentives may include enabling migrant workers to benefit from social security or payroll tax reimbursements on their return to their country of origin (Martin et al., 2005: 122), or the setting up of special savings accounts enabling migrant workers to benefit from special high interest

TEXTBOX VI.19

Sponsorship under the Proposed New Points-Based System for Migration into the UK

The policy

57. The policy intent underpinning sponsorship is that those who benefit from migration – not just the Government, but also employers and educational institutions – should play a part in ensuring the system is not being abused. By working together it will be possible to achieve a system that delivers the migrants the UK needs, but which also keeps out those that it does not. A properly managed migration system for the UK is a responsibility shared by Government and society as a whole.

Certificates of sponsorship

58. For each application in Tiers 2-5 [see Textbox VI.7], a valid certificate of sponsorship will act as an assurance from the sponsor that the applicant has the ability to do a particular job or course of study, and should be regarded as trustworthy from an immigration perspective, i.e. is likely to comply with the conditions of their leave. This will replace the subjective tests under the current immigration rules which necessitate a judgment about whether a course is suitable for a particular applicant, something that is best left to the educational institution, or whether an applicant is able to do a particular job, which an employer is better placed to judge. ...

Approved sponsors

61. Because of the weight given to the assurances made by sponsors in the entry clearance or leave to remain process, it will be important to ensure that all sponsors are competent and acting in good faith. It will therefore be necessary for all organizations that wish to sponsor migrants to be approved by the Home Office in order to issue certificates of sponsorship. Prospective sponsors will therefore need to make an application showing that they meet the set requirements and undergo some checks before they are approved. ...

Responsibilities of sponsors

63. As well as taking on greater responsibility for checking the credentials of migrants they wish to bring to the UK, sponsors will be required to cooperate with the Home Office's monitoring.

64. Sponsors will be required to inform us if a sponsored migrant fails to turn up for their first day of work, or does not enrol on their course. Similarly they will be expected to report any prolonged absence from work or discontinuation of studies, or if their contract is being terminated, the migrant is leaving their employment, or is changing educational institution. Sponsors will also need to notify us if their circumstances alter, for example if they are subject to a merger or takeover. ...

Rating sponsors

66. In order to address this, we will rate sponsors A or B according to their track record and policies. This will in turn give migrants they wish to sponsor more or fewer points when making their applications to us. Sponsors, who conform with all their responsibilities and whose migrants are found regularly to comply with their immigration conditions, can expect to be rated A. Sponsors, who have a less good track record or could do more to improve their procedures, will be rated B. Sponsors will therefore have an incentive to ensure they are doing their best to help maintain the integrity of the control. New sponsors will be risk-assessed on a case-by-case basis before being allocated an initial rating.

67. Failing sponsors, or those in relation to whom we have evidence of large-scale noncompliance or fraud, will be removed from the list of approved sponsors and may be prosecuted. Prior to removal, sponsors will be notified of our intentions and given the opportunity to make representations, though all applications will be suspended in the interim.

Source: UK (2006: 19-20).

rates on the condition that the savings will only be released to them on their return to the country of origin (Ruhs, 2005: 213).

The standard method of enforcing the temporary stay of migrants is expulsion or deportation, applied to foreign workers who overstay and therefore find themselves in unauthorized or irregular situations. However, there are clearly humanitarian and cost issues connected with this means of ensuring return, particularly for forced returns. IOM, for example, advocates the long-term sustainability of voluntary return. Indeed, while developing EU law and policy in this area has until now focused on cooperation among

Member States on forced return, the recent Commission proposal on common standards and procedures for returning illegally resident migrants (Textbox VI-II.8), including irregular migrant workers, supports a one month "period for voluntary departure", which would give time to potential returnees to consider returning on a voluntary basis, with the advantage that this may give them the possibility of re-entry at a later date (EU, 2005c: 4 and Art.6(2)).

VI.4.5.2 Fair treatment of temporary migrant workers

Growing competitive pressure on employers as a result of globalization and the increasing introduction of flexible working practices pose a number of difficulties for fair treatment and protection of the rights of temporary migrant workers. In many countries with temporary labour migration programmes, migrant workers may find it difficult, if not impossible, to

TEXTBOX VI.20

International Standards relating to the Protection of Temporary Migrant Workers

ILO's principal conventions for protecting migrant workers, Conventions No. 97 and No. 143, and the ICRMW do not generally differentiate between migrant workers admitted for settlement and those admitted for temporary employment in terms of their protection, although some adjustments have been made to address particular categories of temporary work.

Students and trainees are excluded explicitly from the equal treatment part of Convention No. 143. They are also excluded from the provisions of ICRMW, except under Part V, which applies to particular categories of migrant workers and removes certain rights protections from project-tied workers and specified-employment workers, such as access to vocational guidance and placement services, vocational training, social housing, and free choice of employment (Art. 61 and 62). While there may also be limitations on the rights of seasonal workers, the pertinent provision, Article 59(1), is not mandatory. Indeed, for seasonal workers who have worked in the country of destination for a significant period of time, ICRMW (Art. 59(2)) urges States parties to treat them more favourably by facilitating their access to other forms of employment and giving them priority over other workers seeking admission.

With the exception of permissible minor adjustments, therefore, rights' safeguards for temporary migrant workers and migrants with a more secure residence status should be equivalent in principle. Moreover, recent policy proposals for making temporary labour migration programmes operate more effectively are not incompatible with ensuring adequate protection for the rights of migrant workers. For example, the Global Commission on International Migration's report recommends, inter alia, that, in the effective design of such programmes, careful consideration should be given to informing temporary migrants about their rights and conditions; ensuring that migrants are treated equally with nationals with respect to their employment rights; affording temporary migrants the right to change their employer during the period of their work permit; and monitoring the implementation of the work permits and contracts provided to such migrants with a view to blacklisting countries and employers that violate the provisions of such documents (GCIM, 2005:18, para. 34).

However, rapid growth in temporary migrant worker programmes and their potentially adverse impact on the protection of migrants' rights were not anticipated by the international instruments, and therefore these questions have not been addressed with sufficient clarity or detail. Indeed, the ILO report to the June 2004 International Labour Conference observes that "current ILO standards were not drafted with the protection of temporary workers in mind and the provisions applicable to other lawfully admitted migrant workers may not always be well suited to their situation" (ILO, 2004a: 89, para. 282).

It is noteworthy, however, that the European Commission's Policy Plan on Legal Migration, which sets out a road-map for policy-making in this field until 2009 (Textbox IX.5), proposes the adoption of a general framework directive guaranteeing a common framework of rights to all non-EU or third-country nationals in legal employment in EU Member States without reference to their length of stay, although the level to which the rights would be protected has not been specified at this stage.

Sources: Böhning (2003); GCIM (2005); ILO (2004); EU (2005f).

change their employers or jobs, be reunited with their families, gain secure residence status, and have access to the full range of social security protections in the country of employment.[47] Moreover, temporary migrant workers are vulnerable to certain abuses in the recruitment process (Section III.2 above). In particular, unskilled workers are more likely to use the services of private recruitment agents who compete intensely for placing their workers with employers in the destination country. Such abuses include deliberate misinformation about working and living conditions in the country of employment and the charging of excessive fees.[48] These migrant workers may also suffer similar abuse at the hands of employment intermediaries in destination countries (Section VIII.4.3 below). The requirement in some countries that employers sponsor migrant workers may also result in exploitation, such as late payment of wages, substitution of the original employment contract with one containing fewer safeguards for the migrant worker, restrictions on freedom of movement, and, in some cases, physical or sexual intimidation (Ruhs, 2003: 13-15, ILO, 2003b).

Generally speaking, however, the international and regional standards relating to migrant workers do not make significant distinctions between temporary migrant workers and other labour migrants in terms of their access to important employment and social rights (Textbox VI.19), nor are such distinctions normally found in national legislation. Frequently, the problem lies in the absence of explicit provisions in national law relating to the protection of migrant workers and the exclusion of vulnerable categories, such as domestic workers (Section VI.4.3.4 above) and agricultural workers, from national labour legislation.

ENDNOTES

1 E.g. ICRMW (UN, 1990: Art.79) observes in explicit terms: "Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention".

2 Information provided by IOM Moscow (March 2006).

3 Cf. Böhning (1996: 33).

4 E.g. employers and trade unions in Spain considered the 2000 quota a failure because it did not meet labour needs. See Pérez (2003).

5 E.g. in 2002 when Spain set a labour migration quota of 32,079 places, of which 10,884 places were available for stable long-term employment, and 21,195 places for temporary work. However, according to the Spanish Government, only 13,633 places (42.5%) in the 2002 quota were taken up: 3,113 for stable long-term posts and 21,195 for temporary employment (Pérez, 2003: 4).

6 Also referred to as an "economic needs" test.

7 The UK established its Highly Skilled Migrants Programme in January 2003 in order to facilitate the insertion of highly-skilled migrants. This programme will in due course be included in a five-tier points-based managed migration system, at the first level (Section VI.3.4 below).

8 Provided the criteria used are in line with current federal immigration laws.

9 Québec is the only province with the authority to select immigrants independently (Canada, 2001b).

10 Since 2001, the annual immigration plan has provided prospective admissions targets for at least two years into the future, although the Minister continues to submit annual plans, adjusting previous projections when necessary (Canada, 2001b).

11 Skill type O, Skill level A or B. See CIC Canada at http://www.cic.gc.ca/english/skilled/qual-2-1.html

12 Ibid. at http://www.cic.gc.ca/english/skilled/qual-5.html

13 See http://www.immigration-quebec.gouv.qc.ca/anglais/immigration/permanent-worker/prerequisite.html

14 See http://cicnet.ci.gc.ca/english/skilled/provnom/index.html (Provincial Nomination).

15 See also http://cicnet.ci.gc.ca/english/business/index.html (Who is a Business Immigrant?).

16 Due to a February 2005 change in policy, spouses and common-law partners need not have valid temporary immigration status for their sponsorship to be approved. See http://www.cic.gc.ca/english/sponsor/faq-spouse.html

17 In 2004, 62,246 persons were admitted as permanent residents in the family class and 65,124 in 2003 (Canada, 2004; 2005b).

18 Immigration to the US can be generally grouped into four major categories: family reunification, employment-based immigration, refugees and asylees, and diversity (Bednarz and Kramer, 2004; 95-96).

19 Provided the applicant has been in the US for at least 30 months within the previous five years and has not been outside the US for a period greater than one year.

20 Under IMMACT 1990, the annual number of employment-based immigrants has increased from 54,000 to a minimum of 140,000. Despite this expansion, employment-based principals (i.e. not their accompanying families) accounted for 3.7-7.8% of annual immigration for fiscal years 1992-2001.

21 The adjusted limit for employment-based admission will be 140,000 plus the unused family visas from the preceding year.

22 Title 8 (Aliens and Nationality) U.S. Code (8 U.S.C.) § 1153(b)(3)(B) (2006).

23 8 U.S.C. § 1152 (2006). Thereafter, additional persons from the same country cannot receive immigrant visas for that year and must go on a waiting list. The following year, the process starts again.

24 As a result of a huge reorganization adopted by the US Congress, under the Homeland Security Act of 2002, the functions of the Immigration and Naturalization Service (INS) were transferred to the newly created Department of Homeland Security (DHS) on 1 March 2003. A separate unit within the DHS, US Citizenship and Immigration Services (USCIS), inherits the operational functions of the former INS, and is responsible for naturalization, asylum and adjustments of status.

25 Labour certifications are initiated by the employer, who must file a form with the DOL. Previously, employers filed with a State Workforce Agency (SWA) office. The new system, instituted in March 2005, is called the Program Electronic Review Management (PERM), which streamlines the certification process. Title 8 (Aliens and Nationality) Code of Federal Regulations (8 C.F.R.) § 656. In addition to individual labour certification, DOL has created a schedule of occupations and has delegated approvals for these to USCIS. The Schedule A Occupations List provides a catalogue of professions, for which the DOL has determined there are insufficient US workers who are able, willing, qualified or available for employment and that employment of foreigners in these occupations will not adversely affect the wages and working conditions of US workers similarly employed. Schedule A occupations include: physical therapists who must have qualifications necessary for taking the licensing examination in the State where they will work; and professional nurses having either passed the Commission on Graduates in Foreign Nursing Schools (CGFNS) Examination, or a full and unrestricted licence to practice in the State of intended employment. 28 C.F.R. §656.10 et seq.

26 8 USC § 1101 et seq. (2006); 8 USC § 1154(a)(1)(I) (2006).

27 Statistics for 2000 show that 85 per cent of immigrants "admitted" for economic reasons were already in the US and have changed their status to that of "immigrant".

28 Entry requirements for citizens of the EU, European Economic Area (EEA) or Switzerland are not addressed in this section.

29 As of 3 October, 2005, a total of 317 participants received permanent resident status under the programme (Milos, 2005). The project establishes annual admissions quotas for internal and external applicants (300 applicants each) (OECD, 2004b).

30 When the testing phase of the project proves successful, it will be opened to nationals of all third countries.

31 Bulgarian, Croatian and Kazakh nationals may apply through Czech embassies in their home countries, but nationals of other participating countries must apply within the Czech Republic after securing their work permit and visa. Applications are available online at www.immigrationcz.org.

32 The period of 5 years replaces the previous four-year period as from 3 April 2006 (UK, 2006c: para.134).

33 See GCIM (2005: 16, para. 25). The World Bank emphasized the importance of remittances for developing sending countries in its most recent Global Economic Prospects Report (World Bank, 2005).

34 Circular temporary migration may also benefit migrants, especially if their reintegration back home or re-entry into the destination country is facilitated.

35 For a comparative overview of a number of temporary labour migration programmes in Europe, North America and elsewhere, the problems connected with them and suggestions for the future successful operation of such programmes, see Martin (2003); Ruhs (2003). See also Ruhs (2005: 203), Martin et al. (2005: chs 4 and 5).

36 Organic Law 8/2000, Article 32(2); Royal Decree 864/2001, Article 42 (see Spain, 2001).

37 Information provided by IOM Moscow (2006).

38 For more information on the Canadian Seasonal Agricultural Workers Programme, see http://www.sdc.gc.ca/en/epb/lmd/fw/seasagri.shtml

39 For example, Germany's "guest worker" training programmes invite young people from Central and Eastern Europe, for a maximum of 18 months. 3,000 to 6,000 people participate each year (see http://www.zuwanderung.de/english/1_anwerbung.html, visited 28 February 2006).

40 For example, in Germany, the trainer worker must remain outside the country for 3 years before returning, while in the UK this period is between 1 and 2 years (Textbox VI.15) (UK, 2005c: 6, paras. 42-43).

41 The remaining workers came from Hungary, Croatia, Romania and the Czech Republic.

42 See also Ruhs (2005), who argues that there is an ethical case for new and expanded temporary foreign worker programmes (TFWPs), which is "motivated by the argument that a managed liberalization of international labour migration, especially of low-skilled workers for whom international migration restrictions and thus also international wage differentials are greatest, would benefit all sides; and that of all the possible ways to manage and liberalize labour immigration in a world of sovereign states, TFWPs are the most realistic policy option" (original emphasis).

43 See Directive 2003/86/EC on the right to family reunification (EU, 2003d), Preamble, Recital 4: "Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty".

44 In this respect, another "means of control" can be restriction of access to the labour market for family members, sometimes advanced as necessary to protect the domestic labour market, but which may also have the adverse effect of isolating such family members in the host community and thus working against their integration.

45 Council Regulation 2133/2004/EC (EU, 2004j) amending the provisions of the Schengen Convention (EU, 1990) and the Common Manual, which gives detailed effect to these provisions. Moreover, the EU is planning to establish a European Visa Information System (VIS). Once VIS is established, travel documents and the biometric data of all third-country applicants for short-term visas will be entered into the VIS database, and will, in theory, assist in identifying "overstayers" who destroy or lose their travel and identity documents (EU, 2004k).

46 See e.g. the IOM assisted voluntary return programmes implemented in a number of host countries in Europe, and UNHCR's voluntary repatriation of refugees in post-emergency situations.

47 See Ruhs (2003: 8-9), with reference to six programmes in five countries (Germany, Kuwait, Singapore, Switzerland, and the United States). See also Cholewinski, (2004: 82-84).

48 ILO Convention concerning Private Employment Agencies 1997 (No. 181) prohibits private employment agencies from charging "directly or indirectly, in whole or in part, any fees or costs to workers", although the competent authority, in the interests of the workers concerned and after consulting the social partners, may authorize exceptions in respect of certain categories of workers as well as types of services provided by private employment agencies (Art. 7).