

EUROPEAN CITIZEN ACTION SERVICE

WHO'S AFRAID OF THE EU'S LATEST ENLARGEMENT?

The Impact of Bulgaria and Romania joining the Union
on Free Movement of Persons

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Introduction

Much has been written about the accession of the ten Central- and Eastern European countries to the European Union since (and well before) May 2004. At that time the debate was typically focused on the preparedness of the candidate countries, their economic potential, the capacity of the EU to maintain the ability to function despite increasing heterogeneity, the perception of further enlargements by Europeans and above all, the maintaining of the national interests – especially in relation to vital questions such as the distribution of the community budget or the implementation of national labour market policies.

Two and a half years on, the same questions and fears are echoed, maybe even to a greater extent. If in 2004 the EU enlargement shocked in terms of “numbers” (ten countries joined at the same time), the 2007 EU enlargement scares certainly because of its antecedents. Romania and Bulgaria lodged their application for EU membership in the mid 90’s, however the decision to start the accession negotiations with Bulgaria and Romania was taken by the Helsinki European Council only in December 1999. The treaty of accession was signed with the two countries on 25 April 2005, the entry into force of which was possible to be postponed by one year if the progress reports made by the European Commission suggested insufficient preparedness of the candidates. Corollary, but essential safeguard measures (*cf. infra*) touching upon economic requirements, the possibility of financial correction on EU funds or restrictions on the free movement of workers were also foreseen in relation to the newly acceding states.

Being aware of the fact that the legal framework of the latest enlargement can not be separated of its historical, economic and political context, ECAS finds it necessary to go beyond facts and to depict not only the general context or the legal implications of the accession of Bulgaria and Romania to the EU and the much debated issue of migration, but also to explore the human factor behind i.e. the interaction between Bulgarians, Romanians and the current EU Member States in the past and present.

Part I. – The 2007 EU enlargement in context

1. Background: the accession of EU10 in 2004

During the first two years of the membership of the Central- and Eastern European countries in the EU, labour migration from these countries was characterised by a predominantly East-West migration, but migration remained below the expectations in some countries (e.g. Sweden) and expected forecasts in some others (e.g. Ireland, UK).

According to the findings of a recent study¹, by the end of 2006 there were 685,200 new Member State nationals (i.e. the “accession eight” countries, without Cyprus and Malta – hereby referred to as EU8) employed in EU15 of which 34% and 33.1% in the United Kingdom and Germany respectively.² The share of EU8 nationals in employment was the highest in Ireland (2.4%), Austria (1.3%) and Luxembourg (1%). **In all the other EU15 countries the share of EU8 workers remained under 1% of the total employed workforce** (in the UK EU8 workers amounted for 0.8% and in Germany for 0.6% of the employed) and their average labour market participation was 67.4% with the largest shares in Ireland (85.4%), the United Kingdom (82.3%) and in Luxembourg (79.1%).

At the same time EU8 nationals were taking advantage of the free movement opportunity among themselves as well. We also find around 15,000 workers from EU15 who took up employment in the new Member States by the end of 2006.³ The real GDP growth strengthened in most of the new Member States⁴ and the growth for EU12⁵ was 3 points higher at the beginning of 2007 than at the same period in 2006. Unemployment rates were falling (with the exception of Hungary), whereas the largest relative fall amongst EU8 was observed in Poland (from 13.9% in June 2006 to 10.2% in June 2006) and the unemployment

¹ Hönekopp E.: *Labour migration studies in nine countries: General background and first attempts to present findings and proposals*. Presented in Budapest on 12th June 2007 at the international expert conference “European cooperation in labour migration: search for best practices”, in the framework of the EC AGRO project.

² Denmark: 4,800 (0,7% of the total EU8 workforce working in EU15), Belgium: 8.500 (1,2%), Germany: 226.700 (33.1%), Greece: 12.000 (1.7%), Spain: 30.200 (4.4%), France: 15.800 (2.3%), Ireland: 47.000 (6.9%), the Netherlands: 9.200 (1.3%), Italy: 30.000 (4.4%), Luxembourg: 2.000 (0.3%), Austria: 50.400 (7.4%), Portugal 200 (0.03%), Finland: 6.600 (1%), Sweden: 8.600 (1.3%), the United Kingdom: 233.200 (34%). Source: Hönekopp, *cf. supra* note 1.

³ for a fuller account see: Traser, J.: “Who is still afraid of EU enlargement?” European Citizen Action Service, Brussels 2006

⁴ see: World Bank EU8+2 Regular Economic Report January 2007

⁵ EU10 and Bulgaria and Romania (EU2)

rate was the third lowest (3.9%) in Cyprus in EU27 and only Bulgaria, Romania, Hungary, Poland and Slovakia were above the average unemployment rate in EU27 together with Portugal, Spain, Greece and France.⁶

As stated and repeated by several private and public actors, post-enlargement labour migration does not have a negative impact on host labour markets: levels of employment and wages are slightly higher as a result of migration and migrant workers pay more taxes than the value of the public services they receive⁷. Migrant workers do not crowd out nationals since the number of jobs is not fixed and the dynamics of demand and supply make it possible that migrant workers fill in the employment gaps and consequently contribute to production growth.

This did not lead EU15 to liberalise access to their labour markets and thus many of them still opt for restrictive migration policies with regard to Romania and Bulgaria too.

2. Accession country profiles

The latest accession increased the population of the EU from 463 million to 493 million and made its economy grow from 10.8 trillion euros to 10.9 trillion euros.⁸ The two countries make up for 6% of the population of the EU, while their GDP represents only 1% of the overall economic performance of the EU. If compared to the average GDP/head of EU15, which was 108.3 euros in 2005, this indicator is 34.7 euros for Romania and 32.1 euros for Bulgaria.⁹

While both countries are very much pro-EU membership (they also ratified the EU Constitution), attitudes towards enlargement in EU25 show big variations. While the overall support for enlargement in the EU reaches 46%; in Austria, France, Germany, Luxembourg or the UK, the support ranges from 30% to 36%.¹⁰ Other studies reveal that racism is also on the rise in Europe (for ex. in Denmark, Finland, France, Ireland, Poland, Slovakia, the UK; while

⁶ Euro indicators news release 105/2007 (31/07/2007), Eurostat STAT/07/97 (12/07/2007)

⁷ The economics of migration – managing the impacts. UK, Trade Union Congress, 19/06/2007

⁸ „Fireworks fly as Romania and Bulgaria limps into EU” Source: <http://euobserver.com/15/23154>
Hárs, Á. – Sík, E. Szempontok a román – bolgár EU csatlakozás magyar munkaerőpiacra gyakorolt hatásának értékeléséhez. TÁRKI, Budapest 2006. p. 25.

¹⁰ „Q&A: EU enlargement” Source: <http://news.bbc.co.uk/2/hi/europe/2266385.stm>

a decrease of racist crimes has been registered in the Czech republic, Austria and Sweden¹¹), however negative attitudes concern immigrant communities in general and not specifically the “intra-European” movers.

2.1. Bulgaria

Bulgaria with its 7.5 million inhabitants represents 1.5% of the labour force of the European Union. The economic expansion in the second and third quarter of 2007 was 6.5% and direct investment amounted for 15% of the GDP.¹² It is certainly not by chance that 63% of the Bulgarians think EU accession is positive for their country and economy.¹³

The employment rate of the country is 58.5%, while the unemployment rate is 6.6% (down from 19.5% in 2001).¹⁴ Nevertheless the labour market suffers from structural mismatch: demand largely exceeds supply and not only for blue-collar workers but also for managerial-level employees. As reported by the Bulgarian National Statistical Institute, in March 2007 14.7% of industrial enterprises surveyed pointed out the labour shortage as a factor limiting their activity.¹⁵ Furthermore there is a growing gap between workers’ qualifications, their vocational education and the jobs available, which could be remedied only if Bulgarian workforce became more flexible and thus low qualified workers could also enter the labour market and escape from “*the trap of poverty and social exclusion*”.¹⁶ The demand of the labour market and the educational system should be aligned¹⁷ because a restructured educational and training system could influence for example the potential for self-employment and could make economic activity within the country a real alternative to unemployment or emigration for work purposes.¹⁸ The Bulgarian government therefore targets an increase in the number of economically active workforce by 6% in three years time

¹¹ “Racism on the rise in Europe, new study says” Source: <http://euobserver.com/851/22968>

¹² “World Bank: Bulgaria facing risk of sharp growth correction in 2007” Source: <http://news.dnevnik.bg/print.php?id=9688>

¹³ www.dw-world.de/article/0,2144,2295755,00.html

¹⁴ Eurostat: employment rate (2006), Harmonised unemployment rate July 2007. Source: <http://epp.eurostat.ec.europa.eu>

¹⁵ Key indicators for Bulgaria, National Statistical Institute. Source: http://www.nsi.bg/KeyInd_e/KeyInd2007-04.pdf

¹⁶ “Challenges for Bulgaria vis á vis the European social model” European Industrial Relations Observatory, Source: <http://eurofound.europa.eu/eiro/2006/10/articles/bg0610029i.html>

¹⁷ “Low qualification levels an obstacle to economic competitiveness” European Industrial Relations Observatory, Source: <http://eurofound.europa.eu/eiro/2006/10/articles/bg0610049i.html>

¹⁸ “The potential for self-employed among the unemployed” European Industrial Relations Observatory, Source: <http://eurofound.europa.eu/eiro/2006/10/articles/bg0603202f.html>

and a progressive diminution of the jobless rate.¹⁹ With a view to meet the labour shortages and to assure proper conditions of work for migrant workers, Bulgaria recently signed a bilateral agreement on social security with Cyprus, which provides for equal social protection for nationals of the contracting States when working legally in the other country.²⁰ Similarly, a joint initiative of Bulgarian and Spanish trade unions decided the opening of an information centre in Bulgaria,²¹ which is meant to help to defend Bulgarian workers' social security rights and to promote legal work.

According to a recent study²² based on a sample survey that was commissioned by the Bulgarian Ministry of Labour and Social Policy, around 45,700 – 50,000 Bulgarians would have the intention to work in another EU Member State after accession and only a minority (27% or around 13,000) find it likely they would depart immediately after accession. 72% of the migrants indicated work as the major purpose of their planned stay in the following sectors: services and tourism, production, construction and agriculture; while only 2% of the respondents declared that they wished to stay abroad forever. Regarding past migratory experience, only 15% of the households have member(s) working abroad of whom more than two-thirds (72%) work in EU countries, traditionally in Germany, Greece, Italy and Spain. However if we compare these findings with future migrants' destinations we find a shift in preferences, namely that the first choice is now Spain followed by Germany, the US, Italy and Greece, while the United Kingdom and Ireland rank only 6th and 11th respectively.

Contrary to the emigration trends of the 90's and the beginning of the new millennium when around 700,000 Bulgarians left the country²³ mainly for Germany, the USA, Spain or Greece, the migration intentions now seem to be decreasing. A survey carried out in 2001-2002 – when the Schengen short-term visa requirement was lifted for Bulgarians – estimated that 15% of the country's working age population would consider leaving in order to work

¹⁹ “Sofia drafts measures to increase active workforce” Source: http://novinite.com/view_news.php?id=75894

²⁰ “Cyprus and Bulgaria sign bilateral agreement on social security.” European Industrial Relations Observatory, Source: <http://eurofound.europa.eu/eiro/2006/08/articles/cy0608019i.html>

²¹ “New information centre for Bulgarians intending to work in Spain” European Industrial Relations Observatory, Source: <http://eurofound.europa.eu/eiro/2006/12/articles/bg0612019i.html>

²² Emigration Attitudes prepared for the Ministry of Labour and Social Policy by BBSS and Gallup International. September 2006

²³ “Challenges for Bulgaria vis á vis the European social model” European Industrial Relations Observatory, <http://eurofound.europa.eu/eiro/2006/10/articles/bg0610029i.html>

abroad.²⁴ Nowadays, this ratio becomes smaller. The above-mentioned study from 2006²⁵ already mentioned that there is around 13% decrease in the number of emigrations since 2001. This tendency might continue given the fact that 90% of the Bulgarian households own their houses, so that their mobility can be expected to be low. Furthermore, the two most probable arguments against future international migration are that the emigration resource of the country is exhausted and that quotas under previously existing bilateral agreements have not been filled in the past either.

Allocations from EU funds²⁶ can make it easier for Bulgaria to achieve the targeted goals (also as regards the necessary reform of its labour market), while positive trends such as foreign citizens buying property in the country might also contribute to economic expansion: the British, who are that numerous in some villages, that some of them were already named “English villages”,²⁷ or the Maltese, who invest in the country²⁸ due to extremely low real estate and land prices if compared to Western prices.

In the progress report on the “Cooperation and Verification Mechanism with Bulgaria” the European Commission confirmed that Bulgaria made progress in order to reach the benchmarks set by the Commission. Even if “*much remains to be done*”, the country has made efforts in all fields e.g. to reform the judicial system, to fight high-level corruption and to assure the independence and accountability of the judicial system.²⁹

2.2. Romania

Certainly, it is the migration potential of the Romanian workforce which was at the heart of debates throughout EU25 during the pre-accession period. Fears could be founded for some Member States or unfounded for others. Nonetheless it is an undeniable fact that Romanian

²⁴ Markova, E.: Labour emigration: what can be expected? http://www.bridge-mag.com/magazine/index.php?option=com_content&task=view&id=150&Itemid=42

²⁵ “Emigration Attitudes” prepared for the Ministry of Labour and Social Policy (Bulgaria) by BBSS and Gallup International. September 2006

²⁶ 7 billion euro is available between 2007-2013 for rural development in Bulgaria. Source: www.focus-fen.net/?id=18245

²⁷ “UK pensioners live like kings in Bulgaria” Source: http://sofiaecho.com/article/uk-pensioners-live-like-king-in-bulgaria/id_20202/catid_69

²⁸ “Maltese investing in Bulgarian property” Source: http://international.ibox.bg/news/id_391055858

²⁹ Key findings on the progress report on the Cooperation and Verification Mechanism with Bulgaria. MEMO/07/261 (27/06/2007). Source: <http://europa.eu/rapid/pressReleases>

emigration has an important history starting after 1990, once Romanian citizens were entitled to hold a passport again. Three distinct migration periods can be identified during the past 16 years:³⁰

- a) between 1990 – 1995 the work emigration rate was 3%. The departures were mainly carried out without support or assistance from abroad (only 22% of the emigrants had some kind of help from others), and were directed towards Israel, Turkey, Italy, Hungary and Germany;
- b) between 1996 – 2000 work emigration rate grew to 7%. The main destinations changed to be Canada, Italy and Spain, while ethnic migration (to Israel, Hungary Germany) gradually gave its place to economic migration. By that time 40% of the migrants already received pre-departure assistance from abroad;
- c) in 2002 the Schengen short-term visa restriction was lifted. From 2002 onwards, migrants mainly headed for Italy and Spain and the work emigration rate increased sharply to 28% involving already 60% of the emigrants having had assistance prior to departure. The undoubtedly economic migration targeted mainly unskilled jobs in the construction, housekeeping and agriculture sector.

After the lifting of the short-term visa requirement when travelling to a Schengen State in 2002, the number of passports issued to Romanian nationals increased by 40% in two years, while returns from abroad also increased by 55%.³¹ (Return measures concerned those who exceeded the legal period of stay granted by their residence permit and those who worked without contract.) In other terms, this means that 10% of the households (around 2.5 million) have had at least one member of the family who went abroad after 1989. Among 18-59 year-old people, one-fifth (!) of the households have had at least someone working abroad.³²

As a response to the significant increase in the number of economic migrants, the Romanian government took drastic measures to regulate the conditions of travelling to Western-European countries. The Government Emergency Ordinance 144/Oct. 2001 foresaw that Romanian nationals have to be in possession of medical assurance, return ticket/green card for

³⁰ The following analysis is based on the study of Sandu, D.: Exploring Europe through work migrations: 1990 – 2006. In: Living abroad on a temporary basis. The economic migration of Romanians: 1990 - 2006. Open Society Foundation Bucharest, 2006. and Stan, R.: Irregular migration of Romanian workers to European Union: Factors, Practices and Management. CEPS, Budapest 2006.

³¹ Stan, p. 15 – 16. *Cfr. supra* 30.

³² Sandu, p. 19. *Cfr. supra* 30.

personal car and a certain amount of foreign currency or a credit card.³³ The condition of being self-supporting was later modified and the amount of 500 euros previously required was reduced to 150 euros. However additional conditions, such as the justification of the aim of the planned stay (even for tourists) were added.

In August 2003, Ordinance 84 stipulated the temporary refusal to issue of a passport if the holder was previously returned from abroad or exceeded the legal period of stay in the country of destination.³⁴ If the passport was already issued than, it was possible to retain it or to suspend the right to use it. As a next step, Ordinance 28 of 14/07/2005 – which entered into force on 1st August 2005, just 15 days after its adoption– authorized the Romanian Border Police to retain the passport of the said persons. The Ordinance remained in force for one month and resulted in 2,300 entrants out of 20,000 having their passports retained without administrative procedure or other procedural safeguard.³⁵

According to estimates, more than 2.5 million Romanians are currently working abroad,³⁶ whereas the country has 21.6 million inhabitants. Labour force participation was 58.8% in 2006, while the unemployment rate was 6.9% in July 2007.³⁷ In 2003 and 2004 the Romanian economy grew at an annual rate of 8.4% and after a fallback in 2005, in 2006 the growth rate was again 7.7%.³⁸ Migrants' remittances amounted for 3.6 billion euros in 2005 (up from 2.8 billion euros in 2004³⁹) and returning migrants changed a further 8.9 billion euros in Leu in Romania in 2005.⁴⁰ The foreign currency brought to the country by international migrants is a vital support for the national economy. However the national labour market lacks these workers. Employers' organisation in the construction sector for example reported a shortage of 50% or 300,000 workers.⁴¹

³³ Stan, p. 6. *Cfr. supra* 30.

³⁴ Quoted by Stan, R.: Irregular migration of Romanian workers to European Union: Factors, Practices and Management. CEPS, Budapest 2006. , p. 9.

³⁵ Stan, p. 10. *Cfr. supra* 30.

³⁶ Growing concern over labour shortage due to migration. (19/02/2007) Source: www.eurofound.europa.eu/eiro/2006/11/articles/ro061149i.html and „Returnee programme for Romanian emigrants” source: <http://www.eurotopics.net/en/presseschau/aktuell.html>

³⁷ Source: Eurostat, www.destatis.de

³⁸ Booming Romanian Economy Lures Foreigners. Balkan Insight (7/06/2007) Source: www.focus-fen.net/id/=18399

³⁹ According to the Urban Sociology Centre the 2004 migrant remittances almost surpassed the annual volume of foreign investment. Popescu, X., Romanian Migration in the context of European Integration? <http://www.arte.tv/fr/histoire-societe/regards-croises/1395862.html>

⁴⁰ Tibori Szabó Z.: „Romania ante portas” in: Európai Tükör 2006/12

⁴¹ *Cfr. supra*: Growing concern over labour shortage due to migration. (19/02/2007) Source: www.eurofound.europa.eu/eiro/2006/11/articles/ro061149i.html

The profile of the migrants changed over the time. Predominantly 18-59 year-old men, having vocational education or high school started to migrate from the rural areas; later on women from both the rural (aged 18-29) and urban areas (aged 30-59) started to migrate and found employment mainly in the domestic sector. Romanian workers mostly target three areas of economic activity: health care and personal social services, construction and agriculture.⁴² Apparently more and more women tend to migrate, which is also illustrated by the fact that the men – women ratio is now reaching 45% - 55%. While labour migration mediated through official channels is limited (only 4% of the applicants succeeded⁴³), informal and semi-legal means of migration are more widespread.

Some factors probably enabling someone to migrate are: being a man of young age, having secondary education or being semi-skilled, being unemployed or working, but in both cases having a low income, having previous work experience abroad and being optimistic. It is an advantage to have the “social capital” (kinship, friendship, foreign friends, labour intermediation through a company etc.⁴⁴), which facilitates the arrival in the new country. On the “mental destination map” of the migrants the targeted countries are Italy (31%), Spain (17%), Germany (8%), the USA (5%), Hungary (4%) and France (4%).⁴⁵

According to the survey of the Open Society Foundation (Romania), 11% of the people aged 18-59 show a propensity to migrate for work purposes in the future – which would mean the temporary emigration of around 1,400,000 Romanians in the next few years.⁴⁶ Migration, as a *temporary strategy* to improve the individual’s economic situation and that of the family might pursue three goals: **change** (involving significant improvement); **accumulation** (purchase of resources) and **studies** (which entail a status leap).⁴⁷

The most important “push factor” for migrants is obviously the wish to assure the economic well-being for themselves and for their families (implying a strong *emotional motivation* too!), however if a migrant has to choose the semi-formal or illegal ways of migration, such move risks to negatively reverberate on his/her parental relationship. A CEPS study based on

⁴² Growing concern over labour shortage due to migration. (19/02/2007) Source: www.eurofound.europa.eu/eiro/2006/11/articles/ro061149i.html

⁴³ Stan, p. 18. *Cfr. supra* 30.

⁴⁴ Sandu, p. 19. *Cfr. supra* 30.

⁴⁵ Hárs, Á. – Sík, E. pp. 16, 19. *Cfr. supra* note 9.

⁴⁶ Sandu, p. 17. *Cfr. supra* 30.

⁴⁷ Mihai, I. A.: Community aspects. In: Living abroad on a temporary basis. The economic migration of Romanians: 1990 - 2006. Open Society Foundation Bucharest, 2006., p. 78.

sample survey showed that those migrants who were not able to regularise their situation while being abroad could not return that often to Romania, as a consequence of which the divorce rate increased (from 0% in 1995 to 1.1% in 2003) and the birth rates fell (from 21.1% in 1995 to 11.7% in 2003) in the sampled area.⁴⁸ This phenomenon adds to the individual “cost” of migration, while it also puts a burden on the sending society and at the same time, it increases the “national cost” of migration i.e. the loss of workforce.⁴⁹

In relation to that, an additional danger linked to economic migration is the phenomenon that can be labelled as “home alone generation”, i.e. the children of migrant worker parents who are left behind in the country. International Organization for Migration reported that in the Moldova region there are approximately 20,000 children (in that region alone!) who are left behind by their parents while working abroad. 20% of these children have both parents abroad.⁵⁰

33% of the respondents said that the major inconvenience of labour migration is that migrants are away from their families, however both the local surrounding and the migrants themselves identified the advantages of the migration experience such as financial gain (70.7%), higher quality of living (7.8%) and that migration changes mentalities.⁵¹ Migrants are seen to have changed mentality on work, having a different perspective of life, thinking more freely and positive.

Maybe there is a relation between this largely positive experience and the fact that Romanian citizens are overwhelmingly in favour of their EU membership (69% in May 2007⁵²), which they associate with better living standards, rising wages and salaries and more job prospects abroad. In the following chapter we will go through country-specific migration experiences. However as a general remark we would like to note here, that the perception of Romanian migrant workers is very positive abroad: they rank first on the list of most hard working

⁴⁸ Stan, p. 32. *Cfr. supra 30.*

⁴⁹ Romania is already suffering from acute skill shortages in the agriculture and construction sector, but also in the health-care sector. There is an estimated deficit of 300.000 workers in the construction sector. Reported by: www.eubusiness.com/Employment/011122082833.pchq9842 (Romania seeks foreign workers to counter labour drain)

⁵⁰ Home Alone Generation – The Romanian Children Left Alone by Their Migrant Worker Parents. IOM/MRF Budapest Newsletter, Issue 1, November 2006.

⁵¹ Sandu, p. 55. *Cfr. supra 30.*

⁵² Eurobarometer 67 (June 2007). Source: http://ec.europa.eu/public_opinion/

employees, they are seen by employers as being well prepared, competent and willing to work extra hours for modest salaries.

3. What does the accession treaty of Bulgaria and Romania stipulate?

According to the common terminology used during the accession negotiations, once a candidate country joins the European Union, it becomes a “fully fledged member”. However, in relation to Bulgaria and Romania one can ask the question whether this has really been the intention of the drafters of the accession treaties.

First of all, art. 39 (1) of the Protocol concerning the conditions and arrangements for admission of the Republics of Bulgaria and Romania to the European Union⁵³ stated, that in case of “*clear evidence that ... there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas, the Council may, acting unanimously on the basis of a Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008.*” However, with respect to Romania, the same decision could have been taken by qualified majority voting (thus in a way it would have been easier to delay the entry by one year). This “credible threat”⁵⁴ remained unused.

Art. 36 – 38 stipulate specific safeguard clauses, which might be taken up to three years after accession, but they might remain applicable beyond that date until the situation is remedied.⁵⁵ The *economic safeguard clause* (art. 36) is a traditional trade policy measure that helps to deal with adjustment difficulties of an economic sector or area for both the EU25 and the new Member States. The *internal market safeguard clause* (art. 37.) authorises the Commission to take measures on a case by case basis (on its own initiative or upon request by one Member State) in sectors like telecommunication, competition, energy, agriculture, consumer and health protection if Bulgaria or/and Romania fail(s) to implement internal market legislation. (To give a concrete example in the field of food safety, the Commission might decide to restrict the sale of certain Bulgarian and/or Romanian products on the internal market if it

⁵³ OJ L 157/29, 21/06/2005

⁵⁴ Noutcheva, G.: Bulgaria’s and Romania’s Accession to the EU: Postponement, Safeguards and the Rule of Law. CEPS Policy Brief, No. 102/May 2006, p. 1.

⁵⁵ Accompanying measures in the context of Bulgaria’s and Romania’s accession. 26/09/2006, MEMO/06/347

cannot be assured that these products meet the high-level EU standards.⁵⁶) The specific *justice and home affairs safeguard clause* (art. 38) is linked to the functioning of the judicial system in the field of insolvency proceedings, proceedings in matrimonial matters, parental responsibility, uncontested claims and the European Arrest Warrant. In case of serious or imminent risks of shortcomings in the transposition or implementation of the EU rules on mutual recognition of judgements and after suspension of specific rights of Bulgaria and Romania, EU Member States would be entitled to automatically refuse the recognition and the enforcement of certain civil and criminal judgements rendered by Bulgarian and/or Romanian courts.

Besides the above, in case of improper use of EU funds, financial corrections such as delayed disbursement, reduction on future payments or recovery of funds can be imposed.⁵⁷ Transitional measures are applied for a set period of time in the field of free movement of workers, acquisition of land, road transport, agricultural and environmental EU laws and standards etc.

A *post-accession monitoring mechanism* was to be put in place to verify the cooperation and progress of the newest Member States, whereas the first report was issued by the Commission in June 2007. The monitoring has to focus on three major issues: *the judiciary reform* (to assure the independence and the “responsibilisation” of the judiciary system and to reform its functioning; to make judiciary procedures transparent and efficient); *the fight against corruption* (to carry out professional investigations on high-level corruption) *and organised crime* (to fight corruption at the borders and at the level of local administration; to establish a strategy to fight against organised crime).⁵⁸

Bulgaria and Romania will be allocated 18 and 35 seats in the European Parliament respectively and they will have 10 and 14 votes in the Council until 2009, when the new

⁵⁶ Ollie Rehn, Accession of Bulgaria and Romania to the EU – a debate in the Bundestag, 18/10/2006. Ref: SPEECH/06/607 available online: http://europa.eu/rapid/pressReleasesAction.do?reference_SPEECH/06/607&aged=0&language=EN&guiLanguage=en

⁵⁷ Accompanying measures in the context of Bulgaria’s and Romania’s accession. 26/09/2006, MEMO/06/347 <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/347&format=HTML&aged=1&language=EN&guiLanguage=fr>

⁵⁸ www.diplomatie.gouv.fr/fr/europe_828/contours-europe_843/elargissement_848/bulgare_4167/bulgarie_13783.html

ponderation of votes will come into force and will give 17 votes for Bulgaria and 33 for Romania (with respect to the size of their population).

4. Rules governing the free movement of Bulgarian and Romanian workers

The most debated issue in relation to the fifth EU-enlargement was probably the migration potential of the newly entrants and national rhetoric unjustly turned attention away from the European aspect of the question i.e. the right of each European citizens to move freely from one Member State to an other – not only as tourists, beneficiaries of services or other, but also as workers or self-employed.

As regards the *rules governing the free movement of workers*, the concept set forth by the accession treaty of Bulgaria and Romania is the same as it was for the EU8 in April 2003.⁵⁹ It implies the possibility for Member States to maintain the application of national rules or those resulting from bilateral agreements instead of applying Community rules on free movement of workers. Exceptions can be maintained for a maximum seven years (on 31st December 2013 restrictions shall definitely come to an end). This period is divided in the same “2+3+2” way as it was the case for the previously acceding countries (1st phase: 01/01/2007 – 31/12/2008; 2nd phase: 01/01/2009 – 31/12/2011; 3rd phase 01/01/2012 – 31/12/2013). The transitional system allows a Member State to grant free access for Bulgarian and Romanian workers to its labour market at any time during the application of the maximum seven years period or on the contrary, to restore the national regime of work authorisations in case the country (having previously granted free access to workers from the new Member States) experiences serious disturbances on its national/regional labour market or in a given occupation (*safeguard clause*). However, even if a Member State has to have recourse to the application of the safeguard clause, it is not allowed to impose more stringent measures than those that were applicable on 31/12/2006 (*stand still clause*).

As a general rule, transitional arrangements should cease to apply on 31/12/2011. However between 01/01/2012 – 31/12/2013 a Member State will be still authorised to maintain its work permit (or quota) regime but only in case there is evidence of real disturbances on the labour

⁵⁹ For a fuller account see: Traser, J.: “Who is still afraid of EU enlargement?” European Citizen Action Service, Brussels 2006

market i.e. there is a substantial interest of keeping the labour market closed. In any case, the system of the transitional arrangements precludes any Member State from disregarding the *community preference principle* and thus to treat third country nationals in a more favourable way than accession State nationals when applying for work and having equal aptitude to fulfil the position.

Transitional measures do not concern those workers who were legally present on the labour market of a EU-25 country on 1st January 2007 for an uninterrupted period of 12 months or longer. Thus they gain automatic access to that labour market, but not to those of the other Member States maintaining restrictions. In other words, transitional measures apply to Bulgarian and Romanian workers who enter the labour market of a Member State continuing to apply its national work authorisation regime before or after 1st January 2007 but who do not have a work authorisation (contract) lasting for at least 12 consecutive months.

Family members might join the worker and gain free access to the labour market of the chosen Member State from the third year following accession or after 18 months of legal residence with the worker, whichever date is earlier. In certain cases, family members of the worker might find themselves in a more favourable situation (e.g. from the third year after accession) than the worker himself/herself, who remains subject to work permit requirement, but not the relative. The transitional arrangements do not concern the self-employed and the providers of services with the exception of certain sectors in Austria and Germany.

The experience of post-accession migratory trends after May 2004 and estimates of the possible impact of Bulgaria and Romania joining the EU led several Member States to have recourse to the application of transitional arrangements. If this was not done for reasons of fearing an “immediate influx” of workers from Bulgaria and Romania, than it was probably because migration trends are internationally inter-linked. To avoid the so called “*railway station effect*,”⁶⁰ 10 Member States opted for not opening up their labour markets. The “*railway station effect*” describes the phenomenon when countries that open their labour market become a temporary destination for migrant workers waiting for the possibility to migrate to more wished destinations – but in the meantime, they “saturate” the actual labour market.

⁶⁰ Hárs, Á. – Sík, E, p.5. *Cfr. supra* note 9.

Part II. – The legal background and the factual experience of migration

1. EU15

Since Member States were not obliged to notify the Commission about their decision whether restricting or liberalising access to their labour markets for Bulgarian and Romanian workers, a comprehensive analysis of the rules currently applied by EU25 Member States is difficult. Relying on information gathered – where available – solely from official sources, the following list can be developed:

- 1) currently the following Member States apply the Community rules on free movement of Bulgarian and Romanian workers are: Cyprus, the Czech Republic Estonia, Finland, Latvia, Lithuania, Poland, Slovakia, Slovenia, Sweden.
- 2) while partial or total restriction regarding access to the labour market is maintained by: Austria, Belgium, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Luxembourg, Malta, Portugal, Spain and the UK.⁶¹

This is worth noting, that the most considerable policy U-turn is that of the United Kingdom and Ireland, which were among the very first to grant free access to workers from the EU8 since 1st May 2004. Hungary is also an exception since no other EU8 that went through (or is still undergoing) the same differential treatment opted to pose similar restrictions on the newest entrants. It was to be expected that Italy, Spain and Greece – the traditional destination countries for Bulgarian and Romanian workers – would prolong the application of national work authorisation systems, as well as Germany and Austria that showed the strongest connection with the idea of closed labour market policies since the beginning of the enlargement negotiations.

1.1. Austria

The country restricts access to its labour market by applying a federal quota system and imposing the work permit requirement at the same time. Along with Germany, Austria also restricts the provision of services in certain sectors. Migrants coming from Bulgaria and

⁶¹ “Accession 1 January 2007”, <http://europa.eu>

Romania wishing to work in Austria will have to undergo the “labour market test” (i.e. the verification if there is no other EU15 national better placed for the job in question) and the subsequent procedure for issuing the work permit.

Data available for Austria shows the inflow of 15,711 and the departure of 9,286 EU8 nationals, which results in a net migration of 6,425 persons. That is less than the numbers in 2005 (8,396). In 2005, the two most numerous groups were from Poland and Slovakia (6,035 and 3,668 arrivals respectively), while Bulgarians and Romanians were only 1,315 and 4,757 respectively. These figures remain well below the 69,151 EU14 nationals (the net migration was 11,320) that entered Austria for various purposes.⁶²

According to the Austrian Labour Market Service 7,149 new Member State nationals found employment in Austria by July 2007.⁶³ The number of Polish, Hungarian and Slovak nationals has decreased, while the number of Romanians (1,021) shows a 135.3% increase if compared to the corresponding period during the previous year. However it still remains well below the number of Hungarian or Polish workers employed (1,829 and 1,770 respectively).⁶⁴ While the country maintains restrictions on labour mobility, the Austrian Federal Economic Chamber called for the facilitation of the measures bearing in mind that the country suffers from a “chronic” shortfall of skilled domestic workers.⁶⁵ For example a consistent shortage of licensed and affordable mobile nursing staff leads many Austrians engage workers illegally.⁶⁶

It might be a step forward that the Minister of Economy and Labour Affairs presented a draft bill in February 2007 on the partial opening of the Austrian labour market. This would allow skilled new Member State nationals in pre-determined sectors to be employed for a maximum of 50 weeks and than the employer could extend the contract with the employed (resulting in the “activation” of the “12 month rule” and thus the right to take up employment freely in the country). The number of possible employed would still be governed by quotas. Estimates

⁶² Wanderungsstatistik. Statistik Austria (28/06/2007)

⁶³ namely 579 Slovenians, 1.829 Hungarians, 1.770 Polish, 1.021 Romanian, 1.252 Slovaks, 548 Czechs and 150 Bulgarians.

⁶⁴ Ereilungen nach Nationalität – 07/2007. Arbeitsmarktservice (06/08/2007)

⁶⁵ Partial opening of labour market to workers from new Member States. Source: www.eurofound.europa.eu/eiro/2007/03/articles/at0703029i.html

⁶⁶ Temporary work permits issued to illegal foreign care workers. Source: www.eurofound.europa.eu?eiro/2007/01/articles/at0701019i.html

count on 43,500 workers in total from the newest EU Member States within the next ten years.⁶⁷

1.2. Belgium

Selective labour market policy continues to apply in Belgium allowing EU8 nationals, Bulgarians and Romanians to get easy access to “bottleneck jobs” for which there are hardly any candidates from the national/EU15 labour force. Work permits (*permis de travail*) are issued in accelerated procedure within five days in the sectors facing labour shortages.⁶⁸ Belgium does not differentiate between workers of the fifth enlargement round (EU8 and EU2) depending on when their countries of origin joined the EU. The identical system nevertheless shows a difference with reference to time: while measures will be applied in relation to EU8 until 30/04/2009, measures (in the optimal case) will cease to apply to Bulgarian and Romanian workers from 31/12/2008. Thus it will finally result in a differential treatment anyhow to the detriment of EU8 workers.

Belgium is characterized by the presence of a very high number of EU nationals that represent two-thirds of the foreign population, which amounted to 932,161 in 2006. This figure in absolute terms is 31,688 higher than it was in 2005.⁶⁹ At the beginning of August 2007, the largest EU Member State communities were Italians (171,542), French (129,457) and Dutch (122,558), while EU12 nationals altogether were not more than 59,549 of which the largest group was Polish (27,558). Bulgarians and Romanians were 6,140 and 14,274 respectively.⁷⁰ Regarding their labour market participation, the number of migrant workers engaged in the construction sector has increased considerably.⁷¹ Nevertheless the High Committee of Employment in its report on the recent evolution of the labour market did not make special remarks on the presence or the employment of EU8 or EU2 nationals in the country, it only recalled the important structural problems of the national labour market and the need for continuous job creation.⁷²

⁶⁷ “Megijedtünk a románoktól és a bolgároktól” Source: www.index.hu/gazdasag/magyar/munbo060906
⁶⁸ www.diplomatie.be/bucharestfr/default.asp?id=23&mnu=23&ACT=5&content=23

⁶⁹ www.statbel.fgov.be/figures/d21_fr.asp#5

⁷⁰ Data obtained from l’Office des Etrangers, Belgium.

⁷¹ Measures to combat illegal work among migrants in construction sector. Source: www.eurofound.europa.eu/eiro/2006/11/articles/be061169i.html

⁷² Rapport 2007. Conseil Supérieur de l’Emploi, Belgique (<http://www.emploi.belgique.be/WorkArea/showcontent.aspx?id=10022>)

1.3. Denmark

Denmark chose to impose the same restrictions on Bulgaria and Romania as on EU8. Under the transitional arrangements, citizens from the above countries are eligible to obtain a Danish work permit if they hold a fulltime (at least 30 hours per week) employment on collective bargaining contract conditions or under standard wage and work conditions while the employer that hires workers from new Member States has to be registered in compliance with Danish laws. The applicant can start working once his/her work/residence permit has been granted⁷³ and both the employer and the employee can be penalised if working or employing illegally. The penalty is quite severe for the employers, even an imprisonment up to two years or a fine of 10,000 DKK (around 1,340 euros) per illegally employed workers might be charged in case of aggravating circumstances. For the worker who is found to be illegal a fine or imprisonment up to one year can be imposed only if the person concerned acted with intent or negligence.⁷⁴

In today's Denmark, 463,000 immigrants and their descendants constitute 8.5% of the population,⁷⁵ of which new Europeans are only marginally represented, namely: only 12,500 work permits were granted to EU12 nationals between January 2006 – July 2007 of which 119 to Bulgarian and 275 to Romanian nationals, 6,001 to Poles and 1,258 to Lithuanians.⁷⁶

1.4. Finland

Finland was the first amongst EU15 to announce the lifting of restrictions to free movement of workers at the end of the second year of the transitional period as regards EU8 nationals. In line with this policy, Finland does not apply restrictions to Bulgarian and Romanian nationals either. Even though immigration figures for year 2006 are the highest since Finnish independence, it is only 1,100 persons more than the immigration in 2005. Roughly a half of

⁷³ Transitional arrangement concerning the access to the Danish labour market for Romanian and Bulgarian workers. Source: www.bm.dk/sw15320.asp

⁷⁴ section 59 of the Danish Aliens Act quoted by the Agreement between the government (the Liberal Party and the Danish Conservative Party), the Social Democrats, the Socialist Peoples' Party and the Social Liberal Party regarding the EU enlargement and the Danish labour market. (29/06/2007)

⁷⁵ Denmark in figures 2007. Statistics Denmark, February 2007.

⁷⁶ Information obtained from the Danish Labour Market Authority and the Danish Immigration Service.

the migrants came from the new Member States i.e. 11,580 of a total of 22,451 immigrants⁷⁷ of whom, for example 222 are Poles, 2734 Estonians or 111 Romanians and 38 Bulgarians. If we take a look on the age group we find that migrants aged between 15 and 34 are the most mobile.⁷⁸

1.5. France

France adopted a coherent approach (*“choix de la cohérence”*) towards labour migration for the twelve “new” Member States of the European Union meaning that the sectors open to workers from EU10 and Bulgaria and Romania are the same. In case a worker applies for a work authorisation in the agricultural, construction, tourism or certain other sectors, the issuing of the required authorisation should be automatic. The opening of 61 sectors mainly benefits seasonal workers especially those working in the agriculture.⁷⁹

Statistical data that was available for France at the time of the research covered only the year 2005 when the estimated number of foreigners in France was 1.46 million equalling 5.3% of the economically active population. In 2005 there were 516,687 EU15 nationals of working age in France compared to 86,147 new Member State nationals.⁸⁰ The report states that the number of Polish workers was decreasing from 2002 – 2005 – which leads us to question the relevance of the famous debate over the “Polish plumber”...

1.6. Germany

Germany – together with Austria – was the first to clearly express its will to use the possibilities offered by the accession treaties to the maximum extent, thus maintaining the work permit requirement and additionally blocking the *free provision of services* in the construction and the industrial cleaning sector among others. The immigration policy has not changed since then: *“employment and self-employment of foreigners are to be oriented on Germany’s economic needs, taking into account the labour market situation and the need to*

⁷⁷ Record number of immigrations in 2006. Source: Population and Cause of Death Statistics. Statistics Finland (20/04/2007)

⁷⁸ Population statistics upon request. Statistics Finland

⁷⁹ http://laroumanie.free.fr/page/droit_au_travail.html

⁸⁰ Régnard, C.: Immigration et présence étrangère en France en 2005. Rapport annuel de la Direction de la Population et des Migrations. (12/2006)

reduce unemployment.”⁸¹ Section 39 (6) of the German Residence Act stipulates that nationals of the acceding States can enter the German labour market insofar as no Germans or persons enjoying equal rights (thus not the new Member State nationals!) are available. However, priority must be given to EU8 and EU2 workers over third country nationals.

The 2004 EU enlargement had positive impacts on the German economy: it contributed to the increase of the country’s GDP by 1% and the present accession is thought to bring slight benefits to the overall economic development also.⁸² Nevertheless, at the same time the general attitude towards immigrants is ambivalent.⁸³ 7.2 million immigrants live in Germany, the majority of whom stay on average for 10-12 years. Parallel societies develop and integration remains a major challenge and high unemployment (above 10%) also leads to tensions on the labour market.

53% of the Germans were against Bulgaria and Romania joining the EU, which is not surprising if we know that support for the accession of EU10 was even lower at 39%.⁸⁴ According to the German Federal Statistical Office there were 6,751,002 foreigners residing in Germany in 2006, of which 2,183,365 came from EU25 States that is less than it was prior to the 2004 enlargement (2,346,990). During the first two years of membership of the EU8 the yearly inflows of mainly the Polish workers rose from 49,744 (2003) to 79,797 (2006). However the inflows of Slovaks, Czechs or Hungarians remained fairly constant.⁸⁵ If we analyse the correlation between inflows and stocks, we find that the major part of residents from the new Member States were already present before the accession.

After the Polish, Romanians and Bulgarians are the biggest new Member State communities, but both the figures for the stocks and inflows show a decrease over the past three years. In 2003 there were 44,300 Bulgarians and 89,104 Romanians residing in Germany, whose number fell back to 39,053 and 73,353 respectively by the end of 2006 and entries of migrants from these two countries also fell back from 10,560 (Bulgarians) and 15,755 (Romanians) in

⁸¹ Source: National Immigration Service, Germany: www.zuwanderung.de

⁸² www.eubusiness.com/Finance/061214132940.3de0hm1r

⁸³ Nasshoven, Y: Allemagne, pays de „l’immigration ressentie”? <http://www.arte.tv/fr/histoire-societe/regards-croises/1395860.html>

⁸⁴ „Expansion, the 1st of January 2007” reported by Die Welt. Article Source: <http://easteuropeandigest.vox.com/library/poste/tags/bulgaria/>

⁸⁵ figures refer to the inflows in 2003 and in 2006 and the stock at the end of 2006: Slovakia: 6.700 – 6.658, 23.835; Czechs: 5.685 – 4.849, 33.316; Hungarians: 9.106 – 11.483, 52.347 and residing Polish in Germany at the end of 2006: 361.696.

2003 to 5,328 and 13,143 in 2006 respectively.⁸⁶ At the same time, employers' associations are calling for reduced labour market reductions for the entry of the skilled labour force.⁸⁷

1.7. Greece

With a view of preventing a crisis on the labour market, Greece applies transitional arrangements from 1st January 2007, Bulgarian and Romanian nationals thus remain subject to a work permit requirement. However, experience from the past shows that restrictive policies do not prevent the inflow of undocumented workers, hence future policies should focus more on how to help migrants to enter the labour market legally.

Due to its geographical proximity, Greece is one of the most possible and easily accessible destination countries for Bulgarians and Romanians. Migration from Bulgaria started as early as 1990 as seasonal migration was directed towards border regions. The first 33,000 emigrants were soon followed by many more due to worsening economic conditions back home, with unemployment growing and wages dropping sharply.⁸⁸ Emigration reached a peak in 1994-1995. The emigration pattern was the same as seen in the case of Romania: first more men sought work in the construction sector and then increasingly more women in the care sector and for domestic work.

During the 1998 regularization program, 25,168 Bulgarian and 16,958 Romanian nationals applied to legalise their situation and yet the policy of the Greek government incited more migrants to come undocumented hoping that sooner or later, legalization programmes would remedy their situation. The quantitative increase was important: 46,114 residence permits were granted to Bulgarian and 26,462 to Romanians nationals in 2006.⁸⁹

⁸⁶ Special thanks to the Federal Statistical Office of Germany for supplying the necessary data for the research.

⁸⁷ Shortage of skilled labour in industrial sectors. Source: www.eurofound.europa.eu/eiro/2007/07/articles/de0707039i.html

⁸⁸ Markova, E. *Cfr. supra* note 25.

⁸⁹ *Ibidem.*

1.8. Ireland

*“Ireland has more than done its bit in terms of supporting the concept of mobility of workers across Europe, and really can’t be held to account that score.”*⁹⁰ said Micheal Martin, Irish Minister for Enterprise, Trade and Employment justifying the restrictions on access to the Irish labour market for Bulgarian and Romanian nationals. By contrast with workers from EU8 countries, a work authorisation scheme was put in place for the newest entrants. Differentiating to the detriment of the later entrants definitely sends an unfriendly message to Bulgarian and Romanian nationals who might be well feeling discriminated against on the grounds of nationality – otherwise forbidden by Community rules (art. 12 EC Treaty).

Romanians started to migrate to Ireland 5-6 years ago, however, migration to Ireland is typically preceded by other work experience abroad (predominantly in Italy).⁹¹ Ireland became a “most wished” destination given the high wages offered to workers (more can be sent back home than from Italy i.e. around 1,200 euros), a strong culture of anti-discrimination on the labour market and better mechanisms for social-economic integration. As one migrant worker expressed: *“there is no class differentiation here.”*⁹² The migrant in question would undoubtedly still say the same, however a bit bitterly if looking at a Hungarian, or even at a French man working besides him – who did not have to comply with administrative burdens, authorisations etc., but who could start working simply on the basis of his or her qualifications and European citizen status...

However, it was certainly not the previous economic migration from Romania that led the government to take the decision to give up the open door policy, but more the fact that after 1st May 2004 the proportion of migrants grew drastically in the country and reached 9.5% of the Irish population in 2006,⁹³ foreign nationals representing 13.4% of the labour force in the first half of the year.⁹⁴ According to the 2006 census, Ireland has a population of 4,172,013 of whom 275,775 come from an EU Member State. The largest foreign community is that of the

⁹⁰ „EU free movement of labour map” Source: <http://news.bbc.co.uk/2/hi/europe/3513889.stm>

⁹¹ Stan, p. 29. *Cfr. supra* 30.

⁹² quoted by Stan, p. 29. *Cfr. supra* 30.

⁹³ Malone, J.: La chance des Irlandais. http://www.arte.tv/fr/content/tv/02_Communities/C1-history_20and_20society/02-Magazine/24_Europe_Regards_croises/01_Editions_cette_semaine/edition-2006.12.08/01_mise_en_perspective/ART_20mise_20en_20perspective_IRLANDE/1395874.html

⁹⁴ FÁS Quarterly Labour Market Commentary, second quarter 2007

British (112,548), whereas the combined migrant communities of the EU12 amount to only a slightly higher number (128,230 – with 63,276 Poles as the largest community). Romanians were 7,696 which is smaller than the German or French community of Ireland (10,289 and 9,046 respectively).⁹⁵

According to the yearly labour market review, migration has been extremely important to the growth of the labour force in 2006, whereas “*immigration continues to be a major source of labour supply.*” and “*The ability of the labour market to absorb the large inflow of migrant workers bear testimony both to the strength of the labour market and the employability of the migrants.*”⁹⁶ By the end of 2006 there were 93,600 EU8 and EU2 nationals on the Irish labour market with the largest concentration in the construction sector, whereas during the first two months of 2007 over 5,000 PPS numbers were issued to Romanian migrants. The latest data on the most recent migratory trends shows that labour migration peaked towards the end of 2006.⁹⁷ If we compare the data of the Central Statistical Office (93,600) with that of the Personal Public Service Numbers (needed in order to take up employment in Ireland – 320,000 PPSN numbers issued during the first three years after accession), the difference in figures proves that “*many of the EU10 immigrants entering Ireland are choosing to return home after only a relatively short time working here.*”⁹⁸

Labour demand in Ireland during 2006 was such that not even migration from the enlarged EU was sufficient to fill all jobs and the country had to look for almost 17,000 extra workers coming from third countries. At the beginning of 2007, 12% of the firms reported vacancies, which was due to the positive economic environment that stimulates the significant job growth. The Irish economy grew by 5.75% during 2006, which would present the fastest growth since 2000 with the main drivers being the strength of domestic demand in services and the construction sector. While the annual employment growth is well above the EU average and whereas the contribution of migrant workers to the increase in labour force is almost 60%, the PPS figures already show an 8% fall year-on-year (meaning fewer registrations from workers from the new Member States). The unemployment rate for EU10 is only slightly higher than the rate of Irish nationals and migrant workers continue to earn significantly less than their Irish counterparts.

⁹⁵ Central Statistical Office 2006. Source: www.cso.ie/statistics/nationality_agegroup.htm

⁹⁶ Executive summary, FÁS Quarterly Labour Market Commentary, first quarter 2007

⁹⁷ Executive summary, FÁS Quarterly Labour Market Commentary, second quarter 2007

⁹⁸ FÁS Quarterly Labour Market Commentary, first quarter 2007. p. 7.

1.9. Italy

From 1st January 2007, Bulgarian and Romanian nationals can seek work more easily in the construction sector, agriculture, domestic work, engineering trades, hotel trade, tourism and some highly qualified areas. Seasonal work is also covered by the facilitated procedures, while for the rest of the occupations, the transitional arrangements apply. The Italian Minister for Social Solidarity stated that the partial liberalisation of access to the labour market “would cover the majority of Romanians already in Italy who have been hitherto subject to restrictions as non-EU members.”⁹⁹ This move by the Italian government is seen as a sort of regularization programme since it basically legalises the Romanian workers already present in Italy.¹⁰⁰

Italy turned to be a country of immigration in the mid ‘80s and since 2001 it receives on average of 250,000 – 260,000 immigrants per year. In 2006 immigrants amounted to 5.6% of the population (or around 3.7 million people¹⁰¹). Many of those came from a previously irregular status. So far Italy ran five regularization programmes while maintaining since the mid ‘90s its quota system for foreign workers that generally remained unfilled due to complicated application procedures. The employment rate of immigrants is 13% higher (70.9%) than that of nationals (57.9%) and the unemployment rate is only a little higher than that of Italians (9.7% against 6.1% in the first quarter of the year). Most of the migrants take up unskilled jobs and thus provide the country with a regular labour force assuring jobs that would otherwise remain unfilled.¹⁰²

The history of Romanian emigration to Italy started well before the Schengen short-term visa requirement was lifted in 2002. The number of residence permits granted to Romanian citizens started with a yearly 8,250 permits in 1992 and it rose gradually during the 90’s. Between 1999 – 2003 the annual average increase was already 15,000 amounting to a total of

⁹⁹ Italy to open construction, farming to Romanian and Bulgarian workers. Source: www.eubusiness.com/news_live/1167253202.7/

¹⁰⁰ In Italy, illegal labour accounts for 15.9% – 17.6% of the GDP and involves around 4 million workers in total. Source: Efforts to combat illegal work are intensified.

www.eurofound.europa.eu/eiro/2006/12/articles/it0612029i.html

¹⁰¹ Caritas/Migrantes: Immigrazione, Dossier Statistico 2007.

¹⁰² Reyneri, E.: Immigration in Italy: from underground economy to the occupational downgrading. Presented in Budapest on 12th June 2007 at the international expert conference “European cooperation in labour migration: search for best practices”, in the framework of the EC AGRO project.

94,818 residence permits in 2003.¹⁰³ In 2004, the annual number of Romanian residents doubled and reached around 300,000 by the end of 2005.

Exact figures are available only for 2006 and 2005. However they are indicative enough since during the past few years Romanians made up the third largest group of immigrants in Italy. Between 2003 and 2005, the number of new Member State nationals has also doubled (from 42,204 to 80,672 of which the number of Polish residents increased from 29,572 to 60,823¹⁰⁴). Data for 2006 shows that 120,000 Romanians were applying for work permits.¹⁰⁵

Other sources put the estimated number of Romanians residing and working in Italy at 800-900,000,¹⁰⁶ while non official statistics go even up to 1 million. Romanian associations say 1.5 million and the migrants themselves, say that they are “millions”.¹⁰⁷ Whatever estimates may suggest, facts, such as the 2002 regularization programme in Italy, when 21% of the successful applications were made by Romanian nationals, brings irrefutable evidence.¹⁰⁸ There are around 3 million immigrants in Italy, who make up for 8% of Italy’s labour force. Illegal labour accounts for 15.9% - 17.6% of the GDP of the country.¹⁰⁹ Migrants find employment mainly in the construction sector and agriculture and they go in particular to the North (59%), where the most jobs are available.

Migrant workers from Romania can earn between 800 – 1,400 euros a month in Italy of which they can send back home around 400 – 800 euros.¹¹⁰ An individual migrant’s remittances are still 2-4 times bigger than the wage he or she would earn at home (cc. 200 euros). It is easy to understand that the major pull factor for Romanians is the wage differential and the availability of work; however these obvious factors would not suffice in themselves because from a purely pragmatic approach the “richest” EU Member States should be targeted.

¹⁰³ Stan, p. 28. *Cfr. supra* 30.

¹⁰⁴ La popolazione straniera residente in Italia al 1 gennaio 2006. Istituto Nazionale di Statistica (17/10/2006)

¹⁰⁵ Caritas Italia. „Dicono da noi” (17/01/2007)

¹⁰⁶ Tibori Szabó Z. *Cfr. supra* note 40.

¹⁰⁷ quoted by: Bleahu, A.: Italy: Between informal and illegal, tolerated, but not legalized! In: Living abroad on a temporary basis. The economic migration of Romanians: 1990 - 2006. Open Society Foundation Bucharest, 2006. p. 82.

¹⁰⁸ Stan, p. 26. *Cfr. supra* 30.

¹⁰⁹ “Efforts to combat illegal work intensified” European Industrial Relations Observatory, Source: <http://eurofound.europa.eu/eiro/2006/12/articles/it0612029i.html>

¹¹⁰ Stan, p. 25. *Cfr. supra* 30.

The relative similarity of the Romanian and the Italian languages also acts in favour of migrants choose Italy. Migrants affirm that within three months they are able to speak Italian at an acceptable level.¹¹¹ Additionally, since irregular migration is tolerated by the Italian authorities,¹¹² Romanian migrant workers might be reluctant to change their destination in the future.¹¹³ According to researchers, one legal Romanian migrant might support four other illegal migrants, however “*illegal migration is just a stage in the migration process*” whereas “*migrants can shift their status entering in and out of irregularity.*”¹¹⁴ Before accession, there were different levels of illegality, i.e. overstaying the legal period or already lodging an application, but waiting for it to be issued etc. After accession and until the end of the transitional period there will be only one procedure i.e. the non-compliance with work permit requirement. This results from EU Directive 2004/38, which grants residence right on the territory of other Member States to all European citizens provided that they have sufficient financial means and comprehensive sickness insurance in one of the Member States.

Romanian migrants stay in Italy until economic necessity requires, though migrants tend to return to their homes and families regularly, which proves the circular nature of their migration experience. The phenomenon of “*international commuting*”, with an enormous potential for permanence thus appears.¹¹⁵

Romanian migrants are thus present since more than a decade in a significant number in Italy, without being subject to negative public opinion until recently. When police charged a Romanian man for the murder of a young Italian woman at the beginning of November 2007, violence rose against the migrant Romanian community. Some Romanians were beaten up by extremists and the Government adopted an emergency decree about the expulsion of non-nationals who impose a threat to public policy or public order. The decree entered into force a few days after the events and remained in application for one month. Nevertheless for non-conformity with community law, it was dropped and now a new decree is being prepared.

¹¹¹ Stan, p. 26. *Cfr. supra* 30.

¹¹² Bleahu, A.: Italy: Between informal and illegal, tolerated, but not legalized! In: Living abroad on a temporary basis. The economic migration of Romanians: 1990 - 2006. Open Society Foundation Bucharest, 2006., p. 82.

¹¹³ Ionita, S.: “Pre locuri, fiti gata...” 29/10/2006 Source: www.hotnews.ro

¹¹⁴ Stan, p. 25. *Cfr. supra* 30.

¹¹⁵ “Migrating or commuting? The case of Romanian workers in Italy: Niches for labour commuting to the EU.” Source: www.eumap.org/journal/features/2004/migration/pt1/commuting

Romanians feared mass expulsions, which has not taken place and under community law could under no circumstances take place, since Directive 2004/38 sets out clear guidelines. The expulsion measure has to be based on the personal conduct of the individual – whereas no previous criminal convictions might be taken into account. Authorities can only pursue individual prevention, but no general preventive aims, excluding the possibility of mass expulsions. Decisions need to be taken by the competent authority assuring the right to appeal, taking into account the individuals' integration into the host society and the length of his or her stay. The Charter of Fundamental Rights of the European Union, which should become legally binding if the Lisbon Treaty enters into force, also bans mass expulsions.

The problem that might arise in such cases is linked to the blurred interpretation of “public policy” or “public order” that might vary from one country to the other and despite the narrow interpretation given by the European Court of Justice, the definition of a European public policy is still open to interpretation. In the meantime, the only possible guarantee lies in the procedural safeguards i.e. that the individual needs to have the right to appeal against the decision on expulsion that was taken by a competent authority. The individual will have the right to take the case from the administrative body to a court in case the appeal did not lead to a favourable decision, even if the person was expelled in the meantime due to the non-suspensory nature of the appeal.

1.10. Luxembourg

The government chose to impose the same restrictions on the Bulgarian and Romanian workforce that were foreseen for EU8 in 2004 (a simplified procedure for granting work permits in the viticulture, agriculture, the catering sector and additionally the financial sector).¹¹⁶

The small country of Luxembourg that has a population of 277,700 has the highest share of employed foreigners in EU (42.3% or 129,800¹¹⁷) mainly from Portugal (67,800), France (22,900) and Italy (18,800). Statistics report the category of “other European countries”

¹¹⁶ Communiqué – Décision du gouvernement luxembourgeois concernant la libre circulation des travailleurs bulgares et roumains (22/12/2006)

¹¹⁷ Hönekopp, E. *Cfr. supra* note 1.

without specifying the origin of the foreign workers who, at the end of 2006 were 9,800.¹¹⁸ Luxembourg traditionally has a very important commuting workforce from the neighbouring countries, Bulgarian and Romanian nationals are not a significant part in the workforce.

1.11. The Netherlands

Workers from EU8 on the one hand and EU2 on the other are treated differently as regards access to the Dutch labour market. In relation to EU8 workers the Dutch government was gradually liberalising the restrictions and decided the opening of further sectors in which obtaining a work permit became faster and easier from January 2007. Transition is now completed with regard to EU8 workers. As of 1st May 2007 the government liberalised access to Dutch labour market for the workers concerned and thus applies European rules on free movement of workers. At the same time Bulgarian and Romanian citizens are subject to more stringent labour market measures. They must apply for a work permit and they must also satisfy the “labour market test” before being granted the authorisation.¹¹⁹

In the country where there are 3,170,406 people with a foreign background. Only 191,074 originate from EU countries¹²⁰ and even less from Bulgaria and Romania. During January – September 2007 5,600 Bulgarians and Romanians registered, which is higher, than the registrations in the same period in 2006 (around 1,000 registrations). However this figure is still extremely low especially if we take into account the total number of foreigners present in the country. Due to the significant proportion of foreigners on the Dutch labour market, the municipality of Nijmegen did a test with anonymous job applications, which revealed that foreign workers have a better chance of being called in for an interview if the application does not disclose their identity.¹²¹

¹¹⁸ Kollwelter, S.: Immigration in Luxembourg: New challenge for an old country. Source: <http://www.migrationinformation.org/Profiles/display.cfm?ID=587>

¹¹⁹ http://internationalezaken.szn.nl/index.cfm?fuseaction=dsp_document&link_id

¹²⁰ Central Bureau of Statistics, source: <http://statline.cbs.nl/StatWeb/table.asp?LYR=G2:0&LA=en&DM=SLEN&PA=03743eng&D1=a&D2=0-7,60&D4=0,4,9,1&HDR=G3,T&STB=G1>

¹²¹ Anonymous job application trial to be extended due to success. Source: www.eurofound.europa.eu/eiro/2007/04/articles/nl070469i.html

Romanian and Bulgarian nationals tend to concentrate in basically four major towns in the Netherlands. Migrants are usually male, aged between 20 and 40. As regards the return rate of migrant workers, data is only available about EU8 nationals, whereas the Dutch Statistical Office reports that one-fourth of the Polish workers returned.¹²²

1.12. Portugal

Requests for obtaining a “work visa” for Portugal need to be introduced at the consular service of Portugal in Romania in possession of a previously signed and registered work contract in the host country or a declaration by the future employer to engage the worker in question. The future migrant worker also has to produce a wide range of other documents (such as medical certificate, certificate of good morals translated and certified, attestation of professional qualifications and of experience). All documents need to be introduced in three copies and an additional sum of 106 USD (August 2007, around 70 euros) has to be paid. Requests are examined within 6 – 12 weeks. However failure to hand in any of the required documents results in the rejection of the application.¹²³

Regarding the situation of immigration in Portugal, one can draw similar conclusions to Italy. During the ‘60s and ‘70s the country had to face a strong emigration trend that later slowed down so, that today it is only of a temporary nature. Immigration from Eastern Europe started in the late ‘90s followed by a general, noticeable increase in 2001. Nowadays immigrants make up for 5-6% of the total labour force equalling around 416,000 persons.¹²⁴ As a general trend, Eastern Europeans generally find jobs that require lower skills, that their original qualification. This deskilling is seen as a loss in terms of possible economic gains.

Portugal held subsequent regularization campaigns (in 1992-1993, 1996 and 2001 and started one in August 2007) but the number of the undocumented migrants is estimated to be still

¹²² “Immigration from Eastern Europe invariably high” Source: www.cbs.nl/en-GB/memo/themas/dossiers/allochtonen/pubilcaties/artikelen/archief/2007/2007-2334-wm.htm

¹²³ Many thanks to Náguly Emőke for translating the relevant information from the web-site of the Embassy of Portugal in Romania. <http://www.embportugal.ro/en/visas/vizamunca.htm>

¹²⁴ Peixoto, J.: *Demography, labour force and migrations: trends, prospects and policy implications*. Presented in Budapest on 12th June 2007 at the international expert conference “European cooperation in labour migration: search for best practices”, in the framework of the EC AGRO project.

important, around 150,000.¹²⁵ The latest regularization programme has been suspended soon after it came into effect due to mass applications not only from Portuguese, but also from Spanish and Italian migrants. However, the new law foresees that only those that already have an employment contract and are enrolled in the social security system can be legalised.

1.13. Spain

Spain decided to restrict access to its labour market for workers from the newest Member States for the first phase of the transitional period. However the government will review the measures after one year and will assess whether the evolution of the situation on the labour market justifies further restrictions or not.¹²⁶ Two factors certainly contributed to the shaping of the national immigration policy: first, public opinion (52% of the Spanish consider immigration to be the most important problem of the country)¹²⁷ and second, the lasting history of Romanian immigration to Spain.

Out of the 3,740,956 foreigners residing in Spain, there are 505,670 Romanians who make up for the second largest foreign community (or 13.52% of the foreigners) after Moroccans. Bulgarians are much less present with 113,792 migrants, especially if we compare this figure to the total number of EU25 nationals residing in Spain which stood at 1,400,000 as of September 2007 and represented 37,3% of foreign residents in Spain.¹²⁸ Unofficial estimates put the number of Romanians – if irregular migrants are included – at 800,000.¹²⁹ Nevertheless 25% to 35% of the current foreign population is thought to be illegal in general.¹³⁰

Comparing data from 2006 with the above we find similar tendencies and an increase in figures (211,325 Romanians were residing in Spain by the end of 2006), while the increase in the proportion of Romanian nationals between 2005/2006 is smaller, only 10%, whereas for

¹²⁵ Lisbon stops legalisation of immigrants after avalanche of applications. Source: <http://euobserver.com/9/24668/?rk=1>

¹²⁶ “El Gobierno aprueba la duración del período transitorio de la libre circulación de trabajadores de Rumanía y Bulgaria” <http://www.ttas.es/periodico/immigracion/200612/INM20061222.htm>

¹²⁷ The total immigrant population in Spain is 18 million, SOPEMI 2006, p. 172 – quoted by Hárs, Á. – Sík, E. p. 8. *Cfr. supra* note 9.

¹²⁸ Boletín Estadístico de extranjería e inmigración. (09/2007)

¹²⁹ Romanian influx challenges Spain. Source: <http://news.bbc.co.uk/2/hi/europe/6098632>

¹³⁰ Spain: immigrants welcome. Source: www.businessweek.com/magazine/content/07_21/b4035088.htm (21/05/2007)

example the number of Polish nationals grew by almost 40% (from 34,600 in 2005 up to 48,031 in 2006).¹³¹ There are more Romanian men than women migrating (56% against 44% respectively) and their average age is only 31.¹³²

Those Romanians who work in Spain mainly come from the following Romanian regions: Moldva, Crisana, Maramures.¹³³ They are uniformly scattered through the country, with a more important concentration in Madrid and the outskirts. The Open Society Foundation (Romania) mentions the town of Colada having 70,000 inhabitants of which 13,000 are Romanians.¹³⁴ Informal and formal associations help the integration of Romanian migrants after their arrival. The “*Romanian church*” works on the same basis as the “*Polish church*” in the UK or Ireland, but in this case, Romanians gather around orthodox churches. They offer a place to meet each other, to exchange information on jobs and living conditions, to get practical advice on where and how to get accommodation and how to deal with administrative procedures.

Formal associations, such as FEDROM – which was put in place (and is financed) by Spanish authorities and regroups 14 associations helping the adaptation of Romanian migrant workers to Spanish working and living conditions – also exist since 2005.¹³⁵

The number of Bulgarians residing in Spain grew only by 6.38% in 2006 (from 56,329 to 60,174) compared to the previous year. More important is the presence of the British who make up almost 6% of the total foreign population and are 175,870 in Spain.¹³⁶ Besides EU2 workers, who mainly find employment in the construction and agriculture sector, 1300 self-employed are known to be also present. According to a labour migration agreement, which entered into force between Bulgaria and Spain in early 2005, permanent and seasonal workers from Bulgaria shall be given equal working conditions and social rights to their Spanish counterparts.¹³⁷

¹³¹ Anuario Estadístico de Inmigración 2006. Ministerio de Trabajo y Asuntos Sociales, Secretaria de Estado de Inmigración y Emigración. p. 1.

¹³² Anuario Estadístico de Inmigración 2006. Ministerio de Trabajo y Asuntos Sociales, Secretaria de Estado de Inmigración y Emigración. p. 29.

¹³³ Sandu, p. 16. *Cfr. supra* 30.

¹³⁴ Mihai, I. A., p. 72. *Cfr. supra* note 47.

¹³⁵ <http://fedrom-spain.blogspot.com/>

¹³⁶ Anuario Estadístico de Inmigración 2006. Ministerio de Trabajo y Asuntos Sociales, Secretaria de Estado de Inmigración y Emigración. p. 30.

¹³⁷ “New information centre for Bulgarians intending to work in Spain.” European Industrial Relations Observatory, Source: <http://eurofound.europa.eu/eiro/2006/12/articles/bg061219i.html>

1.14. Sweden

Sweden is known for its open door policy, having been the first country to fully liberalise access to its labour market, not restricting access to social benefits either. This policy is applied not only towards EU8 nationals, but with regard to Bulgarian and Romanian workers as well.

Immigration amounted for 43,433 persons during the first half of 2007 which was slightly less than the corresponding period in 2006. Poland and Denmark came second and the third most populous migrant groups respectively after Iraqis, while only 626 Bulgarian and 1,287 Romanians migrated in Sweden since their country joined the EU.¹³⁸ This evidence clearly confirms that the Swedish open-door policy was justified.

Data for 2006 show 96,000 entries in Sweden of which 6,300 were Polish citizens. Their number – even though it remained low – doubled if compared to 2005.¹³⁹ The largest single group of immigrants consisted of returning Swedish citizens who accounted for 16% of the total immigration.¹⁴⁰

1.15. The United Kingdom

The United Kingdom together with Ireland and Sweden was the first to grant Central- and Eastern European nationals free access to its labour market from the first day of accession on 1st May 2004. The expected impact was however underestimated and the real migratory flows were then grater. Therefore, the government adopted a new approach to intra-European migration as regards Bulgarian and Romanian workers: a quota of 19,750 was set for workers from the newly acceding States¹⁴¹ mainly for the unskilled in order to avoid a large inflow of migrants. Bulgarian and Romanian nationals must be in possession of an “*accession worker card*” if intending to take up employment in the UK. If found in breach of these rules, on the spot fines up to 100£ can be charged on the worker and up to 5,000£ on the employer.¹⁴²

¹³⁸ Press release from Statistics Sweden Nr 2007:201 (14/08/2007)

¹³⁹ Press release from Statistics Sweden Nr 2007:06 (07/03/2007)

¹⁴⁰ Press release from Statistics Sweden Nr 2007:035 (15/02/2007)

¹⁴¹ www.iom.bg/ukcampaign/101en.htm

¹⁴² Home Office: Living and working in the UK. Rights and Responsibilities of nationals from Bulgaria and Romania from 1st January 2007.

Bulgaria and Romania will be afforded gradual access to the country's labour market meaning that for the moment the number of lower skilled workers is limited by a quota in the United Kingdom i.e. the *Seasonal agricultural Workers Scheme* allows 16,250 EU2 workers while the *Sectors Based Scheme* – for the agricultural and food processing sector – only 3,500. Skilled workers are not submitted to a quota requirement but need to satisfy the criteria for obtaining a work permit. Bulgarian and Romanian nationals who wish to establish themselves as self-employed in the United Kingdom need to apply for a *registration certificate*.

Between May 2004 and December 2006, around 487,000 EU8 nationals entered the UK labour market.¹⁴³ At the same time, many have stressed the imprecision of the monitoring system; Martin Rush for example estimated that the real stock of EU8 migrant workers in the UK is 212,000 due to the fact that around two-thirds of the migrants already left the country.¹⁴⁴ Applications under the Workers Registration Scheme (foreseen for EU8 nationals) decreased during the first quarter of the year if compared to the fourth quarter of 2006 (49,000 against 65,000 respectively) of which there were 33,110 re-registrations and multiple re-registrations. Polish citizens still make up for the largest group of applications (33,440 during the first quarter of 2007 or 65% of all applications) but their number is decreasing in line with the number of other EU8 applicants.¹⁴⁵ Migrant workers are predominantly young (83% are between 18 – 34 years old), working in administration, business and management (37%), hospitality and catering (20%) and agriculture (10%) – basically in sectors “where the work is” and 97% of the applicants work full time.¹⁴⁶ The presence of EU8 workers supports the provision of public services for example as care workers (5,700), teachers (700) or doctors (1,000) and in total 21,000 are working in the NHS and other healthcare fields.¹⁴⁷

From a purely economic point of view, migration from the eight CEECs contributed in a complementary way to the performance of the UK labour market and with 0.5% and 1% to the economic growth of the country in 2005 and in 2006 respectively. The foreign workforce had a vital role to play in the construction sector (around 100,000 migrant workers found

¹⁴³ For a fuller account of the rules governing the free movement of EU8 workers and their registration requirement as well as the migratory flows see Traser, *cf. supra* note 59.

¹⁴⁴ Drew Ch., Sriskandarajah, D.: “EU enlargement in 2007: No warm welcome for labour migrants”
Source: www.migrationinformation.org/Feature/display.cfm?id=568

¹⁴⁵ Accession Monitoring Report A8 countries May 2004 – March 2007. Home Office 2007. p. 9.

¹⁴⁶ Accession Monitoring Report A8 countries May 2004 – March 2007. Home Office 2007 p. 1

¹⁴⁷ The case for free movement in Europe. Business for Europe briefing (26/09/2006)

employment there) and in farming (70,000 EU8 migrants).¹⁴⁸ Public opinion was not convinced of the appropriateness of the liberal approach the government took vis-à-vis the “new Europeans” and concerns about not letting the same happen in relation to Bulgaria and Romania arose.

A full-scale debate through the media occurred in summer 2006 when it was reported that the UK had received over 1 million citizens from the new member States since the 2004 enlargement. Strains on local services were reported in some localities. A Polish NGO – the Barka Foundation – started an operation to help migrants on the street with the support of the London borough authorities. There was sympathy for migrants with reports on how some had been exploited in conditions of virtual bonded labour, and at the same time calls to limit the number of new arrivals.

Bulgarian and Romanian accession statistics published by the Home Office in early 2007¹⁴⁹ reveal that during the first three months following accession, only 9,305 applications were made by Bulgarian and Romanian citizens for registration certificates of which 7,120 were approved while out of 1,115 applications for accession worker cards 815 were approved (290 for Bulgarians and 525 for Romanians) during the first three months of the year. Prior to enlargement government estimates put the number of Romanian and Bulgarian workers to be expected in the UK after 1st January 2007 at 41,000 and 15,000 respectively.¹⁵⁰

Between April and June 2007 only 9,565 people from Bulgaria and Romania applied to come to the UK of which 9,335 application were granted. 3,990 were granted access to work – being 21% lower than in the first quarter of the year – with an additional 3,980 who were issued with cards for the Seasonal Agricultural Workers Scheme.¹⁵¹ Latest statistics on the third quarter of 2007 show very marginal numbers, such as 1,385 applications for accession worker card by Romanians and Bulgarians, of which 1,010 were approved.¹⁵²

Migrant EU2 workers mainly found employment in the entertainment and leisure services (28%), hospitality and catering (15%), health and medical services (15%). During the said period 4.500 applications were made for National Insurance Numbers (including those present

¹⁴⁸ Grice, B., Brown J., at: www.focus-fen.net/?id=l8104

¹⁴⁹ Bulgarian and Romanian Accession statistics January – March 2007. Home Office 2007.

¹⁵⁰ EU enlargement: Bulgaria and Romania – Migration implications for the UK. IPPR Factfile, 2006. p.

32.

¹⁵¹ Bulgarian and Romanian Accession statistics April – June 2007. Home Office 2007.

¹⁵² Bulgarian and Romanian Accession Statistics, July – September. Home Office 2007.

in the UK prior to accession) of which only 44 or 1% was made for benefit purposes. The majority of the migrants are of age 25-34 (50%) and migrants between 18 – 44 year old amount to 85% of the applicants.

Accession statistics show a low interest of EU2 nationals to work in the UK. The fact that only salaried work is governed by transitional arrangements does not lead masses of Bulgarians and Romanians coming into the country under self-employed status, where there are no restrictions. During the third quarter of 2007 930 Bulgarians and 2,705 Romanians received their registration certificates for pursuing self-employed activity, the number of rejected applications being marginal. However, the debate over the figures is in a way misleading since reference is made only to the number of registrations – even though all Accession Monitoring Report make clear that the data refers to “a record of numbers of applications and not necessarily people”.¹⁵³

By comparison: in total, there are 1.57 million UK citizens living in other EU countries.¹⁵⁴

2. EU10 – selected countries

Member States that joined the EU in 2004 had to face the same questions in 2007 with regard to Bulgaria and Romania as the EU15 did back in 2004 concerning EU10 workers. Then, the decision taken (no full application of the “*acquis*” in the field of free movement of workers by most of the EU15) was disappointing even if the EU10 decided to liberalise labour migration between themselves and most of them did not intend to impose reciprocal measures on workers from EU15 countries either.

Positions changed in 2007. Malta restricts access of Bulgarian and Romanian workers due to the small size of its labour market and the structure of its workforce. Hungary remains the other exception amongst EU10 having opted for the imposition of partial restrictions on access to its labour market.

¹⁵³ for ex. Bulgarian and Romanian Accession statistics January – March 2007. Home Office 2007 p. 17
¹⁵⁴ The case for free movement in Europe. Business for Europe briefing (26/09/2006)

Cyprus

Cyprus enjoys almost full employment, whereas apart from its own nationals there are about 5,000 Bulgarians and Romanians working on the island with a further 10,000 other Member State nationals and around 37,000 third country nationals mainly from Asia.¹⁵⁵ Trade unions fear that the opening of the labour market to EU2 will result in job losses, however so far it seems that the labour market is able to absorb the foreign workforce.

Czech Republic

Together with Slovenia, the Czech Republic has the highest incomes amongst new Member States with 73% and 82% of the average EU GDP respectively, or to put it differently, their income level is similar to that of the countries with the lowest GDP per capita in the EU15.¹⁵⁶ The Czech Republic reported a record-breaking drop of unemployment in May 2007 to 6.1% and employment reached the highest level since the end of the '90s.

According to the Central Statistical Office, the largest groups of foreign residents in 2006 were Ukrainians followed by 58,384 Slovaks, Vietnamese and 18,894 Poles; however if we add to these figures the number of commuters as well, we find that 99,637 Slovaks were employed in the Czech Republic during the past year. These facts point out the non-negligible phenomenon of an important intra-EU8 migration and the correlation between a well-performing economy and the probability of labour migration. Besides the above, there were only 4,642 Bulgarians employed in the Czech Republic and 2,808 Romanians who have already taken up permanent or long-term residence in the country by the end of 2006.¹⁵⁷

In order to overcome the present labour shortage and to get prepared for the future, the Czech Ministry of Labour and Social Affairs started a pilot project on "*Selection of Qualified Foreign Workers*" in 2003 which allows participants from selected countries (for example: Bulgaria, Croatia, Kazakhstan, Belarus, Canada, Moldova, Ukraine, Serbia etc.) to obtain a

¹⁵⁵ "Cyprus unions fear influx of Bulgarian, Romanian workers" Source: www.eubusiness.com/news_live/1167746402.08

¹⁵⁶ Effect of EU enlargement on growth and employment in Germany and in selected EU Member States. Experiences to date and future developments taking into particular consideration the EU accession of Bulgaria and Romania. Project 33/5, Bundesministerium für Wirtschaft und Technologie (01/07/2007)

¹⁵⁷ Number of foreigners in the Czech Republic. www.czso.cz/csu/cizinci.nsf/engkapitola/ciz_pocet_cizincu See also: Labour market opened for Bulgarian and Romanian workers. Source: www.eurofound.europa.eu/eiro/2006/12/articles/cz0612029i.html

permanent residence permit after two and a half years instead of the normal period of five years.¹⁵⁸

Hungary

The work permit system currently applied in Hungary is more favourable to Bulgarian and Romanian workers than it was prior to accession, since the Government decided to partially open 219 sectors¹⁵⁹ that were defined on the basis of labour market analysis and corresponding economic needs. In these listed sectors Romanian nationals need to apply for a work permit, but these permits are granted without the examination of the situation of the labour market. Seasonal employment agreements that entered into force between Romania and Hungary on 1st January 2002 remain in force and thus allow for 8,000 seasonal workers per year. Similarly, the previously agreed arrangements for trainees continue to be applicable (they concern 700 trainees/year).¹⁶⁰

The largest group of foreigners employed in Hungary traditionally consists of Romanian nationals who are overwhelmingly ethnic Hungarians from Transylvania. On 30 June 2007 there were 22,226 Romanian nationals employed in the country equalling 42.3% of the total foreign worker population of which 3,558 were granted work permits in the liberalised sectors. For comparison, during the first half of the year, 17,067 Slovak workers registered in Hungary.¹⁶¹

A study¹⁶² commissioned by the Hungarian Ministry of Labour and Social Affairs concluded that if the labour market was to be totally opened to Bulgarian and Romanian nationals, the labour force participation would increase by 1% – 3% as a result of accession. An increase of

¹⁵⁸ Government to grant residence permits to selected foreign workers. Source: www.eurofound.europa.eu/eiro/2007/02/articles/cz0702069i.html

¹⁵⁹ The sectors opened concern the following type of occupations: engineering and natural sciences, health care, social care, qualified educators, economy, law and social sciences, administrators technicians, justice, life and property protection, customer service occupations, food industry, light industry, iron and metal industry, construction industry, operators of machines in processing industry. The complete list can be downloaded in English from the following web-site: www.szmm.gov.hu/main.php?folderID=13419&articleID=31249&ctag=articlelist&iid=1

¹⁶⁰ „Hogyan vállalhatnak munkát Magyarországon a román és bolgár állampolgárok?” Hungarian Ministry of Labour and Social Affairs, www.szmm.gov.hu/main.php?folderID=13419&articleID=31250&ctag=articlelist&id=1

¹⁶¹ Külföldi Munkavállalók Magyarországon – általános tudnivalók. Állami Foglalkoztatási Szolgálat (07/2007)

¹⁶² Hárs, Á. – Sík, E. *Cfr. supra* note 9.

1% might be expected if Romania is examined as a whole (since the overall migration is expected to be insignificant) and 5% if migration from Transylvania is examined separately given the fact that Transylvania is home to 1.6 million ethnic Hungarians. In any case, inward labour migration would not represent a drastic change on the labour market, since the composition, the volume and the direction of migration from Transylvania was already fairly constant during the past years.

Other arguments in favour of a liberal approach to economic migration would have been that wages in the construction sector or the heavy metal industry are higher in Romania than in Hungary. Except for the food processing industry, where the trend is reversed.

Conclusions and recommendations

This report has demonstrated that there is no need to fear the latest EU enlargement and that restrictions occurred "after the horse has bolted." Any expected influx of Romanian and Bulgarian job seekers simply did not occur with numbers on the whole suggesting a better spread of mobility generally, stabilising or even going down.

In its two reports on free movement of workers in EU25¹⁶³ ECAS already urged the lifting up of the transitional measures due to their discriminatory nature and to the fact that restrictions are rather used as political tools and have little economic justification. Member states maintaining restrictions may lose out on the benefits to their economy, particularly of skilled workers. Restrictive national rules on the free movement of workers lead to the fragmentation of the European idea of maintaining differential treatment on grounds of nationality.

When assessing the experience of the latest enlargement, it should be pointed out that both countries, but especially Romania has a significant migration history. The media or political discourse should not create therefore an artificial tension or cleavage between past and present migration. Bulgarian and Romanian migrants were present especially in the mediterranean countries before accession, a tendency which remained basically unchanged after January 2007. Destination countries remain attractive for economic, cultural, linguistic and historical reasons (including migration history), whereas other European Union member states, regardless of whether they opened or closed their labour market do not seem to be subject to major migration.

In contrast to the May 2004 enlargement, the accession of Romania and Bulgaria has not received much attention (except for scandals). There is little attention paid to how migrants live the migration experience, or to explore the background of their motives, such as emotional (helping other family members), professional or simply economic.

There are fewer economic reports, this one being the exception. To encourage more debate, the Commission report on the future of the transitional arrangements for Bulgaria and Romania should be published as early as possible in 2008.

¹⁶³ Traser, J.: "Who is afraid of EU enlargement?" European Citizen Action Service, Brussels 2005 and Traser, *cf. supra* note 60.

There is need for studies and reports that go beyond national borders, which should examine the phenomenon of intra-community migration from a comparative, European point of view. This should contribute on the one hand to overcoming the myths and fears related to migration and on the other hand to giving a reliable basis to the shaping of national policies on further application or not of transitional arrangements.

It is true, that accession treaties of the Central- and Eastern European countries authorise Member States to maintain the application of national rules instead of Community ones. Thus, restrictions are correct from a legal point of view. However they still contradict the spirit of the founding Treaties and especially articles 12 and 18 on non-discrimination on grounds of nationality and the establishment of a European citizenship for all nationals of the Member States.

There is differentiation between EU15 and EU8+EU2 nationals if wishing to take up employment in an EU Member State. There is differentiation between EU8 nationals on the one hand and EU2 on the other – depending on the date of accession of their countries. The most striking example is in the UK or in Ireland, where EU8 nationals are free to engage in a salaried activity, while their Bulgarian or Romanian counterparts are subject to a quota system and work permit requirements. There is also differentiation between EU8 and Cypriot and Maltese nationals, the latter being granted immediate access to EU25+ EU2 labour market.

Countries that chose a “coherent approach” to labour migration (for example Belgium and France) and seem not to discriminate (at least not between “new entrants” themselves) might also be caught in a trap: if in the ideal case, transitional arrangements cease to apply at the end of the first two years (from 1st January 2009 onwards) in relation to Bulgaria and Romania; EU8 workers will still remain subject to work authorization until 30th April 2009. Thus, a reversed situation could occur for four months when EU8 workers would find themselves in a more restrictive situation than Bulgarians or Romanians. Finally, family members might also find themselves in a more favourable situation than the worker as they can enter the labour market of a “restricted access” country freely from the third year after enlargement (in case of legal residence with the worker).

Recommendations

- *The existence of such contradictions and anomalies is one argument for an immediate consolidation of the situation of workers from the new Member States and an end to transitional arrangements.* The experience of May 2004 – May 2006 showed that migrant workers remain on a labour market only if there are jobs available. Migrant workers from Central- and Eastern Europe did not seek social assistance and benefits in a larger proportion than nationals, while they helped to alleviate skills shortages (see especially the United Kingdom, France and Germany) and contributed to the economic growth and productivity of the host societies.
- 2007 has been designated by the Commission “*European Year of Equal opportunities for all*” intending to draw attention to possible discriminations based on race, ethnic origin, age, sex, handicap etc. when applying for work or using public services for example. Can differentiation based on nationality when applying for work in an EU Member State fit in the above framework? Is discrimination on the basis of nationality compatible with other years, such as that of free movement of workers (2006) and intercultural dialogue (2008)?
- ECAS recommends that Member States harmonise their national regimes as regards Bulgarian/Romanian workers and EU8 workers in order to avoid discrepancies and serious distortion of the image of “Europe”. Governments and EU Institutions should pay more attention to European citizenship and the way this concept is being developed in landmark judgements by the European Court of Justice, making free movement a fundamental right of citizenship.
- Instead of transitional arrangements Member States could require a permit but only as a declaration for monitoring purposes. This would be a rational and reliable way of keeping a track of migrant workers without limiting their freedom to take up employment and to earn their living. *Hence, estimates would not risk becoming guesses which may discredit them in the eyes of public opinion.*
- Information on how to comply with different national regimes should be made available in a simple and easy way – both for workers and for employers. Furthermore, governments which have not already done so should communicate their position and legal

requirements via their EURES service to the central EURES database and make it available on-line assuring a greater possibility of compliance.

- Further work should be done on the notion of the one-stop shop for information, advice and problem solving, but this requires strong partnerships and less scattered responsibilities for free movement of persons at European level. The European Year of workers mobility showed the potential of linking one-stop shops across border to improve pre-departure advice, integration in the host country and preparation for return, since much EU mobility is circular and temporary.
- During the year of workers mobility, pilot projects helped identify ways local authorities, employers, trade unions and NGOs in particular could work together and be more proactive. The problems with the retention of passports in Romania, the threats of mass expulsions from Italy, the children left behind in Moldova – should never have occurred in the first place and are the unacceptable face of migration. To prevent them however would require more than pilot projects. With its cohesion funds and neighbourhood instruments the EU does have resources, more of which could be directed to managing migration.
- With regard to the legal and the factual framework of intra-community labour migration, the practical issues and obstacles of migration should be discovered and addressed, such as administrative practices, the lack of information, misleading legal terminologies or other irregularities. The Commission should strengthen its own role as guardian of the Treaties, and set targets for itself and member states to respond to complaints and solve problems within weeks, not months. Intensified labour inspections by member states should assure that the most vulnerable migrants (for reasons of lack of sufficient financial resources or proper documentation) are not exploited and that proper social and collective protection is granted.
- Intra-european *migration* and *immigration* from third countries should not be used as interchangeable terms, since the first refers to a right European citizens are encouraged to use. Whilst keeping the legal distinction clear, further economic research is necessary covering both intra-EU migration and external immigration. The extension of the Schengen free travel zone now to 24 countries, suggests that more attention should be paid both to internal free movement and to mobility across external borders of the EU with neighbouring countries.

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