EUROPEAN COMMISSION
EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES DG

Social protection and social integration
Free movement of workers and co-ordination of social security schemes

THE TRANSITIONAL ARRANGEMENTS FOR THE FREE MOVEMENT OF WORKERS FROM THE NEW MEMBER STATES FOLLOWING ENLARGEMENT OF THE EUROPEAN UNION ON 1 MAY 2004

1. Introduction

The transitional arrangements agreed between the 15 old Member States and the former candidate countries now form part of the Accession Treaty, and will be of great significance to the eight new Member States to whom they primarily apply (Czech Republic, Poland, Latvia, Slovakia, Estonia, Lithuania, Slovenia and Hungary). These arrangements are complex, but comparable to those agreed at the time of the accession of Spain and Portugal to the European Community. At that time, a discussion in the Technical Committee took place to ensure that the transitional arrangements were correctly understood by all Member States, and applied in the same way. The Commission considers that an equivalent exercise would be of even greater value for this enlargement.

2. Transitional Arrangements

The basic structure of the transitional arrangements is as follows:

- old Member States will apply national measures for 2 years following accession; old Member States may decide to liberalise access to their labour markets following accession

- first review by the Council on the basis of a Commission report before the expiration of the 2 year period following accession

- old Member States must then *notify* Commission whether they will lift the transitional arrangements and apply Community law, or whether they will continue with the transitional arrangements for a further 3 years

- one further review if requested by the new Member State

- in principle old Member States should fully apply Community law after 5 years following accession

- however, if there are serious disturbances (or a threat thereof) of the labour markets, they may prolong national measures for a further two years after notifying the Commission

- possibility for old Member States which have lifted the transitional arrangements to invoke a safeguard clause allowing for the application of restrictions if there are serious disturbances (or threat thereof) of the labour market

- during the period when they apply the transitional arrangements Austria and Germany are allowed to limit the temporary employment of workers in the context of cross-border supply of services in certain sensitive sectors (e.g. construction, industrial cleaning) if there is a serious disturbance or threat thereof in the sectors concerned

- possibility for reciprocal restrictions between a new Member State and any old Member States that maintain restrictions vis à vis that new Member State

- as long as one old Member State retains transitional measures in relation to one new Member State, the new Member States may have recourse to a safeguard clause as between themselves if there are serious disturbances (or the threat thereof) on the labour market due to workers from another new Member State

- no transitional arrangements apply to Cyprus and Malta, except for the possibility for Malta to invoke a safeguard clause (and thus re-impose restrictions) if it experiences serious disturbances on its labour market (or if it is foreseeable that it will experience such disturbances)

These transitional arrangements do not apply to people from the new Member States who are legally working in an old Member State at the date of accession or following accession and have been admitted to the labour market of that Member State for an uninterrupted period of 12 months or longer. They will have free access to the labour market of *that* Member State. Family members of a worker from a new Member State who has been legally admitted to the labour market of an old Member State for 12 months or more, and are legally resident with the worker in the territory of a Member State at the date of accession, will also have access to the labour market of *that* Member State. If the family joins the worker after the date of accession, they will have access to the labour market of that state once they have been resident for 18 months or from the third year after accession, whichever is earlier. "Family members" means the spouse of the worker and their children under the age of 21 or who are dependants.

There are no transitional arrangements in respect of rights of residence of groups other than workers (tourists, students, pensioners etc), nor in respect of the Community provisions on the co-ordination of social security schemes and articles other than articles 1-6 and 11 of Regulation 1612/68 on the freedom of movement for workers.

3. Sensitive issues

Although the basic structure of the transitional arrangements may seem relatively straightforward, discussions with some Member States as well as enquiries from citizens have allowed the Commission to identify areas which are politically sensitive, legally unclear or controversial. It is in these areas that the Commission considers that

the opinion of the Technical Committee will be most useful, to ensure that problems are dealt with uniformly in all the Member States. It is the duty of all the Member States to correctly apply the provisions of the accession Treaty in compliance with Community law.

i) the first two years following Accession

It is clear that Community law on the free movement of workers *cannot* apply during this period. An old Member State may liberalise access to its labour market entirely, but this must be under *national* law. Thus, even if two neighbouring Member States have completely opened their labour markets, a worker from a new Member State will have to complete the formalities required under national law to move from one of these Member States to the other.

ii) Standstill clause (paragraph 14)

If an old Member State controls access to its labour market under national law during the transitional period, nationals of the new Member States must not face greater restrictions than those which applied at the date of signature of the accession Treaty – *16 April 2003*. This applies to access granted under national law or bilateral agreements.

iii) Work permits (paragraph 6)

If an old Member State is applying full free movement of workers under Community law, it may issue work permits to nationals from the new Member States for monitoring purposes for up to seven years following the date of accession. However, these work permits *must* be issued *automatically*, and are not a pre-condition for access to the labour market. The automatic issuing of work permits allows the old Member States to keep statistics on the number of workers from the new Member States, which may be important in relation to the standard of proof required were the safeguard clause ever to be invoked. It is not obligatory to adopt a work permit system. Member States that wish to do so will have to ensure the correct *administrative structures* and *documentation*, as a "monitoring" work permit scheme may not fit easily with existing work permit or labour market access schemes.

iv) safeguard clause (paragraph 7)

If an old Member State stops using national law measures and moves to free movement of workers under Community law, there is a possibility to re-impose restrictions if there are serious disturbances on the labour market, or the threat thereof. These "safeguard" clauses have always featured in accession Treaties, but have never been invoked. Therefore the Commission has no practical experience in their operation. However, it is clear that the Commission would expect a Member State to put forward convincing proof of a high level of disturbance on the labour market, in order to justify seeking to re-impose a restriction on free movement of workers, one of the four fundamental freedoms under the EC Treaty. This same comment will apply to the use of the safeguard clause as between the new Member States (under paragraph 11).

v) re-imposition of restrictions during the first two years?

If an old Member State liberalises access to its labour market under national law during this period, there is nothing in the Treaty text on whether it can, or cannot, impose restrictions if it undergoes disturbances on the labour market. What is certain

is that it cannot restrict access to its labour market to a greater extent than that which applied at the time of signature of the Treaty, in application of the standstill clause.

vi) can a new Member State impose restrictions on workers from an old Member State? (paragraph 10)

If an old Member State applies national law, or bilateral agreements, to control access to its labour market of workers from a new Member State, then that new Member State may impose equivalent restrictions on workers from that old Member State. Clearly the new Member State can only *react* to the decision of the old Member State, and this makes it *essential* that the old Member States inform the new Member States and the Commission, of their intentions regarding their use of the transitional arrangements from the date of accession.