
Finland’s responses to the questions posed in the Green Paper

General

When a proposal for the Work Permit Directive was discussed in 2001, Finland shared the reservations expressed by many other Member States about the possible transfer of labour market policy discretion based on the needs of national and local labour markets to the Community level, the bureaucratic nature of the regulatory framework and the problems related to the legal basis. Finland still considers the EU regulatory policy to be inappropriate if it has a stiffening effect on the labour market. In Finland’s opinion, labour policy decisions on third-country workforce, both in terms of volumes and structure, must continue to be made at the national level. Despite the globalisation of trade and industry, the labour market and workforce needs will continue to be national and local in the future, as well. Flexible national regulation is also required due to Finland’s slightly remote geographical location in terms of international workforce flows.

However, Finland believes that some kind of a common framework may be necessary, as long as it is sufficiently flexible and does not prevent national decision-making power from being used. A common framework may be needed for the reasons presented by the Commission in the Green Paper. The regulatory framework must, however, be sufficiently flexible and must allow national decision-making.

Responses to the questions

The following is a description of Finland’s positions on the 38 questions posed by the Commission. The questions are numbered for ease of reference (bulleted in the Green Paper).

1) To what extent should a European policy on labour migration be developed and what should be the level of Community intervention on this issue?

Finland considers the EU regulatory policy to be inappropriate if it has a stiffening effect on the labour market. In Finland’s opinion, decision-making power concerning third-country workforce must be retained at the national level. Despite the globalisation of trade and industry, the labour market and workforce needs will continue to be national and local in the future, as well. Flexible national regulation is also required due to Finland’s slightly remote geographical location in terms of international workforce flows. Some kind of a common framework may be necessary, however, as long as it is sufficiently flexible and does not prevent national decision-making power from being used. A common framework may be necessary, for example, since third-country nationals admitted to the territory of one Member State
also have the right to move in the territories of other Member States on the basis of the Schengen regulations.

2) Should a European migration law aim at providing a comprehensive legal framework covering almost any third-country national coming to the EU or should it focus on specific groups of immigrants?

3) Should a sectoral legislative approach be chosen? Which groups of migrants should be addressed as a priority and why?

4) Do you consider that other approaches – such as a European fast-track procedure – should be explored? Could you propose other options?

Finland supports a horizontal approach to the development of a common immigration policy framework at the EU level. A horizontal approach makes harmonised and clear regulation possible. The disadvantage of a sectoral approach is that it would be difficult to avoid complicated, patchwork-like policy that would include a lot of grey areas and would marginalise certain groups of people. A comprehensive legal framework must, however, be sufficiently flexible and must allow national decision-making.

5) How can we ensure that the principle of “Community preference” is applied in an effective way?

6) Is the existing definition of Community preference still relevant? If not, how should it be changed?

7) To which other economic migrants (apart from intra-corporate transferees of key personnel) might the logic of Community preference not apply?

Finland believes that the definition and principle of Community preference are basically still relevant. It should be noted, however, that different Member States are in a different position in relation to the principle of Community preference, as workforce actually moves between only a few of the Member States. Finland is located slightly at a distance from the biggest workforce flows. In addition, the national immigration regulations of different Member States include several exemptions from the principle of Community preference. In different Member States, this principle protects jobseekers in the labour market only if the jobs that they are seeking are not subject to various special procedures based on special national needs. In practice, the principle of Community preference is limited by various work permit exemptions and special schemes concerning green cards, seasonal work and highly skilled workers. The opportunity to apply such special procedures based on national needs must be retained in the future, as well.

8) Apart from long-term residents, which categories of third-country nationals – if any – should be given preference over newly arriving third-country workers?

In addition to third-country nationals who are long-term residents, other groups of third-country nationals prioritised to access the labour market are also matters of Finland’s national discretion. The Finnish Aliens Act lays down provisions on several
groups exempted from the requirement according to which foreign employees must have a residence permit. In Finland’s opinion, the opportunity to have national discretion should also be retained in the future.

9) Should a priority right – subject to precise conditions – be granted to third-country nationals who have temporarily left the EU after having worked there for a given period?

Finland is of the opinion that third-country nationals who have temporarily left the EU labour market must have secured access back to the labour market. The opportunity of third-country workers to move between the country of origin and the country in which they work not only encourages “brain circulation”, but also promotes efforts to avoid the adverse effects that their migration to the EU may have on the countries of origin.

10) Would facilitating mobility of third-country workers from one Member State to another be beneficial for the EU economy and national labour markets? How could this be put in practice in an effective way? With which limitations/facilitations?

Third-country nationals who are long-term residents have the right to move from one Member State to another in accordance with Directive 2003/109/EC. In Finland’s opinion, the extension of this right is a matter of great fundamental importance, the effects of which should be examined in detail. The facilitation of the mobility of third-country workforce in the internal market area is in line with the objective to increase the mobility of workforce in the internal market in general. The free mobility of workers would help increase the dynamics of the national labour markets.

On the other hand, the opportunity of third-country workforce to move from one Member State to another is linked to the question of national discretion on work permits. The more extensively the conditions of entry of third-country workforce are determined on the basis of national and local labour market needs, the more inappropriate the overall opportunity of workers to move from one Member State to another is.

11) How can the European Public Employment Services (PES) and the EURES Job Mobility Portal contribute to facilitate labour migration of third-country workers?

The utilisation rate of the EURES system is currently small both among employers and among jobseekers moving in the internal market. This is partly due to the nature of workforce mobility and the fact that EURES is still poorly known. Finland considers it imperative that the European Public Employment Services and the EURES system continue to be developed. The jobseeker register of the EURES system could be extended to jobseekers coming from third countries. Third-country nationals seeking jobs in the Community territory need information not only on vacancies but also on national admission regulations, permit procedures, the conditions of pay and employment and, in general, national labour market rules. In addition, co-operation between the EU and third countries could be developed in order to improve the preconditions of workforce mobility.
12) Should the admission of third-country nationals to the EU labour market only be conditional on a concrete job vacancy or should there also be the possibility for Member States to admit third-country nationals without such a condition?

In Finland’s opinion, Community-level regulation should not prevent the possibility of making decisions at the national level to admit workforce without a job requirement. The need for such special procedures, if any, is determined in co-operation with the labour market organisations in Finland. This question covers the same theme as question 21 and is related to Finland’s views, presented in the responses to questions 5–9 above, on the importance of Community preference and the need for special national procedures.

13) What procedure should apply to economic migrants who do not enter the labour market?

In Finland’s opinion, the procedures applied to posted employees, intra-corporate transferees and other corresponding groups should, for reasons of uniformity and clarity and as applicable, be the same as those generally applied in the Member State in question. International regulations that bind the different Member States lay down provisions on several of the groups covered in the question, e.g., posted employees and employees transferred within service companies. Insofar as there is freedom of action, national decision-making should not be prevented in this matter either. This question relates to question 23.

14) Do you consider that the economic needs test is a viable system? Should it be applied in a flexible way, taking into account, for instance, regional and sectoral characteristics or the size of the company concerned?

For those groups not subject to national special procedures, Finland believes the economic needs test (in Finland, workforce availability test) to be a viable system. It must be possible to determine the content of economic needs tests from the national perspective in the future, as well.

15) Should there be a minimum time period during which a job vacancy must be published before a third-country applicant can be considered for the post?

Finland considers that such a procedure could be viably applied to certain posts in addition to other methods. However, “sufficient publicity” should be used as the absolute value instead of “a minimum time period” in order to retain the flexibility of the procedure. Sufficient publicity could be achieved not only by determining the minimum time period during which a vacancy is published, but also by disseminating information on the vacancy as extensively as possible. The procedure should not slow down or complicate the processing of permit applications in other respects either, nor should the procedure be obligatory.

16) In what other way could it be effectively proved that there is a need for a third-country worker?

In Finland’s opinion, it is possible, and often appropriate, to examine labour market needs in different sectors and regions, e.g., by means of labour market analyses and
forecasts that are carried out at the national, regional or local level, as well. Depending on the sector or region, only these types of examinations can prove that there are problems in workforce availability that can be used to justify the admission of third-country workforce on a case-by-case basis.

17) Should the economic needs test be repeated after the expiry of the work permit, if the work contract – by means of which the third-country worker has been admitted – has been/will be renewed?

Finland is of the opinion that the economic needs test should only be applied in cases where the work contract that is to be renewed does not concern the same sector in which the worker was employed when the previous permit was valid. If the work contract is renewed for the same sector, it is inappropriate to apply the economic needs test, with the exception of special cases, if any.

18) What alternative optional systems could be envisaged?

19) Could a selection system work as a possible general rule at the EU level for the admission of economic migrants to the labour market? What should be the relevant criteria?

Finland refers to the responses given to questions 1–4 above.

20) How could employers be provided with comprehensive access to the CVs of applicants in the whole EU? How should EURES be enhanced in this context?

Finland refers to the response given to question 11 above.

21) Should the possibility to grant a “job seeker permit” be foreseen?

Finland refers to the responses given to questions 5–9 and 12 above.

22) Should the EU have common rules for the admission of self-employed third-country nationals? If yes, under which conditions?

Finland believes that the decision-making power pertaining to the conditions of admission of self-employed people should mainly remain at the national level for the same reasons as for employees, for which reason Finland refers to the responses given to questions 1–4 above.

23) Should more flexible procedures be possible for self-employed persons who wish to enter the EU for less than one year to fulfil a specific contract with an EU client? If so, which?

Finland refers to the response given to question 13 above.

24) Should there be a combined “work-residence permit” at the EU level? What are its advantages/disadvantages?
25) Or should a single application (for both work and residence permits) be proposed?

26) Could you propose other options?

Finland considers the creation and maintenance of a clear, simple, consistent and fast application procedure to be of the utmost importance. The permit and the permit procedure must fulfil this requirement in terms of technical arrangements and administration.

27) Should there be limitations to the mobility of third-country workers inside the labour market of the Member State of residence? If so, which (employer, sector, region, etc.), under what circumstances and for how long?

In Finland’s opinion, the mobility of third-country workers in the national labour market should only be limited if deemed necessary from the perspective of national or local labour market needs. The labour market supervision of workforce coming from third countries to Finland requires, however, that permits be restricted, for example, to one or more sectors. This question may also concern the way in which terms of employment are supervised at the national level, as well as national legislation concerning the limitations to people’s mobility in general. The linking of the period of validity of work permits to specific employers is poorly applicable to the Finnish system in which the terms of employment are supervised at the customers’ initiative, whereas the linking of the period of validity of work permits to specific geographical regions is incompatible with the citizens’ right to choose their place of residence, which is guaranteed by the Finnish constitution.

28) Who should be the holder of the permit? The employer, the employee, or should it be held jointly?

Finland believes that the permit can only be held by a foreigner as the permit providing the right to admission and employment is most essentially related to the legal status of the foreigner.

29) What specific rights should be granted to third-country nationals working temporarily in the EU?

30) Should the enjoyment of certain rights be conditioned to a minimum stay? If so, which rights and for how long?

Finland believes that the legal status of third-country nationals should correspond, as far as possible, to that of the citizens of the country in question. Of particular importance is an equal legal status with regard to work-related rights and responsibilities. Not all third-country employees plan to stay permanently in their country of residence; therefore, it is natural that they may only achieve the same legal status as the original population once their residence has become permanent. In Finland, the achievement of a legal status equal to that of the original population is linked to residence in accordance with the Municipality of Residence Act.
31) Should there be incentives – e.g. better conditions for family reunification or for obtaining the status of long-term resident – to attract certain categories of third-country workers? If yes, why and which ones?

In Finland’s opinion, yes. The introduction and direction of special actions, if any, are prepared in Finland on the basis of national needs in co-operation with labour market organisations. Questions relating to basic and human rights concerning the equal handling of different groups of foreigners and questions on development policy may be related to this matter.

32) What kind of accompanying measures should be envisaged to facilitate the admission and integration of economic migrants, both in the EU and in the countries of origin?

Finland refers to the responses given to questions 1 and 5–9 above. The Community-level regulatory framework should retain the opportunity to provide, on the basis of the national labour market needs, introductory measures in the country of origin before the foreigner in question is admitted; such measures could cover, for example, information on the labour market and could be taken when required. The introduction and direction of special actions, if any, are prepared in Finland in co-operation with labour market organisations. An example of accompanying Community-level measures is the organisation of information campaigns, aimed at the countries of origin, about the labour markets and admission regulations of EU Member States.

33) In line with EU development policies, what could the EU do to encourage brain circulation and address the potentially adverse effects of brain drain?

Finland believes that the EU should look at how developing countries could more efficiently benefit from the education and experience acquired by immigrants in EU countries. However, the EU’s development co-operation should not be specifically targeted at preventing the adverse effects that emigration may have. Developing countries are usually not among the most important countries of origin for labour immigration to the EU.

34) Should developing countries be compensated (by whom and how) for their investment in human capital leaving for the EU? How can negative effects be limited?

Finland believes that the EU’s development co-operation should not be specifically targeted at preventing the adverse effects that immigration may have on the countries of origin, nor should the EU consider compensating the adverse effects that brain drain may have on them. When the advantages and disadvantages related to workers immigrating from developing countries to the EU are being estimated, several matters must be taken into account, such as training investments in the sending and receiving countries, the labour market and social situation in the country of origin, the permanence of the move and possible return, cultural action models, the consumption behaviour of the person in question and the funds that he or she may send to the home country, the accumulation of skills capital and the benefits gained, etc. The creation of an efficient system that could distribute the compensations correctly would be extremely complicated and would require worldwide bureaucracy that would hardly be possible in practice.
35) *Should the host and home countries have an obligation to ensure the return of temporary economic migrants? If so, in what circumstances?*

36) *How can return be managed for the mutual benefit of host and home countries?*

Finland believes that the situations referred to in questions 35 and 36 concern special national needs and that Community-level regulation cannot bring any added value. It must also be taken into account that, in accordance with international law, countries are obliged to take back their own citizens.

37) *Should a preference in terms of admission be granted to certain third countries? How?*

38) *Could such preferences be linked to special frameworks, such as the European Neighbourhood Policy, pre-enlargement strategies?*

Finland refers to the responses given to questions 1 and 5–9 above.

**Other**

The processing of the Work Permit Directive was interrupted mainly because of problems related to its legal basis. The new Treaty establishing a Constitution for Europe has, to some extent, transferred the authority related to labour immigration from third countries to EU Member States. Therefore, Finland hopes that the EU would examine the question of the legal basis for regulating the questions covered in the Green Paper at the Community level.