

**REPORT**  
**on the Free Movement of Workers**  
**in Denmark in 2005**

Rapporteur: Prof. dr. Jens Vedsted-Hansen  
with the collaboration of Ulla Iben Jensen, LL.M



## Chapter I

### Entry, residence, departure

#### Entry

##### *Texts in force*

##### *Laws*

The Aliens Act<sup>1</sup> applies to EU/EEA citizens both regarding general and specific sections. However, the provisions of the Act only apply to EU/EEA citizens to the extent this is in accordance with EC law, cf. section 2 (3).

Aliens Act section 2 (1): Contains the basic rule on the right to enter and reside for up to 3 months or – if seeking work – up to 6 months, which applies to EU citizens as well as members of their family, cf. section 2 (2).

Aliens Act section 2 (2): According to this section it can be required that third country family members obtain a visa (see also chapter V on family members' residence rights).

Aliens Act section 28, cf. section 2 (3): This section contains the general rules on refusal of entry.

Section 28 can only apply to EU citizens to the extent this is in accordance with EC law, which means that even though the section mentions the fact that some of the reasons for refusal of entry do not apply to EU citizens, it does not necessarily follow that the rest of the refusal reasons do, cf. section 2 (3).

Section 28 (5): Refusal of entry may be effected until 3 months after entry, but for EU/EEA citizens this only applies to the refusal reasons mentioned in section 28 (1) (i), (v) and (vii).

Reasons for refusal of entry:

- Prohibition from entering as a consequence of a decision on expulsion, cf. section 28 (1) (i)
- Lacking valid passport or other valid identity document, cf. section 28 (1) (ii)
- Insufficient means to support him/her both as concerns the entire intended stay and to pay for his/her return, cf. section 28 (1) (v)
- Public order, security or health, cf. section 28 (1) (vii).

##### *Administrative rules*

Aliens Act section 2 (4) provides the legal basis for the Minister of Refugee, Immigration and Integration Affairs to set out more detailed provisions on the implementation of the EU rules on free movement. This has resulted in the 2004 EU/EEA Order,<sup>2</sup> which is the central piece of legislation concerning free movement as it implements the Directives on free movement.

The EU/EEA Order was amended in 2005 regarding citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary. For this group of persons special rules apply according to the amendment from 2005 which entered into force 1 July 2005<sup>3</sup> (see chapter 1.B, draft legislation, and chapter VIII).

With regard to the right to enter into Denmark, the EU/EEA Order does not contain specific provisions, but the right to enter is, of course, a prerequisite for the enjoyment of the right to residence as set out in the Order (see chapter I.B).

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1 Consolidation Act No. 826 of 24 August 2005 and later amendments.

2 Executive Order No. 292 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 April 2004.

3 Executive Order No. 655 amending Executive Order No. 292 of 28 April 2004 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 29 June 2005.

*Draft legislation, circulars etc.*

Two new versions of the Order entered into force on 1 January 2006<sup>4</sup> and 30 April 2006,<sup>5</sup> respectively.

Given the time scope of this report, the two Orders are to be dealt with in the 2006 report. However, it should be noted that *Directive 2004/38/EC* has been transposed into Danish law by the issuance of the 2006 EU Residence Order which entered into force 30 April 2006.<sup>6</sup> According to section 34, the 2006 Order only applies to EU citizens. Hence, the 2005 EU/EEA Order continues to apply to EEA citizens.

*Judicial practice*

It should be noted that Denmark does not have administrative courts and that ordinary courts only quite rarely deal with cases concerning the right to entry and residence.

*Miscellaneous*

Cases concerning EU citizens and their right to entry, residence etc. are – with some exceptions, including cases on workers from the EU-8 Member States – handled in the first instance by the state county ('statsamt').<sup>7</sup> Residence permits pursuant to the transitional rules for citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary (see chapter VIII) are granted by the Danish Immigration Service ('Udlændingestyrelsen').<sup>8</sup>

Decisions made by the state county can be appealed to the Danish Immigration Service (DIS). When the competence to handle these cases was delegated to the state counties in 1995, DIS issued guidelines for the processing of the cases. The guidelines are updated and supplemented by letters of information or instruction from DIS to the state counties whenever DIS deems it necessary.

*Recent legal literature*

Henrik Thomassen and Pernille Breinholdt Mikkelsen, 'Indrejse og ophold for udlændinge omfattet af EU-reglerne', in L.B. Christensen et al., *Udlændingeret*, 3. Edition, Copenhagen 2006, pp. 239-246.

Ruth Nielsen: *EU-arbejdsret*, 3. Edition, Copenhagen 1997.

Ruth Nielsen: *Europæisk arbejdsret*, 1. Edition, Copenhagen 2003.

## **Residence**

*Texts in force*

*Laws*

Aliens Act section 2 (1): Contains the basic rule on the right to enter and reside for up to 3 months or – if seeking work – up to 6 months, which applies to EU Citizens and members of their family, cf. section 2 (2) and EU/EEA Order section 12.

Aliens Act section 6: Implies that a residence certificate shall be granted to foreigners, to whom the EU rules apply.

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4 Executive Order No.1255 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 November 2005.

5 Executive Order No. 358 on Residence in Denmark for aliens comprised by the rules of the European Union (the EU Residence Order), Ministry of Refugee, Immigration and Integration Affairs, 21 April 2006.

6 See also Act No. 301 of 19 April 2006 amending the Aliens Act and other acts which inserts as a note to the title of the Aliens Act that this Act contains provisions transposing Directive 2004/38/EC.

7 Official website [www.statsamt.dk](http://www.statsamt.dk).

8 Official website [www.udlst.dk](http://www.udlst.dk).

Aliens Act section 14 (1) (ii), cf. section 13 and EU/EEA Order section 13: Exempts EU citizens from the requirement to have a work permit in order to take up employment in Denmark, which is imposed on most other groups of foreigners.

This does not apply, however, to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary. For this group of persons special rules apply according to the amendment from 2005, which entered into force 1 July 2005<sup>9</sup> (see below, draft legislation and chapter VIII on the enlargement of the European Union).

Aliens Act section 1, cf. section 14 (1) (i): Citizens from other Nordic countries can reside and take up employment without permits. Citizens from Nordic countries who satisfy the conditions are free to choose whether they want to apply for an EU residence certificate and thereby acquire the rights under the rules of the Order, cf. EU/EEA Order section 10.

#### *Administrative rules*

EU/EEA Order section 1: According to this provision an EU residence certificate is granted to an EU citizen, who is employed in Denmark and proves by a declaration from his/her employer that he/she has paid employment in Denmark.

This does not apply, however, to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary. For this group of persons special rules apply (see below, draft legislation and chapter VIII on the EU enlargement).

Section 14 (1): Contains the rule that the certificate is granted for 5 years, unless the period of employment is shorter than that or the EU citizen has specifically applied for a certificate valid for a shorter period.

Section 15 (1): Contains the rule that after 5 years the certificate will be made permanent provided that the person in question has taken up permanent residence in Denmark, cf. section 15 (3).

As a modification to this, section 14 (8) implies that the period may be limited to 12 months provided that the EU citizen has been involuntarily unemployed for the last 12 months.

Section 11 (1): Exempts EU/EEA citizens working in Denmark but living in another State ('grænsearbejdere') and their family members from the requirement to have a residence certificate provided that they return to their residence once a week.

This does not apply, however, to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary. For this group of persons special rules apply (see below, draft legislation and chapter VIII on the EU enlargement).

Section 11 (2): Exempts seasonal workers ('sæsonarbejdere') and their family members from the requirement to have a residence certificate.

This does not apply, however, to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary. For this group of persons special rules apply (see below, draft legislation and chapter VIII on the EU enlargement).

#### *Draft legislation, circulars etc.*

Executive Order No.1255 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 November 2005 (in force 1 January 2006) provides a change regarding citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary (see chapter VIII on the EU enlargement).

Section 1: According to this provision an EU residence certificate is granted to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary provided they have been active on the Danish labour market for a minimum period of 12 consecutive months.

Section 11 (1) and (2): Exempts citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary working in Denmark but living in another state ('grænsearbejdere') and seasonal workers ('sæsonarbejdere') and their family members from the requirement to have a residence certificate provided they return to their residence once a week and provided the citi-

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9 Executive Order No. 655 amending Executive Order No. 292 of 28 April 2004 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 29 June 2005.

zens have been legally active on the Danish labour market for a minimum period of 12 consecutive months.

Section 13 (2): Exempts citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary from the requirement to have a working permit provided they have been legally active on the Danish labour market for a minimum period of 12 consecutive months.

#### *Miscellaneous*

The well-known criterion that employment must be actual and effective and that the employment must not be of such limited extent that the income from that appears as a purely marginal supplement to a person's other income or means in order to serve as the basis for the residence right has been tested in relation to EU citizens, who work in the country but whose wages consist partly or completely of a wage supplement from the state. The Danish Immigration Service stated that such cases must be dealt with on a case-by-case basis and that in doing so it must be taken into account whether the employment is temporary and provided through a public job agency or a municipality, whether the employment must be regarded as a form of job training, whether all unemployed persons receive a similar job offer, and whether the public-paid wage supplement covers the main part of the salary or is merely a minor supplement.<sup>10</sup>

#### *Recent legal literature*

Henrik Thomassen and Pernille Breinholdt Mikkelsen, 'Indrejse og ophold for udlændinge omfattet af EU-reglerne', in L.B. Christensen et al., *Udlændingeret*, 3. Edition, Copenhagen 2006, pp. 246-258.

## **Departure**

### *Texts in force*

#### *Laws*

Aliens Act sections 22-26: The general rules on *expulsion* in these sections apply to EU citizens, but only to the extent that these rules are compatible with the EC rules, as explicitly stated in section 2 (3). These rules imply a case-by-case evaluation based on the principle of proportionality, i.e. the longer an alien has resided in Denmark the better is his/her protection against expulsion. A decision on expulsion is usually made by a court of law but in some cases it can be decided administratively.

Reasons for expulsion:

- Crime, cf. sections 22-24
- National security, cf. section 25 (1)
- Serious threat to the public order, safety or health, cf. section 25 (2)
- Unlawful stay, cf. sections 25 a - 25 b.<sup>11</sup>

Aliens Act sections 17-21, cf. section 2 (3): Contains the general rules on *lapse/revocation* of residence permits. The application of these rules on EU/EEA citizens are described in the EU/EEA Order, see below.

Aliens Act section 26: This provision applies in all cases on *expulsion and revocation* of a residence certificate or residence permit. According to section 26 an assessment of the alien's *personal situation*, including his/her attachment to the Danish society, family members here, the length of the stay etc., must be made in order to evaluate whether the expulsion or revocation would be excessively burdensome, cf. ECHR art. 8.

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<sup>10</sup> Information letter from DIS to the state county offices No. 2/2004 of 28 June 2004.

<sup>11</sup> It should be mentioned that for EU citizens invalid residence certificates or permits are no ground for expulsion, since these permits are only proof of the right to reside based on the EC Treaty, see L.B. Christensen et al., *Udlændingeret*, p. 246-248.

*Administrative rules*

EU/EEA Order section 16: Specifically refers to the provision in the Aliens Act section 17 on *lapse* of residence permits, which – with some exceptions – applies to EU citizens and their family members. In practice this means that a residence certificate granted on the basis of the Order lapses when the person in question has stayed outside the country for a period of more than 6 or 12 months, depending on the length of the stay in the country unless there are reasons for dispensation, such as when illness or unforeseen obstacles have caused the stay abroad, cf. Aliens Act section 17 (2).

EU/EEA Order section 17: According to this provision, a *time-limited* residence certificate can be *revoked* or its extension refused when the basis on which the certificate was issued was incorrect or is no longer present. Section 17 (2) - (4) contains, however, a number of exceptions from that rule in accordance with the EU rules on free movement, securing, for instance, that a person losing his job due to sickness or accident or involuntary unemployment will not have his residence certificate revoked.

Section 17 (5): Specifically refers to Aliens Act section 26 (see above).

EU/EEA Order section 18: This section limits *revocation* of *permanent* EU residence certificates to cases where the certificate has been obtained by fraud. Obviously, fraud will also lead to the revocation of time-limited residence certificates.

Section 18 (2): Specifically refers to Aliens Act section 26 (see above).

*Draft legislation, circulars etc.*

Act No. 301 of 19 April 2006 amending the Aliens Act and other acts (in force 1 May 2006) section 1 (48) has inserted section 50 b into the Aliens Act, and changed section 32 (7) of the Aliens Act.

Section 50 b provides an automatic appeal of expulsion decisions concerning EU citizens if the expulsion has not been effected within 2 years, cf. section 49.

Section 32 (7) states that an entry prohibition imposed on an EU/EEA citizen may be lifted at a later date where exceptional reasons make it appropriate.

*Judicial practice*

In a district court judgment of 1 September 2004 (unpublished), the court had been requested by the prosecutor to expel an Italian citizen who had committed a minor crime for which he was expellable according to the Aliens Act. The court decided not to follow the prosecutor's claim. In doing so, the court made reference to the general principles which can be derived from the ECJ practices concerning limitations of the right to free movement, as well as to several judgments from which these principles are drawn, and concluded – taking into account all aspects of the case – that it would be inconsistent with Community law to expel the person in question as there was not an actual and serious threat to public order or security.

In a Supreme Court judgment of 2005<sup>12</sup> a Polish/German citizen was sentenced to 8 years imprisonment for smuggling 10 kilos of cocaine to Denmark with the intention of distribution. As a consequence of the crime, the citizen had been expelled from Denmark by the High Court. The decision on expulsion was not appealed to the Supreme Court, however.<sup>13</sup>

*Miscellaneous*

Certain rules of procedure are valid for EU citizens, cf. Directive 64/221.

Aliens Act section 52 (1) (iii) – (iv), cf. section 25 (a-b): Provides for special review by a competent court of administrative decisions on expulsion of EU citizens.

EU/EEA Order section 27 (2): The reasons for refusal of the issuance of a residence permit must be given, unless considerations of national security prevent it.

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12 Published in UfR (Weekly Legal Magazine) 2005, p. 1796/1H.

13 According to Aliens Act section 49 (1), a decision on expulsion is made in connection with a conviction of a criminal offence, which is subject to appeal according to Part LXXXV of the Administration of Justice Act.

*Denmark*

EU/EEA Order section 23-25: Decisions related to EU residence certificates can be appealed to either DIS or the Ministry of Integration, cf. section 25 a - 25 b.

*Recent legal literature*

Henrik Thomassen and Pernille Breinholdt Mikkelsen, 'Indrejse og ophold for udlændinge omfattet af EU-reglerne', in L.B. Christensen et al., *Udlændingeret*, 3. Edition, Copenhagen 2006, pp. 275-285.

## Chapter II

### Access to employment

It should be mentioned that the situation giving cause to the ECJ judgment in the *Burbaud* case,<sup>14</sup> the use of competitions for access to training and afterwards employment in the public sector, does not seem to be relevant in Denmark.

#### *Texts in force*

Concerning basic *integration assistance*, the central piece of legislation is the Act on Integration.<sup>15</sup> This Act does not apply to EU citizens and members of their families. It has been questioned whether third country nationals who are granted residence permit as family members to EU citizens according to the principles in the *Singh* judgment, should be encompassed by the Act on Integration. Such persons are granted a residence permit with a legal basis in the Aliens Act and not in the EU/EEA Order. The Ministry of Refugee, Immigration and Integration Affairs has determined that such persons shall not be encompassed by the Act on Integration since the background of these residence permits is the EU rules on free movement of persons (see chapter V).

The Act on *Prohibition of differential treatment on the labour market*,<sup>16</sup> which prohibits differential treatment on grounds of race, colour, nationality, ethnicity etc. in the relationship between an employer and an employee, has not been amended since 2004 where the purpose of the amendments was to transpose into Danish law parts of Directive 2000/43/EC on equal treatment of all regardless of race or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.<sup>17</sup>

The Act on *Equal treatment irrespective of ethnic origin*<sup>18</sup> remained unchanged in 2005.<sup>19</sup> The Act which is partly an implementation of Directive 2000/43/EC on equal treatment of all regardless of race or ethnic origin, deals with conditions outside the labour market and contains a prohibition against direct and indirect discrimination on the grounds of race or ethnic origin and a prohibition against harassment and instructions to discriminate. The Danish Institute for Human Rights (DIHR) can hear complaints concerning violation of the prohibition against discrimination. The committee established within DIHR to do so, has dealt with a smaller number of complaints, and the committee has also taken up cases on its own initiative in 2005 (see below, miscellaneous).

The Act on *Access to take up certain jobs in Denmark*<sup>20</sup> passed by the Parliament in 2004, partly to replace an Act from 1991 on the access to certain professions for citizens of the European Community and the Nordic countries, remained unchanged through 2005. The Act authorizes the Danish Education Ministry ('Undervisningsministeriet')<sup>21</sup> to set out rules for the purpose of coordinating implementation of the relevant Directives. The Act and the Executive Orders<sup>22</sup> carry out the implementation of the EU Directives on *recognition of exams and professional qualifications*. With respect to EU citizens the substantial part of the Act is a continuation of the previous Act and the Orders issued on the basis of that Act. The main point of the Act is to make the system for recognition of qualifications for third country nationals more comprehensive and accessible.

The Act on *Danish courses* for adult aliens was passed by the Parliament in 2003 and supplemented by an Executive Order<sup>23</sup> (see also the 2002-2003 report). The Act also applies to EU citizens and their family members. This means that they have a right to receive an offer from the municipality

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14 ECJ judgment of 9 September 2003 *Burbaud* (C-285/01).

15 Consolidation Act No. 839 of 5 September 2005.

16 Consolidation Act No. 31 of 12 January 2005.

17 Acts No. 756 of 30 June 2004 and No. 1417 of 22 December 2004.

18 Act No. 374 of 28 May 2003 and later amendments.

19 Act No. 554 of 24 June 2005 provided a purely consequential amendment of section 10 (3).

20 Act No. 476 of 9 June 2004.

21 Official website: [www.undervisningsministeriet.dk](http://www.undervisningsministeriet.dk).

22 Executive Orders No. 177, 178 and 179 of 17 March 2003, Executive Order No. 7 of 7 January 2003 and Executive Order No. 152 of 11 March 2003.

23 Act No. 375 of 28 May 2003 and Executive Order No. 912 of 28 September 2005 and amendments.

to take part in Danish courses, but they have no obligation to do so. Whereas such courses are free of charge for foreigners encompassed by the Act on Integration, the municipalities may require a fee from other categories of participants, including EU citizens and their family members. The government seems to have considered whether this will raise questions of discrimination under art. 12 TEC, since it is emphasised in the explanatory memorandum to the Bill that the language courses will provide general qualifications and not address the need for specific professional training. The Bill was therefore considered as having no EU law implications, even while it was clearly stated that EU citizens were to be among those participants required to pay for such courses under the Act.<sup>24</sup>

With regard to *nationality conditions for captains and first officers of ships*, the ECJ judgments in the cases C-405/01 and C-47/02<sup>25</sup> led to a change in Danish law in 2004 as the Act on Ships' Crew<sup>26</sup> was amended with the specific aim to bring national law in compliance with Community law as it was interpreted in these two judgments.

According to the Act on Ships' Crew, the starting point is that captains of merchant ships and fishery vessels must hold Danish citizenship, cf. section 13. The amendment of the Act<sup>27</sup> meant an insertion of a provision authorising the Danish Maritime Authority ('Søfartsstyrelsen')<sup>28</sup> to set out rules in an Executive Order for the purpose of exempting persons encompassed by the rules on free movement from the requirement on nationality.

In the explanatory memorandum to the Act amending the Act on Ships' Crew, it was stressed that international conventions require from captains of ships that they have certain knowledge of the maritime rules of the country in which the ship is registered. Against this background, the Executive Order will be accompanied by rules to secure this by setting up basic requirements to the education of captains, where necessary. From the explanatory memorandum follows as well that it cannot be excluded that – in special cases – the extent to which the captain will have to exercise powers conferred by public law will justify that he/she holds Danish citizenship. The Executive Order will include provisions to provide for this.

It is interesting to note that there was some debate on the proposed amendment during the Parliamentary process as some political parties were reluctant to give up the nationality requirement. This led the minister responsible for the Bill to issue a statement promising that with regard to exemptions from the nationality requirement, the Executive Order will not go further than provided for by Community law. By July 2006 the Executive Order has not yet been issued.

In May 2005 the Danish Maritime Authority ('Søfartsstyrelsen') issued an Executive Order on *Recognition of foreign qualifications for service on merchant ships*.<sup>29</sup> The Order implements Directives 2003/103 and 2001/25 and regulates navigation officers, machine officers and radio operators and the recognition of their qualifications according to the STCW Convention and EU Directives on recognition of exams and professional qualifications.

#### *Draft legislation, circulars etc.*

The Act on Danish courses has been changed in 2006.<sup>30</sup> This is to be dealt with in the 2006 report.

#### *Recent legal literature*

Helle Otte: *Vurdering af udenlandske uddannelser*, published in 'Uddannelse' No. 4/2001.

Sjur Bergan: *Dansk lov og europæisk standard – gensidig anerkendelse af uddannelseskvalifikationer*, 2001 (www.ciriusonline.dk, 'nyhedsarkiv 2001').

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24 Explanatory memorandum to Bill No. L 158/2002-03, para. 10 and comments on section 14.

25 ECJ judgments of 30 September 2003 *Colegio de Oficiales de la Marina Mercante Espanola and Albert Anker*.

26 Act No. 15 of 13 January 1997 and amendments.

27 Act No. 1462 of 22 December 2004.

28 Official web site: [www.sofartsstyrelsen.dk](http://www.sofartsstyrelsen.dk).

29 Executive Order No. 315 of 4 May 2005.

30 Act No. 259 of 18 March 2006.

### Chapter III

## Equality of treatment on the basis of nationality

Employment under a collective agreement or on individual contract (as opposed to employment as civil servant, see Chapter IV) is not conditional on the applicant being a Danish citizen. Foreign citizens are generally free to hold such posts.

#### *Texts in force*

#### *Working conditions*

With regard to *equal treatment in the maritime sector*, questions have been raised, as mentioned in the 2004 report. The questions relate to the conditions for Polish seafarers on ships sailing under Danish flag. Polish seafarers have complained that they are not being accorded rights similar to those of Danish seafarers with regard to membership of labour unions, and that they are treated in a discriminatory way with regard to wages and other working conditions.

The first part of the complaint relates to the fact that the *Act on a Danish International Ship's Register*<sup>31</sup> determines that Danish collective agreements regarding wages and working conditions on board ships can only apply to persons living in Denmark or persons who must be put at an equal footing with Danish nationals on the basis of international obligations, cf. section 10 (2). In practice this provision has been construed by the Danish authorities to mean that the *place of residence* is the decisive factor. This interpretation was upheld by the Labour Court ('Arbejdsretten')<sup>32</sup> in a case where it was argued that the entire crew, consisting mainly of Dutch seafarers, on a certain ship should be covered by the collective agreement entered into by a Danish labour union.<sup>33</sup> The Court turned down this argument as in the Court's opinion there were no "international obligations" at present according to which persons residing outside Denmark should be treated as Danish nationals, and thus should be covered by Danish collective agreements.

The second part of the complaint follows from the first part in the sense that the lacking possibility for Polish seafarers to be encompassed by Danish collective agreements in practice means that they are paid less and work under less advantageous conditions. The Danish authorities have justified this by referring to the different costs of living in Denmark and in the seafarers' country of residence.

At the end of 2004 a case on this question was submitted to the Labour Court by the Confederation of Danish Labour Unions ('LO') on behalf of Polish seafarers.<sup>34</sup> The LO claimed that around 4.000 Polish seafarers had been underpaid since 1994. The case was dismissed by the Labour Court on 27 October 2005 on the ground of lacking industrial dispute. The subject of the competence of the Labour Court is cases with disputes relating to collective agreements or individual contracts, and since the subject of this case was found by the Court to be more of a general and principled character regarding section 10 (2) and its relation to EC law, the case was dismissed as being outside the scope of the Labour Court's competence.

Subsequent to that decision, the LO has been corresponding with the European Commission regarding this matter. Furthermore LO is collecting documentation, which might result in LO filing a new case to the Labour Court or the ordinary Danish courts.<sup>35</sup> These possible developments are to be dealt with in the 2006 report.

In October 2004 the Commission filed an *opening statement regarding breach of art. 39 (2) of the EC Treaty and arts. 7 and 8 of Regulation 1612/68*. According to governmental information obtained in May 2006, meetings concerning amendment of the Act on a Danish International Ship's Register section 10 have been held with the Commission. The Danish Ministry of Justice is awaiting the Commission's response on the proposed legislative amendment.<sup>36</sup>

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31 Consolidation Act No. 273 of 11 April 1997 and later amendments.

32 Official website [www.arbejdsretten.dk](http://www.arbejdsretten.dk).

33 Judgment of 24 April 1997 in Case No. 96.017.

34 Case No. 2004.435.

35 Information obtained from correspondence with the LO in May 2006.

36 E-mail of 19 May 2006 from an official in the Danish Ministry of Justice.

*Social advantages*

*The Act on Active Social Policy*<sup>37</sup> section 3 (2) (ii): Any foreigner legally residing in Denmark has a right to cash benefits, but only for a limited period. The right to such benefits on a permanent basis is restricted to Danish citizens and EU citizens and members of their family residing in Denmark on the basis of Community law (as well as to certain third country nationals on the basis of international agreements). On this point EU citizens and members of their family are treated equally with Danish citizens.

As a consequence of the enlargement of the European Union taking effect 1 May 2004, the legislation on social benefits was amended on a few points (see chapter VIII).

*Jobseekers' entitlement to social advantages – the impact of Collins and Ioannidis*

*The Act on Parental Leave*<sup>38</sup> was amended by inserting a requirement according to which persons wanting to take leave after this law should notify the authorities before 1 April 2004.<sup>39</sup> It should be noted, however, that this kind of leave was to be phased out in any event.

*The Act on Allowances in Relation to Sickness and Birth*<sup>40</sup> was amended to specify that an EU citizen who is reported ill and receives Danish sickness allowances abroad can be called in for a so-called “sickness follow up” in Denmark in order to discuss the situation and possible initiatives aiming to enable faster recovery and continued employment.<sup>41</sup>

See also chapter VI.

*Tax advantages*

See chapter VI.

*Draft legislation, circulars etc.*

See chapter VI.

*Miscellaneous*

As mentioned above in chapter II, the Danish Institute for Human Rights can hear complaints concerning violation of the prohibition against discrimination, and the committee established within DIHR to do so has dealt with a smaller number of complaints and has also taken up cases on its own initiative in 2005.<sup>42</sup> Two of the committee's cases involved EU citizens.

In a decision from 19 September 2005<sup>43</sup> the committee dealt with a complaint from a Dutch citizen of Indian origin. The claimant alleged that he was subject to discrimination due to the fact that the state county demanded him to show documentation of his Dutch citizenship besides his Dutch passport. He further complained of the fact that the state county would not accept an employment declaration which was not signed by his employer. The committee concluded that the state county was not allowed to make those demands, but since the demand regarding the documentation of his Dutch citizenship was caused by the fact that there were fake Dutch passports in circulation, and since the demand regarding the declaration from the employer was caused by the state county office's misunderstanding of the EU/EEA Order, the citizen had not been subject to discrimination.

In a decision from 17 May 2005<sup>44</sup> the committee dealt with a complaint from a person who held both Iranian and German citizenship. The claimant alleged that she was subject to discrimination given the fact that the state county treated the application for residence permit as an application from an Iranian and not a German citizen. The committee concluded that the state county had made a procedural error by categorizing the application as one from an Iranian citizen, as the state county itself had admitted to during the case. Since there was no indication that the error in the administrative pro-

37 Consolidation Act No. 1009 of 24 October 2005 with amendments.

38 Act No. 193 of 23 March 2004.

39 Act No. 135 of 2 March 2004.

40 Act No. 1047 of 28 October 2004 and amendments.

41 Act No. 282 of 26 April 2004.

42 Information on this is found at the website of the committee, [www.klagekomite.dk](http://www.klagekomite.dk).

43 J.nr.711.9.

44 J.nr.711.31.

*Denmark*

cedure was deliberate in order to discriminate, the committee found that the citizen had not been subject to discrimination.

## Chapter IV Employment in the public sector

Again here it can be mentioned that the situation giving cause to the *Burbaud* case,<sup>45</sup> the use of competitions for access to training and afterwards employment in the public sector, does not seem to be relevant in Denmark.

### *Texts in force*

The Danish Constitution section 27: Contains the rule that only Danish citizens can be appointed *civil servants* ('tjenestemænd'). This is modified, however, by the fact that foreign citizens can be employed on conditions similar to those of civil servants, which would allow them to take up also high-ranking posts. With respect to pension they will also be treated like civil servants. A rule on this is inserted in the Act on Civil Servants<sup>46</sup> and reference is made to this rule and its connection with art. 39 of the EC Treaty in the guidelines from the Ministry of Finance to the public employers.<sup>47</sup>

A survey on the extent to which a requirement on Danish citizenship exists regarding positions in the public sector was carried out by the State Employers' Authority ('Personalestyrelsen',<sup>48</sup> an agency within the Ministry of Finance) in 2004. The survey covers all Danish ministries but not the regional and municipal parts of the public sector.<sup>49</sup> The conclusion of the survey is that there are in general not posts within the public sector where a requirement on Danish citizenship is upheld. Exceptions to this are certain posts within the Ministry of Defence for which, however, a dispensation can be given, and certain posts within the Prison and Probation Service.

Regarding the *recognition of diplomas for access to employment in the public sector*, degrees obtained at foreign universities are to be evaluated by a body named Cirius.<sup>50</sup> Cirius is to evaluate on a case-by-case basis which foreign degrees are comparable to the relevant Danish degrees. Cirius was established in January 2005 as an authority within the Ministry of Education, replacing the former authority in this area (CVUU) as a result of the fusion of Cirius, CVUU and Eurydice.<sup>51</sup> With the establishment of Cirius, these international aspects of the education system have been united in one authority.

Regarding the right to be credited for *previous employment in the public administration* in other EU Member States, there were no major developments in 2005. In a paragraph in the guidelines to public employers<sup>52</sup> it is expressly stated that previous employment in other Member States shall be taken into account to the same extent as had it been employment in Denmark. This applies to Danish citizens and other EU citizens alike. In the guidelines reference is made to the jurisprudence of ECJ and the Communication from the Commission from December 2002.<sup>53</sup>

### *Miscellaneous*

The statistics on the administration of the rules on *recognition of exams and professional qualifications* show that there are quite few negative decisions on applications to be allowed to take up employment according to the national rules implementing the Directives on recognition of exams and professional qualifications (6 % in 2005).<sup>54</sup>

45 ECJ judgment of 9 September 2003 *Burbaud* (C-285/01).

46 Consolidation Act No. 531 of 11 June 2004 and later amendments, section 58 c.

47 Guidance on Personnel Administration ('Personale-Administrativ Vejledning'), issued by the Ministry of Finance and updated twice every year, chapter 17.

48 [www.perst.dk](http://www.perst.dk).

49 The survey also does not include information on positions for law graduates within the Danish courts.

50 [www.ciriusonline.dk](http://www.ciriusonline.dk).

51 Information about the establishment of Cirius is available in the report from the Ministry of Education to the Parliament, April 2004 (<http://pub.uvm.dk/2004/internationalisering>).

52 Guidance on Personnel Administration, ('Personale-Administrativ Vejledning'), chapter 18.

53 'Free movement of workers – achieving the full benefits and potential', Communication from the Commission of 11 December 2002.

54 [www.ciriusonline.dk](http://www.ciriusonline.dk) ([www.ciriusonline.dk/Default.aspx?ID=3770](http://www.ciriusonline.dk/Default.aspx?ID=3770)).

## Chapter V

### Members of the family

The rights of family members concerning entry and residence are derived from those of the EU citizen performing the right to free movement. Reference can therefore be made to the general rules described in chapter I of this report, while certain rules applying specifically to family members will be described in the following.

#### *Texts in force*

##### *Residence*

The 2004 EU/EEA Order introduced more detailed and partly new rules on the issuance of residence certificates to family members, as compared to the previous Order, especially with regard to requirements on housing and economic support.

Section 5 of the Order regards family members of workers, self-employed persons and persons who provide or receive services. For this purpose section 5 (2) delimits the eligible family members as

- The EU citizen's spouse<sup>55</sup>
- Descendants (of the EU citizen or the spouse) under 21 years of age
- Other descendants (of the EU citizen or the spouse) dependent on the EU citizen
- Relatives in the ascending line (of the EU citizen or the spouse) if they are dependent on the EU citizen
- Other relatives of the EU citizen if they are dependent on the EU citizen or are (were) living under the roof of the EU citizen in the country of origin.

A condition for being granted a residence certificate as a family member – apart from proving the relationship with the EU citizen or, if relevant, with his or her spouse – is that the family prove that they dispose of *sufficient income or means*, unless exceptional reasons make this requirement inappropriate, cf. section 5 (4) of the Order. This requirement of economic support does not apply to spouses and descendants under 21 years of age.

The required income or means is defined as “means corresponding at least to the sum of the benefits for which the EU citizen and the family members in question would be eligible under section 25 (12) and section 34 of the Act on Active Social Policy” (section 5 (4) of the Order). The quoted sections in the Act on Active Social Policy<sup>56</sup> refer to the so-called introductory aid (*‘starthjælp’*) which is the lowest cash benefit under the Act (around 600 euros per adult per month). Detailed rules on the calculation of the income and means, as well as the procedures to be followed by the administrative authorities involved, are set out in section 5 (5) and (6) of the Order.

For family members of EU citizens in paid employment it is an additional requirement for the issue of a residence certificate that the EU worker provides *housing for his family* which is considered as normal for Danish employees in the region where the EU citizen is employed. It is expressly stated in this provision (section 5 (3) of the Order) that it must not give rise to discrimination between Danish employees and employees of other EU/EEA countries.

The introduction of a housing requirement in relation to family members of EU workers and a support requirement in relation to some family members of all EU citizens were the most substantial changes in the 2004 EU/EEA Order. The actual background of these changes was the enlargement of the European Union, which was explained in the explanatory memorandum to the Bill amending the Aliens Act in order to implement the transitional arrangements for citizens from the 8 new EU Member States in Central Europe.<sup>57</sup> Here it was stated – with reference to the political agreement on the transitional arrangements – that a precondition for letting workers from the EU-8 Member States bring their families with them should be that they dispose of appropriate housing and are able to support

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55 Cohabiting partners may also be eligible, see below on section 9 of the Order.

56 Consolidation Act No. 1009 of 24 October 2005.

57 Act No. 283 of 26 April 2004 (see chapter VIII).

their family. As the Accession Treaty does not allow for transitional arrangements on such measures, these additional requirements were to apply to citizens from all EU Member States.<sup>58</sup>

The explanatory memorandum went on stating that EU law (reference is made to Regulation 1612/68, art. 10 (2)) can be construed so as to allow for a requirement being imposed on EU citizens that they prove their ability to support the family members whom they want to bring with them to Denmark. Such requirements cannot, however, be imposed with regard to the EU citizen's wife and children under the age of 21. In practice it should be required that the EU citizen disposes of an income corresponding at least to the amount to which the EU citizen and the family members in question would be entitled if they were receiving the lowest benefit replacing income, according to the rules on social benefits (around 600 euros per adult per month). The support requirement will apply to all categories of EU citizens exercising the right to free movement, whereas the housing requirement will only apply to workers.<sup>59</sup>

With regard to the *housing requirement*, it was clarified in the explanatory memorandum, with reference to EU law, that it should be implemented in a way allowing for a concrete and rather lenient assessment as to whether the requirement is met. It therefore cannot be administered in the same strict way as the housing requirement which generally applies in cases of family reunification, pursuant to section 9 (6) of the Aliens Act. Furthermore, the housing requirement is generally not supposed to be enforced *subsequent* to the actual family reunification, but only at the time of issue of the residence certificate to the EU worker's family member(s). The same applies to the enforcement of the requirement of *economic support* for EU citizens' family members pursuant to section 5 (4) of the Order.<sup>60</sup>

Against this background, *discrimination* against EU workers is not likely to occur in connection with the housing requirement. As regards the requirement of economic support, equal treatment with Danish citizens – and other sponsors applying for family reunification under the general national rules – seems to be provided for by the possibility to dispense with this requirement if exceptional reasons make it appropriate, cf. section 5 (4) of the Order. This criterion is similarly phrased as that of the general economic support requirement under section 9 (3) of the Aliens Act.

The abovementioned rules also apply to family members of citizens of the EU-8 Member States in so far as these lawfully have actual and effective paid employment in Denmark, cf. section 5 (7) and (8) of the Order.

Sections 6-8 of the Order concern the right to residence for family members of the other groups of EU citizens enjoying the right to free movement (students, persons of sufficient means and persons entitled to remain following cessation of paid employment or activities as a self-employed person). These provisions will not be further described here (but see chapter XI).

The rules on spouses also apply to couples *cohabiting in a stable relationship*, defined in section 9 (1) of the Order as “regular cohabitation of prolonged duration” (in practice normally at least 1½ years). However, for this category it is always made a condition for family reunification that the EU citizen undertakes to support the applicant, cf. section 9 (2) of the Order. This corresponds largely to the general rules applying to cohabiting partners of Danish citizens and third country citizens (section 9 (1)(i) and 9 (3) of the Aliens Act).

#### *Lapse and revocation*

The residence certificate of a family member of an EU citizen may *lapse* in the same situations – mainly due to stay outside the country for more than 6 or 12 months – as that of the principal EU citizen, pursuant to section 16 of the 2004 EU/EEA Order (see chapter I.C of this report).

With regard to *revocation* of residence certificates issued to family members of EU citizens who are in paid employment, self-employed or providing or receiving services, detailed rules are laid down in section 19 of the Order. According to section 19 (1), the death of the principal person (the EU citizen) can lead to revocation – or refusal of extension – of the residence certificate of a family member if that certificate is time-limited. Revocation cannot take place under this provision, however, if

- the principal person had resided in Denmark for at least 2 years at his or her death,
- the death of the principal person was due to an industrial accident or an occupational illness, or

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58 Explanatory memorandum to Bill No. L 157/2003-04, paras. 1.2 and 3.

59 *Ibid.*, para. 3.

60 *Ibid.*, para. 3 in fine. Cf. section 17 (4) of the 2004 EU/EEA Order.

- the family member was the principal person's spouse and lost his or her Danish citizenship by marriage to the principal person.

Furthermore, section 22 of the Order states that revocation of a family member's time-limited residence certificate can take place where the principal person's residence certificate lapses, is revoked or its extension is refused. In all revocation cases the humanitarian aspects have to be taken into account, in accordance with section 26 of the Aliens Act, cf. section 19 (3) and section 22 (2) of the Order.

As pointed out in the 2002/2003 and the 2004 reports, the right to *continued residence* for the family member(s) of an EU citizen which under certain circumstances can be derived from the ECJ judgment in the *Baumbast* case<sup>61</sup> does not seem to be covered by the Danish rules. The provisions on revocation and exemptions therefrom were made more detailed and perhaps clearer in the 2004 EU/EEA Order, but in reality the content of these rules has not changed much.

#### *Draft legislation, circulars etc.*

The 2005 EU/EEA Order: Executive Order No. 1255 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 November 2005 (in force 1 January 2006, hence the rules will be described in the 2006 report, cf. chapter I).

The 2006 EU Residence Order: Executive Order No. 358 on Residence in Denmark for aliens comprised by the rules of the European Union (the EU Residence Order), Ministry of Refugee, Immigration and Integration Affairs, 21 April 2006 (in force 30 April 2006, implementing Directive 2004/38, cf. chapter I). Sections 7-13 concern the residence rights of family members.

#### *Judicial practice*

As a rather rare example of judicial review of administrative decisions concerning aliens' residence rights, the High Court of Eastern Denmark in 2005 had to examine certain aspects of the administrative practices through which the Danish Immigration Service is implementing the '*Singh* principles' as described below.<sup>62</sup> In the case brought before the High Court, a US citizen and her Danish husband had been living in London, UK. Having moved with her husband to Denmark, she applied for a residence permit in July 2002, and in February 2003 the permit was issued pursuant to the general rules on family reunification, cf. section 9 of the Aliens Act. Following a submission from her lawyer who claimed that the case was falling within the scope of the principles laid down by the ECJ in the *Singh* judgment, as well as media reports on the case, the Immigration Service reopened the case in May 2003, and changed the conditions of the applicant's residence permit, now referring to section 9 c (1) of the Aliens Act as the legal basis of the permit. At the same time, the Immigration Service regretted that it had been unaware that the applicant might be entitled to a residence permit according to EU law, and offered to reimburse her husband's expenses connected to establishing the bank guarantee that had been required pursuant to section 9 of the Aliens Act, but which was no longer necessary under section 9 c (1), as applied in accordance with the relevant principles of EU law.

The new residence permit was valid for 2 years, reckoned from the initial application in 2002, and renewable for a period of 3 years to be followed by the possibility to apply for permanent residence. In July 2004 the Immigration Service extended the residence permit until 2007, still conditioned on the applicant's cohabitation with her Danish husband. This condition was abandoned in February 2005, the Immigration Service again regretting its error in issuing the residence permit.

Already in October 2003, however, the third country spouse had opened a court case against the Danish Immigration Service, claiming official recognition of the erroneous decisions violating applicable EU law as well as a compensation of 30.000 DKK (app. 4.000 euros). The High Court rejected the first part of the claim for recognition as inadmissible, holding that the applicant no longer had a legal interest ('concrete and actual interest') in judicial review of the matter, due to the Immigration Service's expression of regrets and payment of reimbursement. The second part of the claim for rec-

61 ECJ judgment of 17 September 2002 *Baumbast* (C-413/99).

62 High Court of Eastern Denmark, judgment of 16 November 2005, *Alison Ward Petersen v. Danish Immigration Service*. Published in UfR (Weekly Legal Magazine) 2006, p. 711.

ognition – which had also been held inadmissible by the City Court – was accepted by the High Court, finding that the residence permit issued in May 2003 was containing provisions on validity, right to work and extension which were incompatible with EU law. Thus, the applicant had been unable to calculate her legal position correctly. The claims for compensation, on the other hand, were fully dismissed, the High Court arguing that the applicant had not from the outset indicated to the Danish Immigration Service that she considered herself being within the scope of EU law. Notably, however, the High Court at the same time expressed the opinion that, based on the information provided in the initial application for residence in Denmark, the Immigration Service should have assumed that the applicant third country spouse was to be assessed under the ‘*Singh* principles’.

Hence, it seems that in this case the Danish courts – in particular the City Court, but to a significant degree even the High Court – demonstrated a somewhat reluctant approach to scrutinizing the administration’s effective compliance with EU law concerning mobility rights.

Subsequent to the High Court judgment in November 2005, the Danish Immigration Service published a change of practice concerning the period of validity of residence permits being issued to spouses or cohabiting partners of Danish citizens who move back to Denmark after having lived and worked in another EU Member State. According to the new guidelines, residence permits issued in such cases will be valid for a period of 5 years.<sup>63</sup>

### *Miscellaneous*

#### *Right of residence for third country spouses of Danish citizens*

As highlighted in the 2002/2003 and the 2004 reports, the ECJ judgments in the *Singh* and *Akrich* cases<sup>64</sup> had gained attention and importance following the tightening of the general Danish rules on family reunification over the last few years, especially in 2002 (see chapter VII for an overview of these domestic rules). The reason for this was that a number of Danish citizens who were unable to fulfil the requirements under Danish law for being reunited with family members, in particular spouses, were hoping to rely on the EU rules on free movement as these rules allow for persons exercising the right to free movement to bring with them their family. Such a right also applies to EU citizens upon return to their own country after having resided in another Member State, as stated by the ECJ in the abovementioned judgments.

A Danish citizen with a third country spouse will therefore be entitled to bring his or her spouse to Denmark in order to reside here, if the couple have been living together in another EU Member State and the Danish citizen has had employment or other relevant status under EU law there. In this respect it will make no difference if the couple would be unable to fulfil the strict requirements for family reunification in the Danish Aliens Act.

According to Danish administrative practice, a residence permit will be granted on the basis of EU law under the following circumstances:

- The Danish spouse has resided in another Member State or EEA State on the basis of the provisions in the EC Treaty on free movement.
- The Danish spouse returns to Denmark and takes up residence there in a manner that would have made him/her be encompassed by the EC Treaty provisions on free movement, if he/she had taken up residence in a third Member State instead.
- The Danish spouse must – if he/she is a worker – fulfil a housing requirement in accordance with section 5 (3) of the EU/EEA Order (see above for further details regarding this requirement).
- The couple must be married by the time they enter Denmark and during the third country spouse’s continued residence in the country.<sup>65</sup>
- The foreign spouse must have stayed legally in the EU/EEA State in which the Danish spouse exercised the right to free movement under the EC Treaty.<sup>66</sup>

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63 Danish Immigration Service, news release 21 March 2006: “Ny dom ændrer udlændingemyndighedernes praksis” (available at [www.udlst.dk/Nyheder](http://www.udlst.dk/Nyheder)). No detailed guidelines on the follow-up of the judgment had been issued as of 19 May 2006.

64 ECJ judgments of 7 July 1992 *Singh* (C-370/90) and 23 September 2003 *Akrich* (C-109/01).

65 As an alternative to marriage, regular cohabitation of prolonged duration also qualifies as a basis for family reunification, see above on section 9 of the 2004 EU/EEA Order.

Even while the background of many of the applications for residence for third country citizens under EU law is the fact that they would not fulfil the general requirements pursuant to the Aliens Act for being reunified with their Danish spouses – and their stay in another EU country could thus be considered an attempt to evade restrictions in domestic law – it has been made clear by the Immigration Service that the Danish spouse's motives to move in order to be able to invoke EU law is not a relevant consideration. Abuse of EU residence rights will only be an issue in case of marriage of convenience or forced marriage.<sup>67</sup>

As an important administrative difference, applications for family reunification with third country spouses of Danish citizens according to the '*Singh* principles' are dealt with by the Danish Immigration Service, whereas the implementation of residence rights under EU law normally takes place through the state county offices issuing residence certificates under the EU/EEA Order. This is formally motivated by the fact that the EU/EEA Order only applies to the family members of non-Danish EU citizens. In case of a positive decision by the Immigration Service, the applicant will be issued a residence permit pursuant to section 9 c (1) of the Aliens Act, yet on more lenient conditions than normally required under this provision, in order to adhere to EU law.<sup>68</sup>

Again in 2005, the scope of the '*Singh* principles' was examined and challenged. The main question still seems to be whether the right to residence for a third country spouse upon the Danish citizen's exercise of the right to free movement is limited to workers, self-employed persons and service providers or recipients, or this right also applies to the spouses of students, pensioners and persons with sufficient means who have exercised their right to free movement on the basis of Directives 93/96, 90/365 and 90/364, respectively. The primary reason for the emergence of this question is a number of cases concerning Danish citizens who moved to Sweden but kept their job in Denmark, and who were invoking EU law and the '*Singh* principles' in their applications to bring third country spouses with them upon removal back to Denmark.

In a general statement on this question in December 2004, the Ministry of Refugee, Immigration and Integration Affairs noted that the ECJ has not answered the question whether the '*Singh* principles' can be extended to the groups mentioned above, and that the judgment seems to be interpreted in different ways in different Member States (Germany: extension in practice, United Kingdom: non-extension, according to the Ministry). The Ministry concluded by stating that the right to family reunification will be administered in such a way that the domestic requirements for residence permits pursuant to the Aliens Act will apply to family members of Danish citizens belonging to the three latter groups mentioned above. In other words: The principles derived from the *Singh* judgment do not apply in such cases.<sup>69</sup> This ministerial interpretation is now being implemented in practice by the Danish Immigration Service.<sup>70</sup>

There is still quite strong public interest in the issue, and a number of Danish citizens are likely to become affected by the general policy thus adopted by the Ministry. Hence, cases may still occur in which the restrictive practice and the underlying legal reasoning will be challenged. Given that the primary basis of the Ministry's statement is the absence of ECJ precedents, and the reference to diverging practices in other Member States, there seems to be a high degree of probability that Danish courts will refer this question to the ECJ in a preliminary ruling request.

Furthermore, the restrictive implementation of residence rights under EU law has been challenged before the European Commission by some Danish NGOs. On behalf of three organisations of Danish-foreign couples, the Documentation and Advisory Centre on Racial Discrimination (DA-CoRD) complained in February 2005 about the restriction of the scope of application of the '*Singh* principles', arguing that the ministerial interpretation described above implies a change of administrative practice, since previously at least Danish students have been allowed to bring third country spouses with them at return to Denmark under EU law, and that the restricted practice is an impedi-

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66 Danish Immigration Service, Guidelines No. 4/05 of 11 January 2005. The criteria for the issue of a residence permit to the third country spouse (or cohabiting partner) are essentially the same in Guidelines No. 3/06 of 9 January 2006 which have now replaced the 2005 Guidelines.

67 Cf. Danish Immigration Service, Guidelines No. 3/06 of 9 January 2006, p. 5 and p. 8.

68 Cf. Danish Immigration Service, Guidelines No. 3/06 of 9 January 2006, p. 6 and pp. 8-9.

69 Ministry of Refugee, Immigration and Integration Affairs, statement regarding the scope of the *Singh* and *Akrich* judgments, 21 December 2004.

70 Cf. Danish Immigration Service, Guidelines No. 3/06 of 9 January 2006, pp. 3-4.

ment to the right of free movement for the affected groups of citizens.<sup>71</sup> In a subsequent letter of complaint, DACoRD has brought the Commission's attention to the problem of delays in processing applications for family reunification, resulting from the procedures followed by the Danish Immigration Service due to the different legal basis for the residence permit issued to third country spouses in such cases, as compared to the smooth procedure under the EU/EEA Order.<sup>72</sup> In March the Commission submitted the matters complained of to the Permanent Representation of Denmark before the EU in order to have the Danish Government's comments.<sup>73</sup> The Government's response is not yet known.

*SIS checks on third country family members*

According to section 10 (2)(iv) of the Aliens Act, a foreigner who is not a citizen of an EU Member State or a Schengen country cannot – unless particular reasons, such as respect for family unity, make it appropriate – be granted a residence permit if an alert on the person has been entered into the Schengen Information System (SIS). This led in 2003 to an instruction from the Danish Immigration Service to the state county offices to make sure that an SIS check is carried out before a residence certificate is issued to EU citizens' family members who are third country citizens.<sup>74</sup>

In 2004 the Danish Immigration Service issued a letter of instruction to the state county offices specifying the conditions for denying the issue of a residence certificate or for revoking a residence certificate on the basis of an alert in SIS,<sup>75</sup> when the person in question is a family member of an EU citizen performing his or her right to free movement. The main point in the instruction is that the mere fact that an alert on the third country citizen has been entered into SIS cannot in itself lead to the denial or revocation of a residence certificate. Such a decision must be made on a case-by-case basis taking into account the actual situation with regard to the threat that the person poses in relation to public order, security and health. That threat must be current, genuine and sufficiently serious in order to serve as the basis for a negative decision with regard to a residence certificate.<sup>76</sup>

*Recent legal literature*

Henrik Thomassen and Pernille Breinholdt Mikkelsen, 'Indrejse og ophold for udlændinge omfattet af EU-reglerne', in L.B. Christensen et al., *Udlændingeret*, 3. Edition, Copenhagen 2006, pp. 261-71.

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71 Letter of 28 February 2005 from DACoRD to the European Commission's Representation Office in Denmark.

72 Letter of April 2005 from DACoRD to the European Commission's Representation Office in Denmark.

73 Cf. letter of 20 April 2006 from the European Commission to DACoRD.

74 Information letters from Danish Immigration Service to the state county offices No. 1/2003 and No. 9/2003.

75 It should be mentioned that the Danish authorities do not seem to distinguish between third country citizens who are family members of EU citizens and other third country citizens with respect to *entering* alerts on persons into SIS.

76 Information letter from Danish Immigration Service to the state county offices No. 3/2004, 28 June 2004.

## Chapter VI

### Relevance/Influence/Follow-up of recent Court of Justice judgments

#### *Right of residence for third country spouses of Danish citizens*

The impact of the ECJ judgments in *Singh* and *Akrich* is described and discussed above in chapter V.

#### *Jobseekers' entitlement to social advantages*

According to section 12 a of the Act on Active Social Policy,<sup>77</sup> EU/EEA citizens residing in Denmark on the basis of Community law on jobseekers' right to residence are entitled to no other economical assistance under the Act than coverage of costs related to the return to their home country. This special provision was inserted into the Act in implementation of the political agreement on access to the labour market following the EU enlargement.<sup>78</sup> As the amendment was proposed to the Parliament in February 2004, before the ECJ delivered its judgments in the *Collins* and *Trojani* cases,<sup>79</sup> the possible impact of these judgments was not discussed in the explanatory memorandum, nor elsewhere in the preparatory works. It was, however, argued that the new provision aimed at emphasising that this category of EU citizens – whose right of residence under EU law is conditioned on economic self-sustainability – should not be entitled to receive public assistance on a current basis during their stay in Denmark as first-time jobseekers.<sup>80</sup>

According to the available information, the National Appeals Board on Social Welfare had not by the end of 2005 examined any cases concerning section 12 a of the Act on Active Social Policy.<sup>81</sup> Thus, the impact of *Collins*, *Trojani* and the more recent *Ioannidis* judgments<sup>82</sup> on the application of that provision has not yet been clarified.

#### *Social cash benefits for Danish citizens returning from another EU country*

Section 11 (3) of the Act on Active Social Policy makes it a requirement for the payment of full cash benefits ('kontanthjælp') that the recipient has resided in Denmark during a total period of 7 years within the past 8 years. If this requirement is not fulfilled, the significantly lower amount of the so-called *introductory aid* ('starthjælp') will be paid out instead. The provisions on this reduced benefit and the residence requirement to obtain full cash benefits were adopted in 2002 for the primary, yet only implicit purpose of making it less attractive for refugees and other third country aliens to come to Denmark and apply for asylum or other kinds of residence permit.<sup>83</sup>

The distinctive target of the introductory aid is demonstrated by section 11 (4) of the Act on Active Social Policy, providing that the requirement of 7 years of residence in Denmark does not apply to EU/EEA citizens insofar as they are entitled to cash benefits under EU law. The somewhat unclear scope of this exemption was clarified in the explanatory memorandum. Reference was here made to Regulation No. 1612/68 and the EEA Agreement, and to the ECJ caselaw according similar rights to self-employed persons as to workers under these instruments. It was further explained that the requirement of 7 years of residence therefore does not apply to workers and self-employed persons, and that it would also not apply to Danish citizens comprised by Regulation No. 1612/68, such as Danish citizens having resided as workers in another EU/EEA country.<sup>84</sup> Against this background, section 11

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77 Consolidation Act No. 1009 of 24 October 2005.

78 Act No. 282 of 26 April 2004. The transitional arrangements are described in chapter VIII.

79 ECJ judgments of 23 March 2004 *Collins* (C-138/02) and 7 September 2004 *Trojani* (C-456/02).

80 Explanatory memorandum to Bill No. L 153/2003-04, para. II.1 and IX and specific comments on section 12 a.

81 See list of appeals cases examined by the National Appeals Board on Social Welfare ('Ankestyrelsen'), available at <http://cms.ast.dk/dokumenter/Afgoerelser/smb.asp>.

82 ECJ judgment of 15 September 2005 *Ioannidis* (C-258/04).

83 Act No. 361 of 6 June 2002 amending the Act on Active Social Policy and the Integration Act.

84 Explanatory memorandum to Bill No. L 126/2001-02 (2. Session), para. 5.4 and specific comments on section 11 (4).

(4) seems to imply that Danes and other EU/EEA citizens would only quite rarely, based on residence periods outside the EU/EEA countries, be referred to the introductory aid.

A recent decision from the National Appeals Board on Social Welfare has created doubts on the scope of this EU/EEA exemption, in particular regarding Danish citizens who have resided under the EU rules in another Member State. The individual in the case had, after a number of years of residence and work in another EU/EEA country, returned to Denmark and applied for cash benefits, but was only granted the lower introductory aid. The reason given for this was that he did not fulfil the residence requirement in section 11 (3) of the Act on Active Social Policy, and that his period of residence in the other Member State did not count towards the 7 years rule because he had not acquired the status of worker in Denmark. This conclusion, as well as the line of reasoning, was upheld by the National Appeals Board on Social Welfare. The Appeals Board referred to the caselaw of the ECJ, in particular para. 11 in the *Tsiotras* judgment,<sup>85</sup> invoking this as a basis of the assumption that the status of worker is lost in case of cessation of an employment contract unless it is documented that the EU citizen is genuinely jobseeking in the Member State in which he or she got unemployed.<sup>86</sup>

The Appeals Board decision cannot be considered legally sustainable, as it seems based on a blatant misinterpretation of the EU rules involved. Not only was the ECJ in *Tsiotras* dealing with a particular situation regarding the transitional arrangements upon the accession of Greece to the EC, but the Appeal Board's decision also confuses the requirement of previous employment and actual job-seeking in a host Member State with the issue of seeking employment in the Member State of origin upon return to that country. No mention was made of the possible relevance of more recent ECJ caselaw such as *Collins* or *Trojani*. It may be seen as an indication of the Appeals Board's realisation that this application of EU law is problematic that the Appeals Board, already a month after the publication of this decision, admitted another case concerning introductory aid in order to carry out a new principled examination "as a supplement" to the decision discussed above.<sup>87</sup>

#### *SIS checks on third country family members*

The guidelines described above in chapter V *in fine* seem to comply with the recent judgment in *Commission v. Spain*.<sup>88</sup>

#### *Foreign company vehicles*

As a consequence of the judgments in *Commission v. Denmark* and *van Lent*,<sup>89</sup> the Ministry of Taxation made a proposal to amend the Danish Act on Registration Tax on Motor Vehicles<sup>90</sup> in order for the Act to comply with these ECJ judgments.<sup>91</sup>

The amendment proposed that motor vehicles made available to an employee resident in Denmark by a company which has its registered office or principal establishment in another EU/EEA country, and vehicles used by a self-employed person resident in Denmark, such person being established or providing services in another EU/EEA country, for the performance of that person's business activities in another EU/EEA country, shall not be liable to taxation under this Act, unless the vehicle is intended to be used essentially in Denmark on a permanent basis or is in fact used in that manner.

In order to decide whether the motor vehicle is used essentially in Denmark on a permanent basis, two objective criteria have been introduced: a day-criterion and a kilometer-criterion, both working within a period of 12 months. The day-criterion applies when the vehicle is used for 183 days in Denmark within 12 months, and the kilometer-criterion when the vehicle is used less abroad than in Denmark in terms of kilometers within 12 months. Dispensation has been made possible. The proposed amendment was adopted by the Parliament in June 2006, and entered into force shortly after.<sup>92</sup>

85 ECJ judgment of 26 May 2003 *Tsiotras* (C-171/91).

86 National Appeals Board on Social Welfare ('Ankestyrelsen'), decision of 14 December 2005. Reported in SM A-1-06, 3 February 2006 (available at <http://cms.ast.dk/dokumenter/Afgoerelser/smb.asp>).

87 National Appeals Board on Social Welfare ('Ankestyrelsen'), admissibility decision of 3 March 2006.

88 ECJ judgment of 31 January 2006 *Commission v. Spain* (C-503/03).

89 ECJ judgments of 2 October 2003 *Hans van Lent* (C-232/01) and 15 September 2005 *Commission v. Denmark* (C-464/02).

90 Consolidation Act No. 977 of 2 December 2002 with amendments.

91 Bill No. L 225 of 5 April 2006. The draft text of the proposal is annexed to this report.

92 Act No. 519 of 7 June 2006 (in force on the second day upon official promulgation of the amendment).

## Chapter VII

### Policies, texts and/or practices of a general nature with repercussions on free movement of workers

#### Family reunification

##### *Texts in force*

The general rules on family reunification, as laid down in the Aliens Act, have been amended and tightened several times over the past few years. This happened again in 2005, although only minor amendments were adopted this year. These rules do not apply to EU citizens exercising their right to free movement, as the residence right of family members of such persons will be decided in accordance with the EU/EEA Order (see chapter V above). Nevertheless, there is a link between the general Danish rules and EU law on free movement for persons, because quite many persons who are unable to fulfil the strict requirements in the Aliens Act, or unwilling to go through the cumbersome procedures under the Aliens Act, are invoking EU law in this field. For this reason it may be useful to give an overview of the most important general requirements in the Aliens Act concerning family reunification, primarily focusing on the reunification of spouses.<sup>93</sup>

- For *spouses* there is a minimum age of 24 years for both parties. The same applies to *cohabiting partners* in a stable relationship (normally at least 1½ years of duration). There is no right to family reunification with *parents* except for situations where a negative decision in such a case would be contrary to Denmark's international obligations. *Children* must, as a starting point, be under the age of 15 in order to be granted residence for the purpose of family reunification.
- *Immigrants* must have had a permanent residence permit in Denmark for 3 years in order to be granted family reunification with a spouse. A permanent residence permit will normally require a lawful stay of at least 7 years in Denmark.
- An *economic support requirement* must be met.
- A *housing requirement* must be met.
- An *economic guarantee* of app. 53.000 DKK (around 7.000 euros) must be provided by the sponsor to cover any future public expenses to support the spouse.
- The sponsor must *not* have received *public financial assistance* for a period of 1 year prior to the decision on the application for family reunification, except for minor special benefits and benefits comparable to, or in substitution of, salary or pension.
- The so-called *attachment requirement* must be met, meaning that the aggregate attachment to Denmark of the spouses must be *stronger* than their aggregate attachment to any other country. Thus, if the two spouses' cumulative attachment to another country is stronger than, or just as strong as, their aggregate attachment to Denmark, a permit for family reunification in Denmark will not be granted.
- A residence permit cannot be granted if there is reasonable doubt about either of the spouses' *full consent* to enter into the marriage.
- The marriage must not be one of assumed convenience (*pro forma*).

The legislative changes concerning family reunification in 2005 primarily established the additional requirement that both the applicant and the spouse already living in Denmark must sign a so-called *integration declaration* regarding active participation in the applicant's and, if relevant, the accompanying children's training of Danish language, culture etc.<sup>94</sup> While signing such a declaration was made an indispensable requirement for the issue of a permit for family reunification, it cannot be enforced by specific means directed towards the residence permit once the applicant has taken up residence in Denmark.

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93 Section 9 of the Aliens (Consolidation) Act No. 826 of 24 August 2005. It should be noted that most of the requirements mentioned above can be dispensed with in exceptional cases, yet generally under very restrictive criteria.

94 Act No. 402 of 1 June 2005 amending i.a. the Integration Act and the Aliens Act.

Another amendment of the Aliens Act in 2005 aimed to accommodate parts of the criticism of the Danish rules on family reunification that had been pronounced in 2004 by the Council of Europe's Commissioner for Human Rights. Along with restrictions concerning illegal work (see below) and humanitarian residence permits, the Aliens Act was amended by words intended to put emphasis on the particular weight to be given to family unity considerations in various cases involving the possible issue of a residence permit for a family member, mostly as regards the criteria for dispensing with the normal requirements for family reunification.<sup>95</sup> Since family unity should already be a primary consideration in such cases, this amendment may appear to have been mostly symbolic, even though it did result in more liberal practices concerning family members of refugees who have been granted asylum in Denmark.

#### *Judicial practice*

Judgment of 16 November 2005 from the High Court of Eastern Denmark, *Alison Ward Petersen v. Danish Immigration Service*.<sup>96</sup>

#### *Recent legal literature*

Jens Vedsted-Hansen, 'Familiesammenføring', in L.B. Christensen et al., *Udlændingeret*, 3. Edition, Copenhagen 2006, pp. 121-201.

### **Initiatives to prevent illegal work**

Against the background of a Parliament decision to step up the fight against illegal work, a number of initiatives have been launched in recent years, including reinforced police surveillance and setting up regional networks to monitor the situation. The Aliens Act was amended in 2004 to increase the level of punishment for *illegal employment* of aliens, which can now lead to imprisonment of up to 2 years.<sup>97</sup> In order to accompany the measures taken against persons employing aliens illegally, an additional amendment was adopted in 2005 stepping up the level of punishment for aliens *taking up employment illegally*. Such employment can now be punished by up to 1 year of imprisonment.<sup>98</sup>

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95 Act No. 324 of 18 May 2005 amending the Aliens Act.

96 Published in *UfR (Weekly Legal Magazine)* 2006, p. 711. The judgment is summarised and discussed above in chapter V.

97 Act No. 428 of 9 June 2004 amending the Aliens Act.

98 Act No. 324 of 18 May 2005 amending the Aliens Act.

## Chapter VIII

### EU enlargement

#### Introduction

The EU enlargement as of 1 May 2004 was a major political focal point throughout 2004, and still has been in 2005 and the first months of 2006. Before the enlargement took effect the interest was focusing on the possible pressure on the Danish labour market and the risk of unintended use of the social benefits under the Danish welfare system. This has continued to be a concern, even though Denmark has applied transitional arrangements in accordance with the Accession Treaty for the express purpose to avoid such problems, and experience so far indicates that they only occur to a limited extent in practice.

After the enlargement took effect on 1 May 2004, new questions emerged regarding the transitional arrangements. Much attention has been directed towards possible ways in which the transitional arrangements are or can be circumvented. This risk led to a number of initiatives from the Government in order to tackle the potential problem of circumvention. One such initiative was the clarification of rules and administrative procedures through a publication from the Ministry of Employment. A new edition of this manual was published in 2005.<sup>99</sup> Questions have also been raised by the European Commission regarding the contents of the transitional arrangements. As a result, some of the transitional provisions were amended in 2005.

The background of the transitional arrangements, as well as their content, will be described below. First, the initial political framework will be outlined, followed by the legislation that was adopted in 2004. Second, the legislative clarifications and modifications adopted in 2005 will be described. Finally, the recent political agreement to revise the transitional arrangements for access to the Danish labour market and the proposed changes of legislation will be presented. This presentation will include statistical information in order to illustrate the effects of the EU enlargement and the Danish transitional arrangements with regard to free movement of workers.

#### The political framework and the legislative changes in 2004

Against the background of the findings of ministerial working groups, the Government and the main part of the political parties represented in the Parliament concluded in December 2003 an agreement on transitional arrangements for the access of workers, who are citizens of the EU-8 Member States, to the Danish labour market, and their access to social benefits.<sup>100</sup> The political agreement was implemented by a number of legislative and administrative changes in the first months of 2004.

#### Amendments of the Aliens Act

The Aliens Act was amended by an act in April 2004, taking effect on 1 May 2004.<sup>101</sup> The main new provisions in section 9 a (5)-(11) stipulate the conditions for granting residence permits to citizens from Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic and Hungary on the basis of employment.

The basic condition is that the EU-8 citizen in question must have been offered a full-time job with an employer based in Denmark in accordance with the terms and conditions applying on the

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99 'Rules on residence and work in Denmark for citizens from the new East European EU Member States', Manual published by the Ministry of Employment, 3. Edition, October 2005 (available in English at [www.bm.dk](http://www.bm.dk)).

100 See the 2004 report for more details. The agreement is available in an English version at the website of the Danish Ministry of Employment ([www.bm.dk](http://www.bm.dk)). At this website the development with regard to the number of residence permits issued to workers from the EU-8 Member States, the impact on the labour market etc. can also be followed.

101 Act No. 283 of 26 April 2004.

Danish labour market. The employment must be based either on a collective agreement, on an individual contract for researchers, specialists etc., or for other employees on individual contract conditions that can be considered usual, cf. section 9 a (5) (i)-(iii) of the Aliens Act:

(5) Upon application, a residence permit may be issued to an alien who is a national of Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic or Hungary if:

(i) the alien has concluded a contract of or has been offered ordinary full-time employment with an employer in Denmark pursuant to a Danish collective agreement applicable to the employer and covering the work in question,

and where the party to the collective agreement representing the employees is at least a local trade union which is a member of a national employee association;

(ii) the alien, in a field of work where conditions of pay and employment are usually only governed by an individual employment contract, has concluded a contract of or has been offered ordinary full-time employment with an employer in Denmark as a researcher, teacher, salaried executive or as a specialist, etc.; or

(iii) the alien, in cases other than those mentioned in paragraphs (i) and (ii), has concluded a contract of or has been offered ordinary full-time employment with an employer in Denmark on usual conditions of pay and employment.

The employer must be registered with the customs and tax authorities and must not be the subject of a strike, boycott or lockout, cf. section 9 a (6) and (7). In the situations falling within section 9 a (5) (iii) the employer must also see to that the job offer contains specific information on a number of things, including a work description, rights with respect to holidays etc., and the employer is obliged to make a declaration on the fulfilment of all of the conditions mentioned above to the Danish Immigration Service which processes the applications for residence permits under this scheme, cf. section 9 a (8) and (9).

When needed, the Danish Immigration Service can ask the Regional Labour Market Council to certify that the conditions listed in section 9 a (5) and (8) are fulfilled, and the Immigration Service can forward relevant information on the granting of a residence permit to an EU-8 citizen, without his or her consent, to the Regional Labour Market Council, cf. section 9 a (10) and (11).

Another amendment was made in section 14 (1) (ii) of the Aliens Act, stating that the exemption from the requirement of a work permit, which is granted to foreigners falling under the EU rules, does not apply to EU-8 citizens.

When the situation for workers from these new Member States is compared to that of workers from the EU-15 Member States, as well as from Cyprus and Malta, and third country citizens, respectively, the picture is like this:

- *Citizens from the EU-15 Member States, Cyprus and Malta:* Enjoy full free movement under the rules in the EU/EEA Order, as described in chapter I.
- *Third country citizens:* A residence permit on the basis of employment will only be granted when essential employment considerations make it appropriate, cf. Aliens Act section 9 a (1).
- *Citizens from the EU-8 Member States:* Are not encompassed by the EU/EEA Order's provisions on workers. The Aliens Act section 9 a (5) - (11) applies, which means on the one hand that no labour market test will be applied but, on the other hand, that a full-time job on the terms described above is required in order to be granted a residence permit, cf. section 9 a (5) (i)-(iii). On certain points – especially with regard to the full-time requirement – the conditions under section 9 a (5) will be stricter than those under section 9 a (1). Therefore, EU-8 citizens, whose application under section 9 a (5) has been rejected, are entitled to have their application examined under section 9 a (1) as well.

### **Amendments of the legislation on social benefits**

As mentioned above one of the possible risks entailed to the EU enlargement was an unintended use of social welfare schemes. This led to a couple of changes in the laws on social benefits, which apply to all EU citizens, including Danish citizens.

The Act on parental leave<sup>102</sup> was amended by inserting a requirement according to which persons, who want to take leave after this law, should notify the authorities before 1 April 2004.<sup>103</sup> It should be noted that this kind of leave was to be phased out in any event.

The Act on allowances in relation to sickness and birth<sup>104</sup> was amended to specify that an EU citizen, who is reported ill and receives Danish sickness allowances abroad, can be called in for a so-called “sickness follow up” in Denmark in order to discuss the situation and possible initiatives to enable faster recovery and continued employment.<sup>105</sup>

The Act on Active Social Policy<sup>106</sup> was amended to specify that EU citizens on a short term stay in Denmark, including persons seeking work, will not be eligible for cash benefits except for help in relation to the return to the home country.<sup>107</sup>

### **Amendments of the EU/EEA Order and the Aliens Order**

The EU enlargement was the main background to some of the amendments of the EU/EEA Order that took place in 2004, especially the introduction of housing and support requirements in relation to family reunification.<sup>108</sup> It was also inserted expressly into the EU/EEA Order that its provisions on the issue of residence certificates on the basis of paid employment do not apply to EU-8 citizens, see in particular section 1 of the Order.

As another result of the transitional arrangements, the general Aliens Order<sup>109</sup> was amended in order to clarify the administrative question as to where applications for residence permits from citizens of Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic and Hungary can be filed.<sup>110</sup>

### **Legislative amendments in 2005**

The 2004 report described a number of legal and administrative questions that were raised as a result of the experiences with the Danish transitional arrangements during the first months after the EU enlargement (see the 2004 report, chapter VII in fine). In response to some of these questions, the transitional rules have been amended and partly modified with regard to three different matters.

First, the EU/EEA Order was amended as regards the right to take up employment for other groups of EU-8 citizens than workers. While section 13 (1) contains the general rule that a person eligible for an EU/EEA residence certificate is exempt from any requirement of a work permit, the new provision in section 13 (2) expressly states that, notwithstanding this general rule, citizens from the EU-8 Member States who are eligible for a residence certificate solely on the basis of the provisions concerning students, persons of sufficient means, and persons entitled to remain after cessation of activities as a worker or self-employed person (sections 2-4 of the EU/EEA Order) are *not* exempt from the requirement of a work permit in respect of paid employment.<sup>111</sup>

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102 Act No. 402 of 31 May 2000 (see Consolidation Act No. 193 of 23 March 2004).

103 Act No. 135 of 2 March 2004.

104 Consolidation Act No. 761 of 11 September 2002 (later version: Consolidation Act No. 1047 of 28 October 2004).

105 Act No. 282 of 26 April 2004. These amendments have been specified in Executive Order No. 306 of 3 May 2004.

106 Consolidation Act No. 709 of 13 August 2003 (later version: Consolidation Act No. 1009 of 24 October 2005).

107 Act No. 282 of 26 April 2004. See also chapter VI above.

108 See chapter V above, referring to the explanatory memorandum to Bill No. L 157/2003-04 which presented the Government's statement of the political and legal reasons for the subsequent amendments of the EU/EEA Order.

109 Executive Order No. 581 on aliens' right to enter Denmark (the Aliens Order), Ministry of Refugee, Immigration and Integration Affairs, 10 July 2002 (later version: Executive Order No. 943 of 5 October 2005).

110 Executive Order No. 293 of 29 April 2004, amending section 26 of the Aliens Order.

111 Executive Order No. 655 of 29 June 2005, amending section 13 of the 2004 EU/EEA Order (in force 1 July 2005).

Second, as a special rule concerning students from the EU-8 Member States, the new section 13 (3) of the EU/EEA Order states that a work permit *shall* be issued to an EU-8 citizen who is entitled to an EU residence certificate as a student (pursuant to section 2 of the EU/EEA Order, implementing Directive 93/96) for the purpose of employment up to 15 hours a week, and full-time employment in the months of June, July and August.<sup>112</sup>

Third, a *12 months limitation* of the concrete effects of the transitional arrangements on the individual EU-8 worker has been adopted in response to a question raised by the European Commission. This means that the exception from the scope of the general provisions concerning the issue of residence certificates under the EU/EEA Order on the basis of paid employment for EU-8 citizens ceases to apply if the individual worker has been active on the Danish labour market for a minimum period of 12 consecutive months.<sup>113</sup>

### **Administrative processing of applications**

The duration of the administrative processing of EU-8 citizens' applications for a residence permit varied considerably, depending on the types and complexity of the application. In early 2006 the average processing time was as follows:

- 25 days for permits issued pursuant to section 9 a (5) (i) on enterprises covered by collective agreements,
- 52 days for permits issued pursuant to section 9 a (5) (ii) on individual contracts for researchers, specialists etc.,
- 74 days for permits issued pursuant to section 9 a (5) (iii) on employees with individual contracts providing usual conditions of pay and employment.<sup>114</sup>

According to the Danish Immigration Service, the duration of processing of EU-8 applications was reduced by the half during the first months of 2006. As a result, by May 2006 it was only 13 days as an average for all types of cases.<sup>115</sup>

### **Revision of the transitional arrangements for the second phase in 2006**

On 5 April 2006 the political parties behind the 2003 agreement on transitional arrangements for the access of workers from the EU-8 Member States to the Danish labour market, and to social benefits, concluded a political agreement revising the transitional arrangements with a view to liberalising access to the Danish labour market for EU-8 citizens. The Ministry of Employment has published the following overview of the revision agreement:

#### **Revision of the Agreement concerning access to the Danish labour market for citizens of the East European EU countries**

On the 5th of April 2006 the Liberal Party, the Conservative Party, the Social Democrats, the Socialist People's Party, and the Social Liberal Party concluded a political agreement that will

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112 Executive Order No. 655 of 29 June 2005, amending section 13 of the 2004 EU/EEA Order (in force 1 July 2005).

113 Executive Order No. 1255 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 November 2005 (in force 1 January 2006), section 1 *in fine*. See also section 11 (1) and (2) on trans-border workers and seasonal workers, and section 13 (2) on exemption from the requirement of work permits for students, persons of sufficient means, and persons entitled to remain after cessation of activities as a worker or self-employed person, cf. sections 2-4 of the EU/EEA Order (the initial adoption of section 13 (2) is described above).

114 Explanatory memorandum to Bill No. L 235/2005-06, Ministry of Refugee, Immigration and Integration Affairs, 27 April 2006, para. 3.2.

115 Danish Immigration Service, Newsletter No. 4, 2 May 2006: "Hurtigere adgang for østarbejdere" (available at [www.udlst.dk/Publikationer](http://www.udlst.dk/Publikationer)).

liberalise the Danish transitional arrangement for migrant workers from the East European EU countries further.

While Denmark will continue to have a transitional arrangement in order to ensure proper pay and working conditions, it will now become even easier to employ workers from the East European EU countries. The Danish authorities will also take steps to help enterprises recruit foreign workers to sectors that experience a shortage of labour.

In the next three-year period the parties to the Agreement will discuss the possibilities of gradually phasing out the transitional arrangement.

### **Objectives of the Agreement**

- It should become easier to recruit labour from the East European EU Member States for job vacancies on the Danish labour market.
- It should also in the future be ensured that employment takes place on pay and working conditions that are laid down by collective agreements or that are otherwise ordinary on the Danish labour market.
- The Danish labour market must be prepared to cope with a future situation without any transitional arrangement. The aim is to gradually phase out the transitional arrangement over the coming three-year period.

### **New initiatives in the Agreement**

#### **1. Easier access for East European workers**

Enterprises covered by a collective agreement may, in the future, obtain prior approval for employment of citizens from the East European EU Member States. This means that they will then no longer have to apply for a work permit for each individual worker they wish to employ.

The political parties behind the Agreement will consider whether it will be possible in a longer perspective to extend this arrangement to include enterprises that are not covered by any collective agreement.

Workers from the East European EU Member States may, in the future, be employed also in part-time jobs with a working time of at least 30 hours per week. Students from these countries will, in the future, have the same right to work as students from other EU Member States.

A worker may continue to work during the time an application for a prolongation of the work permit is being dealt with by the authorities.

It will, in the future, be possible to employ lorry drivers and other workers from the East European EU Member States who are residing abroad. Documentation must be provided showing that the wage is covered by a collective agreement or otherwise is in accordance with what is ordinary for the work concerned.

Specific targets will be set for the time it takes to deal with and decide cases concerning labour from the East European EU Member States. Efforts are made to constantly reduce the time it takes to make a decision in these cases.

#### **2. Gradual phasing-out of the transitional scheme**

The parties to the Agreement will on a current basis assess whether the transitional arrangement can be made even more flexible, for instance by abolishing the requirement for a work permit in sectors with bottleneck problems

#### **3. Recruitment of foreign labour**

The labour market authorities will strengthen the cooperation with the social partners concerning recruitment of labour from the other EU Member States to jobs in sectors with shortages of Danish labour.

#### **4. Prevention of illegal work**

A number of initiatives will be taken in order to prevent illegal work. Special attention will be given to preventing illegal work involving lorry drivers.

The National Working Environment Authority will ensure a quick reaction in respect to foreign enterprises violating the legislation on safety and health at work.

Special measures in relation to problems with safety and health in the building and construction sector will be discussed by the parties behind the Agreement.

#### **5. Monitoring of the labour market**

The National Employment Council will at least once a year be requested to assess the development on the labour market in the light of the enlargement of the European Union.

A general analysis will be carried of the challenges facing the Danish labour market in the light of the phasing out of the transitional arrangement.<sup>116</sup>

As far as the residence rights of EU-8 citizens are concerned, the political agreement has been followed up by amendments of the Aliens Act.<sup>117</sup> Furthermore, the Aliens Order is going to be amended in order to operationalise para. 1 of the above overview. The main elements of the legislative amendments are the following:

- EU-8 workers may be employed in part-time jobs of at least 30 hours per week (amendment of section 9 a (5) (i)-(iii) of the Aliens Act, quoted above).
- Employers covered by a collective agreement may obtain prior general approval by the Danish Immigration Service for the employment of EU-8 citizens (new section 9 a (11) and (12) of the Aliens Act, referring to section 9 a (5) (i) and (ii), respectively). The requirement of a collective agreement may, however, be lifted subsequently by the Minister of Refugee, Immigration and Integration Affairs (cf. section 9 a (17)).
- An EU-8 citizen who has concluded a contract of or has been offered employment with an employer who has obtained such general approval, will be allowed to reside and work upon registration with the Danish Immigration Service. If and when issued, the residence permit must be taken out by the worker within a period of 30 days after notification of the issue by the Immigration Service (new section 9 a (13) of the Aliens Act).
- EU-8 students will have the same right to work as students from other EU Member States (sections 4 and 15 of the 2006 EU Residence Order).

#### *Recent legal literature*

Henrik Thomassen and Pernille Breinholdt Mikkelsen, 'Indrejse og ophold for udlændinge omfattet af EU-reglerne', in L.B. Christensen et al., *Udlændingeret*, 3. Edition, Copenhagen 2006, pp. 257-58.

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116 Ministry of Employment, Overview of the revised agreement, 6 April 2006 (available in English at [www.bm.dk/graphics/Dokumenter/Temaer/EU](http://www.bm.dk/graphics/Dokumenter/Temaer/EU)). The full text of the political agreement is annexed to this report.

117 Act No. 532 of 8 June 2006 (in force on the second day upon official promulgation of the amendment). See also the explanatory memorandum to Bill No. L 235/2005-06, submitted to Parliament by the Minister of Refugee, Immigration and Integration Affairs on 27 April 2006.

## Chapter IX Statistics

### General statistics on EU/EEA citizens

9.916 new residence certificates were issued pursuant to the EU/EEA Order in 2005, as compared to 7.904 in 2004. The basis of these certificates varied according to these main categories: paid employment 25%, students 46%, family members 17%, and others 12%.<sup>118</sup>

In absolute figures, the various categories of certificates and the main EU countries of origin were the following:<sup>119</sup>

#### *EU/EEA residence certificates issued*

Category	2005				2004
	Total	Germany	Poland	France	Total
<b>Residence certificates</b>	<b>9.916</b>	<b>2.069</b>	<b>1.130</b>	<b>1.119</b>	<b>7.904</b>
<i>Persons in paid employment</i>	2.516	771	0	293	2.147
<i>Students enrolled in recognised education</i>	4.593	779	699	627	3.815
<i>Family members of EU/EEA citizens</i>	1.642	227	367	96	924
<i>Others, including</i>	1.165				
- Self-employed persons	145				
- Service providers and recipients	84	292	64	103	1.018
- Persons of sufficient means	916				
- Retired persons	20				
<b>Refusal of certificate</b>	<b>107</b>	<b>16</b>	<b>11</b>	<b>4</b>	<b>62</b>
<b>Total</b>	<b>10.023</b>	<b>2.085</b>	<b>1.141</b>	<b>1.123</b>	<b>7.966</b>

Next to Germany, Poland and France, the main EU countries of origin were UK, Spain, Italy, Netherlands, Lithuania, Austria, Portugal, the Czech Republic, Greece, Belgium, Switzerland (whose citizens are also encompassed by the EU/EEA Order), Hungary, Latvia, Ireland and Estonia.<sup>120</sup>

### Statistics pertaining to the EU enlargement

4.923 new residence (and work) permits were issued pursuant to section 9 a (5) of the Aliens Act to workers from the EU-8 Member States in 2005, as compared to 2.097 in 2004 (1 May - 31 December). Among these a number of 'new' residence permits were issued to EU-8 workers who previously held a residence permit based on another employment contract. Thus, between 1 May 2004 and 31 December 2005 6.203 EU-8 citizens obtained a total of 7.020 residence permits under this transitional provision, due to the fact that 685 persons got two separate residence permits, 57 persons got three, and 6 persons got four separate residence permits. 30 applications were rejected in 2005.<sup>121</sup>

The residence permits in 2005 varied according to their basis and the countries of origin of the applicant EU-8 workers as follows:<sup>122</sup>

#### *Section 9 a (5) residence permits issued*

Category	2005 total			
Nationality		Employers covered by collective agree-	Individual contracts	Usual conditions of pay and employment

118 *Tal og fakta på udlændingeområdet 2005* (Figures and Facts on Aliens 2005), Danish Immigration Service, June 2006, p. 16 (available at [http://www.udlst.dk/Statistik/tal\\_fakta\\_2005.htm](http://www.udlst.dk/Statistik/tal_fakta_2005.htm)).

119 *Ibid.*, p. 16 (author's translation).

120 *Ibid.*, p. 17.

121 *Ibid.*, p. 14.

122 *Ibid.*, p. 14 (author's translation).

*Denmark*

		ment (section 9 a (5) (i))	(section 9 a (5) (ii))	(section 9 a (5) (iii))
Estonia	135	83	11	41
Latvia	514	310	8	196
Lithuania	1.536	1.083	81	372
Poland	2.421	1.813	129	479
Slovakia	88	64	5	19
Slovenia	14	6	3	5
Czech Republic	69	33	18	18
Hungary	146	62	24	60
Total	4.923	3.454	279	1.190

In addition to this statistical information published by the Danish Immigration Service, more detailed – and slightly differing – statistics on the outcome of applications under the transitional rules were provided by the Ministry of Refugee, Immigration and Integration Affairs to the Parliament in connection with the legislative amendments aiming to revise the transitional arrangements (see chapter VIII). According to this source, the Danish Immigration Service processed a total of 5.944 applications from citizens of the EU-8 Member States in 2005. 4.928 persons were granted a residence (and work) permit pursuant to section 9 a (5) of the Aliens Act (app. 83 % of the cases), 820 applications were withdrawn, 32 applications were rejected, and 164 persons were exempt from residence and work permit or transferred to another kind of procedure.<sup>123</sup>

The 4.928 residence permits to EU-8 workers issued in 2005 were based on the three different types of employment under section 9 a (5) of the Aliens Act (see chapter VIII) as follows:

- 70% (3.463 permits) were issued pursuant to section 9 a (5) (i) on employers covered by collective agreements,
- 6% (277 permits) were issued pursuant to section 9 a (5) (ii) on individual contracts for researchers, specialists etc.,
- 24% (1.188 permits) were issued pursuant to section 9 a (5) (iii) on employees with individual contracts providing usual conditions of pay and employment.<sup>124</sup>

At the end of January 2006, the residence permits issued to persons actually working in Denmark were divided on the following branches of the labour market:

- Farming and gardening: 1.399
- Industrial enterprises etc.: 333
- Construction enterprises: 452
- Commerce, hotels and restaurants: 289
- Transport: 92
- Financing etc.: 380
- Public and personal services: 525.<sup>125</sup>

<sup>123</sup> Explanatory memorandum to Bill No. L 235/2005-06, Ministry of Refugee, Immigration and Integration Affairs, 27 April 2006, para. 3.2.

<sup>124</sup> *Ibid.*, para. 3.2. It should be noted that the differences between this source and the statistics published by the Danish Immigration Service in June 2006 (quoted above) are insignificant.

<sup>125</sup> *Ibid.*, para. 3.2.

## Chapter X Social Security

### Relationship between Regulation 1408/71 and Regulation 1612/68

The general remarks under this heading in the 2002-2003 report still apply. In addition, reference can be made to chapter VI above regarding the issue of social cash benefits for Danish citizens returning from another EU country.

Various legal problems concerning both principled and practical aspects of the impact of Regulation 1408/71 on Danish social welfare legislation seem to be unsolved. Such problems are probably most frequent in respect of the delimitation of which domestic benefits are covered by the Regulation. However, focus on these problems in the social welfare administration at higher level is likely to be increasing, while lacking awareness at the lower administrative level of the potential impact of the Regulation may still be a practical problem.

In 2005 the National Appeals Board on Social Welfare examined three cases of a principled nature pertaining to Regulation 1408/71. The first case concerned a Spanish citizen receiving partial Danish old-age pension who had applied for a social pension supplement under Danish law, which was to be calculated in accordance with Regulation 1408/71.<sup>126</sup> In the second case, the Appeals Board held that a Danish citizen, resident in Spain, was entitled to certain health-related benefits during his temporary stay in Denmark. Being formerly employed within the EU, and now receiving old-age pension from Denmark, he was eligible for benefits under Regulation 1408/71, and the specific kind of benefit was to be delivered by Denmark during his stay here, according to art. 31 of the Regulation.<sup>127</sup> The third case also involved mobility issues, the Appeals Board here finding that an EU citizen who had resided in Denmark for 22 years and who was now receiving Danish old-age pension, would be entitled to continued receipt of this social pension upon removal to an African country, since art. 3 (1) of Regulation 1408/71 had been amended and residence within the territory of the EU Member States was therefore no longer required.<sup>128</sup>

With a view to the particular problems concerning medical assistance, health insurance and hospital treatment, the Ministry of the Interior and Health has issued new guidelines on the EU rules etc. on social security.<sup>129</sup>

### Supplementary pension schemes

Directive 98/49/EC has not led to any changes in Danish legislation concerning supplementary private pension schemes as the rules and practices were considered to be compatible with the contents of the Directive.

Denmark is one of the countries in which there is a different treatment, as regards taxation, of pension schemes established outside the country from those schemes established in the country.<sup>130</sup> Regarding the free movement of workers, the different treatment occurs when contributions paid to

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126 National Appeals Board on Social Welfare ('Ankestyrelsen'), decision of 17 November 2004. Reported in SM P-2-05, 8 March 2005 (available at <http://cms.ast.dk/dokumenter/Afgoerelser/smb.asp>).

127 National Appeals Board on Social Welfare ('Ankestyrelsen'), decision of 15 June 2005. Reported in SM C-30-05, 6 July 2005. In its decision, the Appeals Board makes reference to two statements from the Ministry of Social Affairs.

128 National Appeals Board on Social Welfare ('Ankestyrelsen'), decision of 19 October 2005. Reported in SM P-30-05, 1 December 2005.

129 Vejledning om EF-regler m.m. om social sikring. Sygehjælp, sygesikring og sygehusbehandling, Ministry of the Interior and Health, October 2005 (available at <http://www.im.dk/publikationer/sygehjaelp/index.htm>).

130 See also Communication of 19 April 2001 from the Commission on the elimination of tax obstacles to the cross-border provision of occupational pensions, and Communication of 30 April 2001 from the Danish Ministry of Taxation to the Parliament (Skatteudvalget, Alm. Del bilag 519, EEU, alm. Del bilag 1137 (løbenr. 17406), available at [www.folketinget.dk/Samling/20001/udvtilag/SAU/Almdel\\_bilag519.htm](http://www.folketinget.dk/Samling/20001/udvtilag/SAU/Almdel_bilag519.htm)).

pension institutions not established in Denmark are not tax deductible, and when there is taxation in Denmark of the pension when moving abroad.<sup>131</sup>

In a report from 2002 on the pension system the Ministry of Social Affairs, in the chapter on the importance of the pension systems for the mobility on the labour market, dealt with the transfer of a pension scheme when moving abroad, but did not specifically deal with the transfer to other EU Member States. The conclusion in this chapter was, however: "Hence, the Danish pension system seems to create no unnecessary obstacles to labour market mobility."<sup>132</sup>

In its 2005 report on the pension system, the Ministry of Social Affairs mentions the possibility of transferring a pension scheme and taxation in Denmark when moving abroad, but still not dealing specifically with transfer to other EU Member States.<sup>133</sup>

On 23 March 2004 the Commission filed a case against Denmark before the ECJ, claiming a breach of the EC Treaty.<sup>134</sup> On 1 June 2006, the Advocate General proposed the ECJ to rule against Denmark for breaching the Treaty. The final result of the ECJ proceedings, as well as the possible consequences for Danish legislation is an issue to be dealt with in the 2006 report.

#### *Recent legal literature*

Kirsten Ketscher, 'EU's påvirkning af dansk socialret – fra ubevægelighed til fri bevægelighed' (in *EU-rettens påvirkning af dansk ret*), Copenhagen 2002.

Kirsten Ketscher, *Socialret – Almindelige principper. Retssikkerhed og administration. Grundværdier*, 2. Edition, Copenhagen 2002, pp. 182-204.

Jon Kvist (ed.), *Velfærdspolitik i et nyt Europa*. Socialforskningsinstituttet, Copenhagen 2002.

Jon Kvist (ed.), *Beskæftigelsespolitik i et nyt Europa*. Socialforskningsinstituttet, Copenhagen 2002.

Jørgen Molde et al. (eds.), *EU-Karnov*, 9. Edition, Vol. 1, Copenhagen 2005, pp. 415-60 (EU Law Commentary).

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131 See also the Commission's decision of 9 July 2003 referring Denmark to the ECJ over discrimination (IP/03/965: [www.europa.eu/rapid/pressReleasesAction.do?reference=IP/03/965&format=HTML&aged=1&language=en&guiLanguage=en](http://www.europa.eu/rapid/pressReleasesAction.do?reference=IP/03/965&format=HTML&aged=1&language=en&guiLanguage=en)).

132 The Ministry of Social Affairs: National strategy report on the Danish pension system, 2002.

133 The Ministry of Social Affairs: National strategy report on the Danish pension system, 2005, chapter 3.3 (available at [www.social.dk/tvaergaende\\_indgange/udgivelser/Publikationsdatabase/SM/SM05/strategi-rapportpension.html](http://www.social.dk/tvaergaende_indgange/udgivelser/Publikationsdatabase/SM/SM05/strategi-rapportpension.html)).

134 C-150/04, *Commission v. Denmark*.

## Chapter XI

### Establishment, Provision of Services, Students, Others

To a large extent the rules, schemes etc. applicable for Community workers, which are described in the previous chapters, also apply to EU citizens who exercise the right to free movement related to establishment, provision of services, studies and disposal of sufficient means. There are differences, of course, and one of the advantages of the EU/EEA Order is a clearer systematic which – to some extent – distinguishes between the different groups mentioned here.

#### Establishment

EU/EEA Order section 1: According to this an EU residence certificate is granted to an EU citizen, who declares that he/she has commenced independent activities as a self-employed person.

This does not apply, however, to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, The Czech Republic and Hungary. For this group of persons special rules apply, cf. chapter VIII on the enlargement of the European Union.

EU/EEA Order section 12: For stays not exceeding 3 months a residence certificate is not required.

EU/EEA Order section 14 (1) (i): For stays exceeding 3 months the residence certificates are issued for a period of 5 years unless the application is for a shorter period of time.

EU/EEA Order section 15: Contains the rule that after 5 years the certificate will be made permanent, provided the person in question takes up residence in Denmark.

EU/EEA Order section 5: Family members, see chapter V.

#### Provision of services

EU/EEA Order section 1: According to this an EU residence certificate is granted to an EU citizen, who proves himself/herself a service provider or that he/she is a recipient of services in Denmark.

This does not apply, however, to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, The Czech Republic and Hungary. For this group of persons special rules apply, cf. chapter VIII on the enlargement of the European Union.

EU/EEA Order section 12: For stays not exceeding 3 months a residence certificate is not required.

EU/EEA Order section 14 (4): The residence certificates are issued for a period restricted to the expected length of the service in question.

EU/EEA Order section 15: Contains the rule that after 5 years the certificate will be made permanent, provided the person in question takes up residence in Denmark.

EU/EEA Order section 5: Family members, see chapter V.

#### Students

EU/EEA Order section 2: Students are granted a residence certificate provided the EU citizen declares that he/she disposes of sufficient means for the support of himself/herself. The issue of a residence certificate can be conditioned by a health insurance.

EU/EEA Order section 14 (1) (ii): The residence certificate is issued for a period corresponding to the length of the studies, but not for more than 1 year at a time.

EU/EEA Order section 15 (1): Students cannot be granted a permanent residence certificate.

EU/EEA Order section 16: For this group a residence certificate will lapse when the EU citizen gives up his/her residence in Denmark.

EU/EEA Order section 6 (3): Regarding *family members* this section includes a requirement for the EU citizen to declare that he/she disposes of sufficient means for the support of his/her family.

EU/EEA Order section 6 (2): The family concept is not as broad as for the other groups, since only the EU-citizen's spouse and their dependent descendents are included in the concept.

## Others

### *Persons of sufficient means*

EU/EEA Order section 3: EU citizens of sufficient means, defined as at least the sum of the benefits for which the person would be eligible under the lowest rate in the Act on Active Social Policy,<sup>135</sup> will be issued a residence certificate.

The issue of a residence certificate can be conditioned by health insurance.

Such certificates are also issued for 5 years, but if deemed necessary, it may be required that the certificate must be extended upon expiry of the first 2 years of residence, cf. section 14 (1) (iii). See also section 15 regarding issue of a permanent residence certificate.

EU/EEA Order section 7: Residence certificates issued to the EU citizen's *family members* are conditioned by sufficient means, defined as at least the sum of the benefits for which the person would be eligible under the lowest rate in the Act on Active Social Policy, unless exceptional reasons make it inappropriate. The issue of a residence certificate can be conditioned by a health insurance.

The family concept is narrower than the one in section 5 (see chapter V), since only the spouse, their dependent descendents and relatives in the ascending line – if they are dependent on the EU national – are considered to fall within the concept.

### *Continued residence upon ceased employment or self-employment*

EU/EEA Order section 4: Contains the rules on the EU citizen's right to residence certificates upon ceased employment or self-employment.

EU/EEA Order section 4 (1) (i): The right to continued residence exists when the EU citizen reaches the age for entitlement to old-age pension as fixed in the Pension Act,<sup>136</sup> provided he/she has been working 12 months up to this point and resided in Denmark the previous 3 years.

The demands for the length of the stay and working period are annulled when the spouse has Danish citizenship or has lost it due to the marriage, cf. section 4 (3).

EU/EEA Order section 4 (1) (ii): The right to continued residence exists when the EU citizen is forced to cease work due to permanent incapacity to work, provided he/she has obtained residence in Denmark the last 2 years or the permanent incapacity is due to an accident at work or an occupational illness entitling the person to permanent benefits.

The demands for the length of the stay are annulled when the spouse has Danish citizenship or has lost it due to the marriage, cf. section 4 (3).

EU/EEA Order section 4 (1) (iii): The right to continued residence exists when the EU citizen takes up work in another Member State, provided he/she has had residence and has been working in Denmark the previous 3 years and returns to his/her residence in Denmark at least once a week.

EU/EEA Order section 8: The rules regarding residence certificates for *family members* are similar to the rules in section 5 (see chapter V).

### *Recent legal literature*

Henrik Thomassen and Pernille Breinholdt Mikkelsen, 'Indrejse og ophold for udlændinge omfattet af EU-reglerne', in L.B. Christensen et al., *Udlændingeret*, 3. Edition, Copenhagen 2006, pp. 253-256, 258-261, 265-266.

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135 Consolidation Act No. 1009 of 24 October 2005.

136 Consolidation Act No. 759 of 2 August 2005.

## Chapter XII Miscellaneous

No new developments to report in addition to the literature and other references quoted in the previous chapters.

### *Annexes and links*

(\* indicates that the document is attached to this report)

- The Aliens (Consolidation) Act No. 808 of 14 July 2004 (in English) \*
- Most recent Consolidation of the Aliens Act (in Danish):  
[http://www.retsinfo.dk/\\_GETDOCM\\_/ACCN/A20050082629-REGL](http://www.retsinfo.dk/_GETDOCM_/ACCN/A20050082629-REGL)
- The 2004 EU/EEA Order: Executive Order No. 292 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 April 2004 (in English) \*
- The 2005 EU/EEA Order: Executive Order No. 1255 on Residence in Denmark for aliens comprised by the rules of the European Union or by the Agreement on the European Economic Area (the EU/EEA Order), Ministry of Refugee, Immigration and Integration Affairs, 28 November 2005 (in Danish, entry into force 1 January 2006): <http://147.29.40.91/DELFIN/HTML/B2005/0125505.htm>
- The 2006 EU Residence Order: Executive Order No. 358 on Residence in Denmark for aliens comprised by the rules of the European Union (the EU Residence Order), Ministry of Refugee, Immigration and Integration Affairs, 21 April 2006 (in Danish, entry into force 30 April 2006, implementing Directive 2004/38): [http://147.29.40.90/\\_MAINRF\\_A619257425/1534](http://147.29.40.90/_MAINRF_A619257425/1534)
- Agreement among the Liberals, the Conservatives, the Social Democrats, the Socialist People's Party and the Social Liberal Party concerning revision of the agreement on the enlargement of the European Union and the Danish labour market, 5 April 2006 \*
- 'Rules on residence and work in Denmark for citizens from the new East European EU Member States', Manual published by the Ministry of Employment, 3. Edition, October 2005: [www.bm.dk/graphics/Dokumenter/Temaer/EU%20og%20international/BM%20Manual%20Om%20gaelse\\_UK\\_3%20%282%29%20ret%20matrice%20%282%29.pdf](http://www.bm.dk/graphics/Dokumenter/Temaer/EU%20og%20international/BM%20Manual%20Om%20gaelse_UK_3%20%282%29%20ret%20matrice%20%282%29.pdf)
- Proposal on amendment of The Danish Law on Registration Tax on Motor Vehicles, Consolidation Act No. 977 of 2 December 2002 with amendments. \*