

**REPORT**  
**on the Free Movement of Workers**  
**in Bulgaria in 2007**

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## **General Introduction**

The Republic of Bulgaria became a Member State of the European Union on 01 January 2007. There is yet little legislative, administrative, judicial and research practice in respect of the operation of the new rules on free movement of persons.

Given the limited practice and the relatively small number of EU citizens from other Member States working and resident in Bulgaria, it is still too early to assess the real impact of Community free movement law in Bulgaria. However, as the report shows, Bulgaria has been exerting efforts to accurately transpose the Community provisions into national law.

## Chapter I

### Entry, Residence, Departure

The European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (hereafter “the EU Citizens Directive”) was transposed in Bulgaria by means of the *Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family* (hereafter “LERD”), separate from the Law on the Foreigners in the Republic of Bulgaria. The law was adopted by the National Parliament on 20 September 2006. It was published in the Official Journal of Bulgaria on 3 October 2006. LERD entered into force on 01 January 2007. It has been amended once on 20 December 2007.

#### A. ENTRY

Art. 4 (1) LERD permits the entry of EU citizens or EEA nationals on the basis of an identity card or passport.

In this respect, the legislative development in Bulgaria marks a progress. Previous regulation of this issue was in the Ordinance on the Conditions and the Procedure for the Issuance of Visas (in force since 17 May 2002) which provided that EU citizens were exempted from the visa requirement for a stay of up to 90 days in the framework of 6 months. There is literal transposition of Art. 5 of the EU Citizens Directive in Art. 4 of LERD.

The less clear question relates to the other documentation that would be permissible to prove identity and nationality in the absence of these documents, or in the absence of the required visa in the case of third-country national family members (Article 5(4) of the EU Citizens Directive)

Art. 4 (5) LERD stipulates that it is possible to enter without the requisite documents as stipulated in the EU Citizens Directive, but in practice it is not clear what other documentation is permissible. This remains to be decided *ad hoc* by the officials of the Border Police Directorate at the Bulgarian Ministry of the Interior.

It is a general problem found in LERD that it is unclear how stated rights could be exercised and respected. The law does not elaborate on the details. No implementing regulation of the law exists.

Art. 22 LERD provides for the permissible limitations to the right to entry and residence of EU citizens and their family members. Limitations are allowed “on grounds, related to national security, public order or public health”. For more on this issue, see the “Departure” section.

Bulgaria has not opted for Art. 5 (5) of the EU Citizens Directive. Given that EU nationals, entering or exiting Bulgaria do not require any specific entry or exit authorization and are not registered by the authorities while in the territory of Bulgaria (unless they apply for a residence certification or declare their place of residence, or declare about their departure from the country), there is no data as to how many of them entered/exited Bulgaria in 2007. They appear in the official statistics only if they stay for longer period than 3 months.

## B. RESIDENCE

With the transposition of the EU Citizens Directive, residence permits are no longer required of EU nationals in Bulgaria.

Art. 6 of the EU Citizens Directive is literally transposed in Art. 6 LERD. Right of residence for up to three months is recognized to EU citizens, on possession of a valid identity card or passport, and to family members who are not EU citizens, on the basis of their passport.

Art. 7 of the EU Citizens Directive is transposed in Art. 8 LERD. Right of residence for more than three months (“*continuous residence*” as it is called in LERD) is recognized to EU citizens if they fulfill any of the requirements stipulated in Art. 7 (1) (a) – (c) of the EU Citizens Directive. LERD stipulates that the size of the “sufficient resources” under Art. 8 (4) of the EU Citizens Directive will be defined by an act of the Council of Ministers of the Republic of Bulgaria. However, the requirements for setting the size as stipulated in Art. 8 (4) of the EU Citizens Directive are not transposed in LERD.

Bulgaria has opted for the requirement in Art. 8 (1) of the EU Citizens Directive. Union citizens and their family members shall register at the National Police Service at the Ministry of the Interior for periods of residence longer than three months. The deadline for registration is 3 months from the date of arrival.

Union citizens and their family members, who are themselves Union citizens, are issued a registration certificate *on the same day* of the submission of the relevant documents.

Family members who are not nationals of a Member State are issued a residence card no later than *three months* from the date on which they submit the application.

Art. 13 LERD transposes the optional provision of Art. 27 (3) of the EU Citizens Directive, although with some discrepancies. The national provision stipulates that “where necessary”, the authorities might ask their counterparts in the country of origin of the person “to check whether he/she represents a threat to the national security or the public order”. There is difference from the Directive, which provides that the information shall be requested should the host Member State “consider this essential” and the information could concern only “any previous police record the person concerned may have”.

Art. 7 (3) of the EU Citizens Directive is transposed into Art. 8 (3) LERD. The conditions for retention of status are the same as stipulated in the EU Citizens Directive, except for one divergence in the transposition of Art. 7 (3) (d) of the EU Citizens Directive. Art. 8 (3) (4) LERD stipulates that when the Union citizen is involuntarily unemployed, vocational training *shall not be* related to the previous employment. This goes contrary to the idea of the EU Citizens Directive that in those cases vocational training not related to the previous employment is allowed, but it is not envisaged to exclude the one related to the previous employment. In the cases under Art. 8 (3) (c) of the EU Citizens Directive, the period through which the status is retained is 6 months.

Art. 14 and 15 of the EU Citizens Directive are not transposed. Although there are no explicit provisions in LERD that go contrary to them, the guarantees are not explicitly stated either.

### ***Right of permanent residence***

There is a substantial mistake in the transposition of the main rule regarding eligibility for the right of permanent residence under Art. 16 and Art. 17 of the EU Citizens Directive. Art.

16 LERD provides that an EU citizen or his/her family member who is an EU citizen is given a permanent residence certificate, if that person has resided continuously in the Republic of Bulgaria for five years *and* he/she fulfills any of the requirements under Art. 17 of the EU Citizens Directive.

There is no national provision specifying the period of time for the issuance of the permanent residence certificate under Art. 19 (2) of the EU Citizens Directive.

The permanent residence card for family members who are not nationals of a Member State is issued within one month of the submission of the application. The application shall be submitted two months before the residence card expires (Art. 19, Paras. 2 and 3 LERD).

***Provisions common to the right of residence and the right of permanent residence under Chapter V of the EU Citizens Directive***

There is no explicit transposition of Art. 22-25 of the EU Citizens Directive. Their regulation could be sought in general labour and anti-discrimination law. Art. 26 of the EU Citizens Directive is transposed in Art. 21 LERD.

***Treatment of Job-Seekers***

There is no transposition in Bulgarian law of Art. 14 (4) (b) of the EU Citizens Directive providing that “Union citizens and their family members may not be expelled for as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged”.

Under Bulgarian Law on Employment Promotion, EU citizens and their family members formally have a right of registration to seek work at the local employment office of the Employment Agency at the Ministry of Labour and Social Policy. According to the law, registered job-seekers that are EU citizens or members of their families have the same rights and obligations as Bulgarian nationals, with the exception of cases in which Bulgarian citizenship is explicitly required. The web site of the Employment Agency contains contradictions with regard to the document certifying address registration of the job seekers required for their registration at the employment office - discussed in Chapter 2, Section A of this report. However, LERD makes no reference to a right of residence over 3 months of EU citizens who are documented job-seekers. The residence regime is within the exclusive competence of the National Police Service at the Ministry of the Interior. Its powers with regard to the residence of EU citizens and their family members are exhaustively regulated in LERD.

**C. DEPARTURE**

As mentioned above, Art. 22 LERD provides for the permissible limitations to the right to entry and residence of EU citizens and their family members. Limitations are allowed “on grounds, related to national security, public order or public health”. These grounds seem in line with the scope stipulated in Community law. However, there is no definition in national law of these terms.

### *I. Types of coercive administrative measures*

Art. 23 (1) LERD provides for three types of *coercive* administrative measures that can be applied to an EU citizen or his/her family member:

- 1) discontinuance of the right of residence in the Republic of Bulgaria;
- 2) expulsion;
- 3) a ban to enter the Republic of Bulgaria.

*Discontinuance of the right of residence in the Republic of Bulgaria* is imposed under either of the following circumstances (Art. 24 LERD):

- 1) the person ceases to meet the requirements stipulated in Art. 7 (1) (a) – (c) of the EU Citizens Directive  
The provision raises concerns since it imposes a coercive administrative measure, without prior giving the person a possibility to voluntarily comply with the requirement obliging him/her to depart from the Republic of Bulgaria within a set time period.
- 2) It has been established that the person provided false data when given the right to residence;
- 3) The person is absent from the Republic of Bulgaria for a period longer than 2 years;
- 4) The person suffers from diseases with epidemic potential as defined by the World Health Organization.

Art. 29 (2) of the EU Citizens Directive is not transposed.

*Expulsion* is imposed when the person constitutes “a genuine threat to the national security or to the public order” (Art. 25, Para.1 LERD)

*The limitations to the possibility to expel* according to Art. 28 (3) of the EU Citizens Directive have been transposed in Art. 25 (2) LERD. The national provision translates the term “on imperative grounds of public security” as “only in exceptional cases, related to the national security”. The wording of the term does not make it clear whether the exceptional cases are a limited group within the broader scope of national security grounds *or* all national security grounds are regarded as relating to “exceptional cases”. Furthermore, the exception in Art. 28 (3) (b) of the EU Citizens Directive is transposed as “when this is in his/her interest”. This standard goes lower than “the best interest of the child”. There is no reference to the UN Convention on the Rights of the Child.

The limited possibility to expel persons who have the right to permanent residence under Art. 28 (2) of the EU Citizens Directive is not transposed.

According to Art. 25 (3) LERD, every expulsion order is accompanied by discontinuance of the right of residence in the Republic of Bulgaria *and* a ban to enter the country.

*A ban to enter the Republic of Bulgaria* is imposed when “the person performs actions that create a genuine threat to the national security or there is data that he/she performs actions against the national security or the public order”. The difference between the two hypotheses for application of the provision is unclear.

## ***II. Procedural Safeguards***

### *1) Considerations to be taken into account*

The requirements for proportionality and for individual approach (Art. 27, Para.2 of the EU Citizens Directive) are transposed in Art. 23 (2) LERD.

However, the requirement that previous criminal convictions shall not in themselves constitute grounds for taking such measures (Art. 27, Para2, second sentence of the EU Citizens Directive) and the rule that expulsion in itself shouldn't be a penalty or legal consequence of a custodial penalty (Art. 33, Para.1 of the EU Citizens Directive) are not transposed in national law. In practice in Bulgaria previous criminal convictions are considered a sufficient ground to conclude that the person constitutes a threat to the public order. Such administrative practice has been created in applying the Law on the Foreigners in the Republic of Bulgaria. After they complete their period of deprivation of liberty in prisons, convicted foreigners are issued expulsion orders and are automatically transferred to the center for administrative detention of foreigners.

Art. 28 (1) of the EU Citizens Directive with regard to the circumstances to be taken into account when issuing an expulsion decision on grounds of public policy or public security has been transposed literally in Art. 23 (3) LERD.

### *2) Notification of decisions*

LERD stipulates that coercive administrative measures can be appealed under the Administrative Code of Procedure. The order for their imposition shall state the time limit for the appeal, the court with which an appeal may be lodged and the period to voluntarily leave the territory.

Here are the main problems in the national regulation in this regard:

- 1) LERD does not transpose the requirement in Art. 30 (1) of the EU Citizens Directive that the notification shall be in such a way that the person is able to comprehend its content and the implications for him/her;
- 2) Art. 30 (2) of the EU Citizens Directive is not transposed at all;
- 3) With regard to the time allowed to leave the territory under Art. 30 (3) of the EU Citizens Directive, the exception phrased as "save in duly substantial cases of urgency" has been transposed very broadly in Bulgarian law. Art. 27 (3) LERD allows exception from the rule when "the person continues to pose a threat to the national security, the public order and the public health";
- 4) Art. 28 (2) LERD stipulates that when the order for the coercive administrative measure has been issued on national security grounds, the appeal has no suspending effect. This provision might be interpreted in practice as making any application for an interim order to suspend enforcement under Art. 31 (2) of the EU Citizens Directive inadmissible;
- 5) Art. 31 (3) of the EU Citizens Directive is not transposed. Lack of explicit transposition of the rule that the redress procedures shall ensure *that the decision is not disproportionate* threatens to lead to inadmissibility of such a review. Under general principles of Bulgarian administrative law, the scope of judicial review encompasses only the legality of the administrative acts and not their proportionality unless the latter review is explicitly envisaged in law;

- 6) Transposition of Art. 32 of the EU Citizens Directive into Art. 30 LERD is incomplete. The national provision allows for the application to be made only by persons excluded on national security grounds and not the ones excluded on public order grounds. National law does not provide for any details regarding the conditions under which the coercive measure is lifted. Thus the discretion of the administrative bodies seems to be unlimited.

#### **D. REMEDIES**

##### ***The possibility to appeal against refusal of entry decisions***

Art. 5 (2) LERD provides for an obligation of the authorities to provide reasoning and the possibility of appeal of a denial of entry to other family members under Art. 3 (2) of the EU Citizens Directive.

Although no similar explicit provisions for EU citizens and their family members under Art. 2 (2) of the EU Citizens Directive exist, it could be assumed that a possibility to appeal the denial of entry exists by way of analogy to Art. 5 (2) LERD. This development marks progress in the national legal regulation since, under general foreigners' law, refusal of the issuance of a visa cannot be appealed, neither the authorities are obliged to provide reasons.

##### ***The possibility to appeal refusal of residence rights***

This possibility is explicitly provided for in LERD with regard to the right of residence for up to 5 years. Art. 9 (5), (6) and (7) LERD refers to the right to appeal a refusal to issue a residence certificate. Art. 12 (5), (6) and (7) LERD refers to the right to appeal a refusal to issue a residence card.

No explicit provisions with regard to permanent residence exist. However, since the refusals fall under the notion of "individual administrative acts", they shall be admissible for review according to general administrative law rules under the Administrative Code of Procedure.

The possibility to appeal the three types of coercive administrative measures has been discussed above in the "Departure" section.

## Chapter II

### Access to Employment

With the entry into force on 1 January 2007 of the Accession Treaty of the Republic of Bulgaria to the European Union, EU citizens can exercise their right to free movement for work purposes in the territory of Bulgaria, without need for a work permit. This is in accordance with Art. 70 (3) of the Law on Employment Promotion which stipulates that foreigners are exempted from the work permit requirement when that is envisaged in an international treaty to which Bulgaria is a party.

With Decision of 21 December 2006 under point 43 of Protocol No52 of the session of the Council of Ministers, the government of Bulgaria approved the Position of the Republic of Bulgaria on the Application of EC Law in the Field of Free Movement of Workers.

#### A. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

The Law on Protection against Discrimination has a special section on equal treatment in the field of employment. Discrimination on the basis of nationality is explicitly prohibited, save in cases where the nationality requirement is stipulated by law.

Art. 18 of the Law on Employment Promotion formally envisages a right of registration to seek work at the local employment office of the Employment Agency at the Ministry of Labour and Social Policy. According to the law, registered job-seekers that are EU citizens or members of their families have the same rights and obligations under the Law on Employment Promotion as Bulgarian nationals, with the exception of cases in which Bulgarian citizenship is explicitly required.

However, LERD makes no reference to a right of residence over 3 months of EU citizens who are documented job-seekers. The residence regime is within the exclusive competence of the National Police Service at the Ministry of the Interior. Its powers with regard to the residence of EU citizens and their family members are exhaustively regulated in LERD.

The national reporter tried to gather information by the Bulgarian Ministry of Labour as to how this issue was solved in practice and what was the authorities' position in that relation. However no specific reply was received to these questions, rather than a referral to the law and the rules on its implementation.

There is a difference between the Rules on the Implementation of the Law on Employment Promotion, adopted by the Council of Ministers, and the rules published at the web site of the Employment Agency at the Ministry of Labour and Social Policy.<sup>1</sup>

Until 04 July 2008 Art. 14 (1) (5) of the Rules adopted by the Council of Ministers required "a document issued *by the municipality* for current address registration". After the amendment in 2008 the provision requires "a document certifying the address registration of the current residence". The specification made in the web site as to what this document should be (see point 2.2.2. below) is not found in the Rules adopted by the Council of Ministers and it can turn out contradictory in practice:

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<sup>1</sup> Source: National Employment Agency.  
[http://www.az.government.bg/eng/internal\\_en.asp?CatID=14/03/01&WA=Jobseekers/RegBT\\_EAAen.htm&BM=8](http://www.az.government.bg/eng/internal_en.asp?CatID=14/03/01&WA=Jobseekers/RegBT_EAAen.htm&BM=8).

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### **Registration terms for EEA citizens and a list of the required papers<sup>2</sup>**

1. Each person that is more than 16 years old and is actively seeking for a job has the right to make a registration as jobseeker in Employment Office. The requirements for registration are as follows:
  - EU, EEA or Swiss citizens;
  - Members of the family of an EU citizen that are not citizens of the EU, EEA or confederation Switzerland.
2. The required documents for the registration of EEA citizens are:
  - 2.1. Identity document Identity card or passport.
  - 2.2. A paper indicating the address registration of the person:
    - 2.2.1. Certificate for the address registration on the territory of Bulgaria;
    - 2.2.2. Residence papers:
      - Paper for continuous residence in Republic of Bulgaria – it can be issued 3 months after the arrival in the country (it is issued by the Police);
      - Paper for permanent residence in Republic of Bulgaria (it is issued by the Police after 5 years of permanent residence in the country)

The required documents in point 2.2.2 can impede the registration as a job seeker. Firstly, they allow for registration only after the elapse of 3 months of stay in the country. Secondly, there would be a discrepancy between the requirements of the Ministry of Labour and Social Policy under the Law on Employment Promotion and the requirements of the Ministry of the Interior under LERD. LERD does not envisage issuance of residence certificates on the ground of seeking a job. A residence certificate can be issued on the ground that one is employed or self-employed. According to their web site, the Ministry of Labour and Social Policy requires that residence certificate in order to register a person as unemployed and seeking work.

The national reporter tried to gather information as to the source of the rules published on the web site of the National Employment Agency, but has received no specific reply, rather than a referral to the Rules adopted by the Council of Ministers.

3. When seeking a job or making use of the rights given by the Employment Promotion Act, job seekers need to extend schooling diploma, vocational training certificate as well as papers showing their work experience.
  - 3.1. All papers, mentioned in item 4, need to be certified by the issuing state. All papers issued by a member state that is a party to the Convention, abolishing the legalization requirements for foreign acts of state need to be sealed with “apostille”. All papers that are issued by a country that has signed a legal assistance agreement with Bulgaria need a notarial attestation. All papers have to be enclosed with official translation certified by the Ministry of External Affairs.
  - 3.2. Medical certificate for reduced work ability, translated in Bulgarian.
4. Jobseekers that meet the requirements mentioned in item 1 have to fill in the registration form in Bulgarian. If they want to be better acquainted with the content of the registration form, jobseekers are given the opportunity to read it in English, French or German.
5. Jobseekers that meet the requirements mentioned in item 1 can receive a certificate that contains information about the period that the person has been registered as a jobseeker in an Employment Office.

## **B. LANGUAGE REQUIREMENT**

In law there are no explicit requirements for knowledge of Bulgarian language for employment in the private sector.

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<sup>2</sup> Rules, published at the web site of the National Employment Agency, see note above.

This is to be decided by the employer, if the nature of the job so requires. Art. 7 (1) (2) of the Law on Protection against Discrimination stipulates that there is no discrimination if certain treatment/requirement is reasoned with the nature of a particular occupation or activity, or of the conditions in which it is performed, if such a characteristic constitutes an essential and decisive occupational requirement, the aim is legitimate and the requirement does not go beyond what is necessary for its achievement.

### **C. RECOGNITION OF DIPLOMAS**

Bulgarian rules differentiate between recognition for academic purposes and recognition for professional purposes.

Recognition for “*academic purposes*” provides access to further education and training (i.e. if a certain stage or level of education has been completed, academic recognition attests to the completion of the stage or level and allows the person to continue their education at the next stage or level). In addition, it may also facilitate access to the pursuit of a particular profession.

Recognition for “*professional purposes*” allows the pursuit of a particular profession (i.e. recognition of qualifications). The obligatory “professional recognition” procedures are applied only with regard to the so-called “regulated professions”.

#### ***Recognition for “academic purposes”***

The competent body to recognize foreign education documents in Bulgaria is the Ministry of Education and Science. The academic recognition is done by an expert commission appointed by the Minister of Education and Science.

The regulation of this issue is divided into two spheres:

##### ***1) Recognition of school education and professional qualifications:***

- Ordinance No. 2 of 14/04/2003 of the Minister of Education and Science on the Recognition of Completed Stages of School Education and Levels of Education and Professional Qualification on the Basis of Documents Issued by Institutions Abroad (published in State Gazette No40 of 29 April 2004);
- Ordinance on Amendments in the Ordinance No. 2 (published in *State Gazette* No. 60 of 22 July 2005).

##### ***2) Recognition of university education:***

- Ordinance on the State Requirements for Recognition of University Education and Completed Periods of Education in Foreign High Schools (published in *State Gazette* No. 69 of 22 August 2000).

Every document presented before the Ministry of Education and Science should be legalized, unless there is a bilateral treaty for legal aid that exempts the documents from the need of legalization.

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### *1) Recognition of school education and professional qualifications:*

Documents that need to be submitted are as follows:

- 1) An application form with the personal data of the applicant;
- 2) The original of the document for school education and/or professional qualification;
- 3) An academic record on the subjects studied and the duration of the classes, as well as the marks received, if the latter are not stated in the document under point 2;
- 4) Translation of the document in Bulgarian language by a certified translator;
- 5) A receipt for a bank transfer of the fee that is 10 leva (5 Euro) for a document certifying a completed term or subject of school education and 25 leva (12,5 Euro) for a document certifying a completed degree of school education and for professional qualification.

The expert commission issues a decision within a period of 2 months.

According to Art. 13 of Ordinance No2 of 14/04/2003 professional qualification acquired in a school abroad is recognized only in connection with recognition of a level or degree of education.

### *2) Recognition of university education*

Documents that need to be submitted are as follows:

- 1) An application form with the personal data of the applicant;
- 2) A diploma for completed secondary education;
- 3) An original and two copies of the document that is to be recognized;
- 4) A receipt certifying the payment of the state fee;
- 5) An original and a copy of an identity document;
- 6) A declaration that the data presented is true and that the applicant is aware of the penal law sanctions envisaged for fraud.

The originals of the documents are returned to their owner at the moment of submission of the file, after a comparison with the copies. If necessary, the expert commission might require the submission of additional documents.

According to Art. 12 of the Ordinance on the State Requirements for Recognition of University Education and Completed Periods of Education in Foreign High Schools, recognition is refused in two groups of cases:

- a) When there is substantial difference between the data in the document presented and the requirements for the relevant level of education under Bulgarian law;
- b) When the diploma is issued by a non-recognized institution in the country of origin.

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*List of countries, with which Bulgaria has signed agreements for mutual recognition of the equivalency of education documents*

Austria	Year 1976	Kuwait	1982
Angola	1977	Laos	1979
Albania	In process of preparation	Libya	1974 1984 – Additional Protocol
Algeria	1975 г.	Macedonia	2001
Afghanistan	1970	Mali	1970
Bangladesh	1976	Mexico	1981
Benin	1986	Mozambique	1978
Vietnam	1982	Moldova	2000
Ghana	1979	Nigeria	1970
Guinea	1962	Nicaragua	1981
Zambia	1980	Pakistan	1974
India	1975	Romania	1999
Iraq	1969	Sudan	1967
Yemen	1983	former Soviet Union	1972
Jordan	1976	Former Yugoslavia	1983
China	1990	Syria	1987
South Korea	1987	Tanzania	1984
Colombia	1982	Ukraine	2001
Congo	1975	Hungary	1975
Cuba	1971	Former Czechoslovakia	1982

Very few of these countries are Members of the European Union.

### *II. Recognition for “professional purposes”*

On 8 February 2008 the Law on the Recognition of Professional Qualifications entered into force in Bulgaria. According to Paragraph 5 of its Additional Provisions, the law transposes Directive 2005/36/EC, Directive 2006/100/EC, Directive 74/556/EEC, and Directive 74/557/EEO into Bulgarian legislation.

There is an Ordinance of 28 April 2006 on the Conditions and the Procedure for Maintaining the List of Regulated Professions in the Republic of Bulgaria. The Council of Ministers, at its meeting on 29 December 2006, adopted Decision No. 925 for approving the [List of Regulated Professions in the Republic of Bulgaria](#). Regulated professions are as follows:

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Air traffic controller (ATCL)	Operator of excavators intended for work with load-handling device (hook, grab or electromagnets)
Aircraft maintenance (AML)	Operator of high pressure boilers III, II and I degree/class
Airline transport Pilot (Airplane) (ATPL(A))	Operator of low pressure boilers
Airline transport pilot (Helicopter) (ATPL(H))	Operator of overhead travelling cranes and mobile lifting frames
Architect	Operator of overhead travelling stacking cranes
Archivist/Keeper of public records	Operator of portal slewing cranes
Assistant Pharmacist	Operator of power block
Auditor, according to the Law on the National Audit Office	Operator of power boilers
Cabin attendant (C/AL)	Operator of railway cranes and other lifting appliances, installed on railway machineries
Certified public accountant (auditor)	Operator of ships' derricks cranes, installed on automobiles, self-propelled or not self-propelled frames
Chief Railway Traffic Controller/Administrator	Operator of tower cranes
Commercial pilot (Airplane) (CPL(A))	Operator of walking cranes
Commercial pilot (Helicopter) (CPL(H))	Orthopaedic technician
Dental technician	Pharmacist
Dentist	Post switchman
Doctor	Qualified masseur/masseuse
Employee in Internal audit central harmonization unit division	Railway level guard
Expert, carrying out environmental assessment and environmental impact assessment	Railway linesman
Finance inspector	Rehabilitation specialist
Fitter on catenary	Road driving instructor
Fitter on safety equipment	Safety consultant on carriage of dangerous goods by railway transport
Flight convoy (F/CL)	Sanitary inspector
Flight dispatcher (Flight operations officer) (FDL)	Ship's electrical Engineer officer
Flight engineer (F/EL)	Ship's electrician
Flight navigator (F/NL)	Ship's engineer officer
Flight operator (F/OL)	Ship's helmsman
Flight radio operator (F/ROL)	Ship's motorman
Geodesy, cartography and cadastre engineer	Ship's radio officer
Internal auditor in the public sector	Shunter
Investment design engineer	Specific EU programmes and fund audit activities auditor
Lawyer	Switchman
Locomotive engine driver	Trainmaster
Medical auxiliary (surgeon's/doctor's assistant)	Veterinary surgeon
Medical laboratory technician	Veterinary technician
Medical X-ray technician	Wagon inspector
Mid-wife	Welder
Navigator	
Nurse	
Operator of cable cranes, ships' derricks cranes and other cranes with specific construction	

The Ministry of Education and Science has created a comprehensive website on the matter.<sup>3</sup> The website provides the list of regulated professions in Bulgaria together with information on the normative regulation and the contacts of relevant competent authorities in Bulgaria to recognize professional qualifications. The information is in Bulgarian and English language.

<sup>3</sup> <http://regprof.nacid.bg/eng/indexeng.html>

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The relevant regulation can be found in the following acts, besides the ones already mentioned above in this section: Law on Higher Education, Law on Vocational Education and Training, Law on Health, Law on the Bar, Law on the Independent Financial Audit, Law on Internal Audit in the Public Sector, Law on Public Financial Inspection, Law on the National Audit Office, Law on the Civil Aviation, Merchant Shipping Code, Railway Law, Law on Veterinary Activity, Rules on the Application of the State Archive Fund Act, Law on the Protection of the Environment, Law on Chambers of Architects and Engineers in the Investment Design, Law on Cadastre and Property Register, Law on Geodesy and Cartography, Regulation on the Conditions for Recognition of the Right of Pursuing a Regulated Profession, Requiring General Economic or General Professional Knowledge and Skills.

## Chapter III

### Equality of Treatment on the Basis of Nationality

#### A. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES

As explained in Chapter 2, EU citizens can enter into *labour relations* or *be self-employed* on the same conditions as Bulgarian nationals. They are exempted from the requirement to be in possession of a work permit.

According to Art. 71 (2) of the Law on Employment Promotion EU and EEA citizens are exempted from the general rule that a local employer can hire a foreign employee provided that for the immediately precedent 12 months the total number of foreigners employed by the domestic employer does not exceed 10 percent of the average number of the people on the payroll, hired under labour contracts, who are Bulgarian nationals and/or refugees.

*Posted workers* for provision of services on the territory of the Republic of Bulgaria who are EU citizens are also exempted from the work permit requirement set out for other foreigners. This issue is regulated by the Ordinance on the Conditions and Procedure for Admitting Posted Workers or Civil Servants from EU Members States or from Third Countries to the Republic of Bulgaria in the Framework of Provision of Services. This ordinance has been amended on 2 June 2006 (State Gazette No45) in order to be in accordance with the law on free movement of workers in the EU.

The Law on Protection against Discrimination has a special section on equal treatment in the field of employment. Art. 13, Art. 14, Art. 15 and Art. 21 explicitly prohibit discrimination on the basis of nationality with regard to working conditions, remuneration, the possibilities for professional qualification and career development and the reasons for dismissal respectively.

According to Art. 2 of the Law on Health and Safety at Work, the law “shall apply to all enterprises and places, where work or training are carried out, regardless of the form of organization, type of ownership or legal grounds on which the work or the training are performed”.

With regard to the right of association of employees and access to professional and trade unions, there are no legal obstacles to the exercise of this right by EU citizens and their family members. According to Art. 4 of the Labour Code, employees are entitled, with no prior permission, to freely form, by their own choice, trade union organizations; to join and leave them on a voluntary basis, showing consideration for their statutes only. Art. 49 of the Constitution of the Republic of Bulgaria also recognizes the workers’ right to association.

According to Art. 26 (2) of the Bulgarian Constitutions, foreigners in the Republic of Bulgaria have the same rights and obligations as Bulgarian citizens, unless the Bulgarian citizenship requirement has been explicitly provided for in the Constitution or in a law.

EU citizens and their family members are entitled to the same social security rights and unemployment benefits under the same conditions valid for Bulgarian nationals according to the Code on Social Security.

The taxation legislation envisages rules preventing double taxation of incomes already taken into consideration in an EU Member State or an EEA country (Art. 37, Para. 7 of the Law on Taxation of the Incomes of Physical Persons).

## **B. OTHER OBSTACLES TO FREE MOVEMENT OF PERSONS**

At the present moment there is nothing to report apart from what is already covered by the other chapters of the Report. Bulgaria is new to the law on free movement of workers and obstacles are yet to be identified with augmentation of administrative practice.

## **C. SPECIFIC ISSUES: FRONTIER WORKERS, SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS, ARTISTS**

### ***1. Frontier Workers***

There are Administrative Instructions with regard to the application of Regulation 1408/71 and Regulation 574/72 issued by the National Social Security Institute, where the situation of frontier workers is examined

A definition of a frontier worker is given in Administrative Instructions No 91-01-13/21.01.2008. It transposes the one under Art. 1 (b) of Regulation 1408/71 and adds that “this term is most frequently used in connection with sickness and maternity, as well as unemployment benefits.” This official guideline is interpreted to be in line with the judgment of the ECJ in the case of Hartmann C-212/05, however it is too early to assess its implementation in practice.

Administrative Instruction No91-01-286/28.12.2007 deals with the transposition of Art. 71 of Regulation 1408/71. These instructions examine the receipt of unemployment benefits and the non-application of the condition that one should have been employed in the Member State where he/she claims unemployment benefits.

The Instructions point out that Regulation 1408/71 does not define a “frontier zone” and there is no requirement that there be common borders between the countries concerned. An example is given that the rules could apply equally between Bulgaria and Greece, as well as between Bulgaria and the United Kingdom. The decisive factor is whether the worker returns at least once per week to the territory of the other Member State where he/she resides.

### ***2. Sportsmen/ Sportswomen***

The rules on the transfer of foreigners in sports clubs in Bulgaria, as well as on the possible nationality quotas in this regard, are adopted by the relevant National Federations in each sport area and approved by the head of the State Agency for Youth and Sport at the Bulgarian government. According to Art. 8 of the Implementing Regulation of the Law on Physical Education and Sport, within a 6-months period from the receipt of their license, the Federation has to propose to the head of the State Agency for Youth and Sport Rules on the recognition, discontinuance and withdrawal of competition rights and on the status of amateur and professional sportsmen/sportswomen that participate in the activities of the sport clubs that are federation members.

Below there is information on the three most popular sports in Bulgaria.

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### *Football*

There are no nationality quotas for EU citizens in the areas of football. Recently the Bulgarian Football Union took a decision to decrease the number of third country nationals in the sports clubs, but this decision does not affect EU citizens.

### *Volleyball*

According to Art. 4 (6) of the Rules on the Competition Rights and Internal Transfer of the Bulgarian Volleyball Federation, a volleyball club from the prime league should not have more than three players with foreign nationality, and only two of them can play in a game at a time. There are no exceptions provided for EU citizens. The quotas rule does not apply to foreigners with long-term residence.

### *Basketball*

According to Art. 16 of the Rules on the Competition and Transfer Rights of the Bulgarian Basketball Federation, the Board of Directors of the Federation decides on the number of foreign nationals allowed to participate in a basketball club.

After an official request for the purpose of writing this report, on 19 March 2008 I received the following information from the Head Secretary of the Bulgarian Basketball Federation:

1. With regard to the number of foreigners that could be members of a basketball club, there are no quotas at all. However, the Ordinance on the National Championships for Men and Women stipulates the following limitation:

*“In the team list for each game within the National Championship or Bulgaria Coup for men and women there could be a maximum of six foreigners, within which number only three could be with nationality outside Europe”.*

2. With regard to international transfers, there is equal treatment of the sportsmen/sportswomen, regardless of their nationality. For each permission for international transfer of a Bulgarian or a foreign national the Bulgarian Basketball Federation charges an administrative fee of 100 Euro, payable by the new club of the sportsman/sportswoman.

3. There is equal treatment between Bulgarian and EU nationals with regard to the membership fee in Bulgaria – 5 levs (2.5 Euro). However, in this regard a problem has arisen with FIBA who treats every sportsman/ sportswoman with a non-Bulgarian passport as a foreigner, regardless of his/her EU citizenship. For that reason the Bulgarian Basketball Federation is required to pay FIBA 125 Euro for each basketball-woman and 250 Euro for each basketball-man that are non-Bulgarians and this has led to charging the Bulgarian basketball clubs with that additional sum of money.

### **3. The maritime sector**

The Merchant Shipping Code was amended (amendments entered into force on 1 January 2007) to adapt national legislation to the EC law on free movement of workers in the maritime sector. In spite of the amendments, however, Art. 88 (4) of the Merchant Shipping Code stipulates that “in all cases, the captain and the chief engineer officer of the ship shall be Bulgarian nationals”.

The rest of the crew may be formed of qualified foreign seafarers – nationals of Member States of the European Union, holding competency certificates, issued in compliance with the International Convention on Standards of Training, Certification and Watch keeping

for Seafarers 78/95 (STCW 78/95) or with the Recommendations on Preparation of the Ship Drivers and their Provision with Competency Certificates for International Shipping of the Inland Transport Committee of the United Nations Economic Commission for Europe and the Danube Commission, without discrimination based on nationality of the workers regarding hiring, payment and other labour conditions, but knowing a language common on the ship.

Ordinance No. 6 of 22 November 2007 (published in *State Gazette* No. 101 of 4 December 2007) on the Competences of Maritime Personnel in the Republic of Bulgaria, issued by the minister of transport regulates the procedure for recognition of the right of EU citizens, acquired in those Member States, to occupy positions in ships sailing under the Bulgarian flag.

#### **4. Researchers**

The Law on Higher Education (LHE) was amended as early as in 2005 (State Gazette No83/2005), with amendments entering into force on 01 January 2007, in order to facilitate integration of EU citizens into the higher education system of Bulgaria.

According to Art. 68 (6) LHE the admission of students, doctoral students and researchers who are citizens of EU Member States or of EEA states, is realized under the conditions and procedure provided for Bulgarian nationals.

According to Art. 91 (5) (4) LHE, unlike other foreigners, citizens of EU Member States or of EEA states are not excluded from state-subsidized scholarships.

According to Art. 95 (7) LHE, students, doctoral students and researchers who are citizens of EU Member States or of EEA states pay education fees according to the conditions and procedure provided for Bulgarian nationals.

#### **5. Artists**

The Law on Copyright and Neighboring Rights was amended as early as in 2005 (State Gazette No99/2005), with amendments entering into force on 1 January 2007 to enlarge its scope to EU citizens, based on the equal treatment principle.

There are no specific provisions with regard to artists who are EU citizens in tax and social security law since they have the same status as national artists.

### **D. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68**

The Law on Health Insurance has been amended (State Gazette No95/2006, in force since 01 January 2007) to exempt from the obligation of health insurance persons who according to the rules for coordination of the social security schemes are subject to health insurance in another Member State. The law regulates the payment of medical services provided to persons who have health insurance in another Member State.

The Code on Social Security has been amended (State Gazette No56/2006, in force since 1 January 2007) to include rules on taking into consideration supplementary pension insurance in another Member State. Article 231 explicitly prohibits any type of discrimination.

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“Rules for coordination of the social security schemes” have been introduced as a term with the legislative amendments in the *Code on Taxation and Social Security Procedure*, which entered into force on 01 January 2008 (published in the State Gazette No109/2007). The amendments are intended to allow the issuance of administrative certificates and other documents with regard to the relevant provisions from Regulation 1408/71 and Regulation 574/72.

However neither material, nor procedural national laws in Bulgaria contain detailed provisions with regard to the rules in Regulation 1408/71 in connection with Regulation 1612/68. The laws enumerate and refer to the EU regulations with regard to their direct applicability. There are Administrative Instructions on the Application of the Rules for Coordination of the Social Security Schemes issued by the National Social Security Institute. These instructions, together with annexes about relevant model application forms are published at the web site of the National Social Security Institute, under the “European Integration” section: <http://www.nssi.bg/index.html>.

## Chapter IV

### Employment in the Public Sector

#### A. ACCESS TO THE PUBLIC SECTOR

##### *1. Nationality condition for access to positions in the public sector*

In Bulgaria the nationality requirement for positions in the public sector is found both in the Constitution and in the laws. Their examination reveals that the public sector remains reserved to Bulgarian nationals only and it is questionable whether all the positions fall within the narrow understanding of the public service by the ECJ.

The Constitution of the Republic of Bulgaria requires Bulgarian nationality for the following positions: Art. 59 – positions in the army; Art. 65 – members of the National Parliament; Art. 93 (2) – President of the Republic of Bulgaria; Art. 110 – members of the Council of Ministers (the government).

There is no constitutional requirement for Bulgarian nationality of mayors and members of municipal councils. However, Art. 4 of the Law on Municipal Elections stipulates that only a Bulgarian national can stand to be elected as a mayor. As far as the members of municipal councils are concerned, in 2007 a new Art. 4a was added stipulating that an EU citizen is eligible, provided that he/she has no other nationality outside the EU, has a continuous or a permanent residence status and before scheduling of the elections has lived on the territory of the respective municipality.

According to Art. 12 (1) of the Law on the Administration, the activity of the administration shall be carried out by two categories of employees:

- a) State servants (appointed according to an administrative act);
- b) Persons working under labour contracts.

According to Art. 116 of the Constitution of the Republic of Bulgaria **state servants** realize the will and the interests of the nation. The conditions for their appointment and dismissal are provided for in law.

According to Art. 7 (1) (1) of the Law on the State Servant, *only Bulgarian nationals can be appointed to be state servants.*

Art. 19, Para. 5 of the Law on the Administration explicitly requires Bulgarian nationality for the following posts: the chairmen, the vice-chairmen and the members of state agencies, state commissions, executive agencies and state institutions functioning in connection with the implementation of the executive power and established by a law or decree of the Council of Ministers.

Art. 67 (1) of the Law on the Judiciary stipulates that members of the juries in penal law cases shall be Bulgarian nationals. According to Art. 162 of the Law on the Judiciary only a Bulgarian national can be appointed as a judge, a prosecutor or an investigator. The posts of the assistants of judges and prosecutors are also reserved to Bulgarian nationals only (Art. 245).

According to Art. 295 of the Law on the Judiciary, an internee-lawyer (with regard to obligatory state practice, necessary for the recognition of rights to practice the lawyer's pro-

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fession) can also be an EU citizen or a foreigner who has graduated Law in Bulgaria or whose Law diploma has been recognized accordingly.

According to Art. 179 of the Law on the Ministry of the Interior, a requirement for occupying any post at the Ministry of the Interior is Bulgarian nationality. This is valid not only for civil servants (employed according to an administrative act), but also to labour contract employees. The Ministry of the Interior encompasses the policemen and the firemen.

With regard to captains of ships, Art. 88 (4) of the Merchant Shipping Code stipulates that in all cases the captain of the ship shall be a Bulgarian national.

Therefore a conclusion can be drawn that in Bulgaria the nationality requirement applies not only to positions where public authority in its strict sense has to be exercised.

### ***2. Language requirement***

Art. 3 of the Constitution of the Republic of Bulgaria stipulates that the official language in the Republic is Bulgarian. Art. 36 of the Constitution provides that studying and usage of the Bulgarian language is a right and an obligation of all Bulgarian citizens. Art. 36 (3) states that the cases in which only the official language is used are stipulated by law.

Although such explicit language requirements are rarely found in laws, since the access to the public sector positions is restricted to Bulgarian nationals, knowledge of Bulgarian language is presumed.

Art. 13 of the Law on the Judiciary stipulates that all procedures before the judiciary bodies (courts, prosecutors and investigators) are carried out in Bulgarian language.

The Merchant Shipping Code requires that the crew knows “a language common on the ship”.

### ***3. Recruitment procedures***

Since the access to public service is restricted to Bulgarian nationals only, the *Burbaud* judgment of the ECJ had no impact in Bulgaria so far.

### ***4. Recognition of diplomas***

Given the restricted access of non-Bulgarian nationals to positions in the public sector, at this point there is no specificity to be identified in comparison to posts in the private sector.

### ***5. Recognition of professional experience for access to the public sector***

Given that the Bulgarian public service remains restricted to Bulgarian nationals only, the recruitment issue of EU nationals is not relevant in regard to this issue.

## **B. EQUALITY OF TREATMENT**

With regard to civil servants, the Law on the State Servant stipulates that only Bulgarian nationals can be appointed to be state servants.

With regard to persons working under labour contracts, the Labour Code contains no provisions on the recognition of professional experience in another EU Member State.

## Chapter V

### Members of the Family

#### A. RESIDENCE RIGHTS

The European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (hereafter “the EU Citizens Directive”) was transposed in Bulgaria by means of the Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family (hereafter “LERD”), separate from the Law on the Foreigners in the Republic of Bulgaria. Only *family members of Bulgarian citizens* explicitly have been provided for to fall under the scope of the *Law on the Foreigners*, Art. 1 (2) of which stipulates: “this law is applied to members of the family of Bulgarian nationals that are not EU citizens or nationals of an EEA country or of Switzerland”.

There is literal transposition of Art. 5 (2) and (3) of the EU Citizens Directive in Art. 4 (2), (3) and (4) of LERD. LERD stipulates that visas are issued to third-country national family members free of charge and in a special procedure that shall be stipulated in an act of the Council of Ministers, which has not been adopted yet.

The transposition of Art. 2 (2) of the EU Citizens Directive is found in §1.1 of the Additional Provisions of LERD, which gives a definition of a “member of the family of an EU citizen”. The national norm includes all the categories of family members enumerated in Art. 2 (2) of the EU Citizens Directive, with the following two types of exceptions:

- 1) Exceptions that narrow the scope of family members:
  - 1.1.) With regard to Art. 2 (2) (c) of the EU Citizens Directive, §1.1.LERD does not mention the direct descendants *of the partner* as defined in Art. 2 (2) (b) of the EU Citizens Directive;
  - 1.2.) With regard to Art. 2 (2) (d) of the EU Citizens Directive, §1.1.LERD does not mention the direct relatives in the ascending line *of the partner* as defined in Art. 2 (2) (b) of the EU Citizens Directive.
- 2) Exceptions that enlarge the scope of family members:
  - 2.1.) With regard to Art. 2 (2) (c) of the EU Citizens Directive, §1.1.LERD does *not* mention the word “*direct*” when referring to descendants, which shall mean that grandchildren are also included;
  - 2.2.) With regard to Art. 2 (2) (d) of the EU Citizens Directive, §1.1.LERD does not mention the word “*direct*” when referring to relatives in the ascending line, which shall mean that grandparents are also included.

Art. 5 LERD stipulates that “*a right to entry, residence and departure of the Republic of Bulgaria is recognized also to*”:

- 1) “another member of the family, irrespective of his/her citizenship, who does not fall within the definition of §1.1.LERD and who in the country, from where he/she comes, is a dependant person or a member of the household of the EU citizen, that has a right to free movement, or in cases where serious health reasons necessarily require personal care for the family member by the EU citizen”;
- 2) “the person with which the EU citizen has certified factual partnership”.

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Art. 5 LERD seems to equal the rights of beneficiaries under Art. 2 (2) and Art. 3 (2) of the EU Citizens Directive. Art. 5 LERD refers to recognition of “*a right to entry, residence and departure of the Republic of Bulgaria*” and not to just facilitation.

However, it is not clear how Art. 2 (2) (b) and Art. 3 (2) (b) of the EU Citizens Directive will be applied in Bulgaria. On the one hand, §1.1(a) LERD refers to “factual partnership”. On the other hand, Art. 5 (1) (2) LERD requires “*certified* factual partnership”. The law does not elaborate on the issue *how* the factual partnership should be proved or certified or under what circumstances it is recognized as such.

According to the EU Citizens Directive, the partner under Art. 2 (2) (b) is recognized as a family member, “if the legislation of the host Member State treats registered partnerships as equivalent to marriage”. This issue is questionable in Bulgaria. The Family Code in force does not envisage such a partnership at all and therefore does not treat it as equivalent to marriage. There is a project for a new Family Code, which provides for “factual spouse partnership” that could be either registered or non-registered one. But currently the latter is only a project drafted by the Ministry of Justice and approved by the Council of Ministers on 26 March 2008. It is not yet reviewed by the National Parliament who has the powers to adopt it. It could be argued that the term “factual spouse partnership” is gaining legal recognition in Bulgaria by including it in several legal acts - the Law on Protection against Domestic Violence, the Law on Asylum and Refugees, etc. However the problem of proving that partnership remains since the inclusion of the term is usually a consequence of literal transposition of EU provisions and it is not clear how those texts will be implemented in practice.

Art. 5 (2) LERD literally transposes the last paragraph of Art. 3 (2) of the EU Citizens Directive, without any elaboration as to how the provision will be applied in practice.

Art. 6 LERD recognizes a right of residence for up to three months to family members who are not EU citizens, on the basis of their passport.

Bulgaria has opted for the requirement in Art. 8 (1) of the EU Citizens Directive. Union citizens and their family members shall register at the National Police Service at the Ministry of the Interior for periods of residence longer than three months. The deadline for registration is 3 months from the date of arrival.

Union citizens and their family members, who are themselves Union citizens, are issued a registration certificate *on the same day* of the submission of the relevant documents.

Family members who are not nationals of a Member State are issued a residence card no later than *three months* from the date on which they submit the application.

Retention of the right of residence of family members as provided for in Art. 12 and 13 of the EU Citizens Directive is transposed in national law with the following discrepancies concerning family members who are not nationals of a Member State:

- in the event of divorce, annulment of marriage or termination of registered partnership, along with the requirements set out in Art. 13 (2) of the EU Citizens Directive, Art. 15 (3) LERD requires presence of the conditions in Art. 7 (1) (a) or (b) of the EU Citizens Directive in order for the right of residence to be retained (not in order to acquire permanent residence);
- Art. 13 (2) (c) of the EU Citizens Directive is transposed as to referring only to cases of being a victim of domestic violence and not to “other particularly difficult circumstances”.

***Right of permanent residence***

There is a substantial mistake in the transposition of the main rule regarding eligibility for the right of permanent residence under Art. 16 and Art. 17 of the EU Citizens Directive. Art. 16 LERD provides that an EU citizen or his/her family member who is an EU citizen is given a permanent residence certificate, if that person has resided continuously in the Republic of Bulgaria for five years *and* he/she fulfills any of the requirements under Art. 17 of the EU Citizens Directive.

The permanent residence card for family members who are not nationals of a Member State is issued within one month of the submission of the application. The application shall be submitted two months before the residence card expires. (Art. 19, Paras.2 and 3 LERD)

With regard to the condition of previous lawful residence stipulated in the Akrich judgment, LERD provides for no such explicit requirement. At the same time, however, third country family members of *Bulgarian* citizens are explicitly excluded from the scope of LERD and inserted into the scope of the Law on the Foreigners in the Republic of Bulgaria, which leads to reverse discrimination (see Section V.E. below).

**B. ACCESS TO WORK**

According to Art. 70 (3) of the Law on Employment Promotion, foreigners are exempted from the work permit requirement when that is envisaged in an international treaty to which Bulgaria is a party. Thus with the entry into force on 01 January 2007 of the Treaty of Accession to the European Union, Bulgaria exempted family members of EU citizens from the general work permit obligation.

Under Art. 4, Para.1, point 11 and Para.6 of the Ordinance on the Conditions and Procedure for Issuance, Rejection and Withdrawal of Work Permits for Foreigners in the Republic of Bulgaria, family members of EU citizens, EEA citizens and Switzerland are not required work permits, but until they are given permanent residence their employer shall declare the fact of their employment at the local Employment Office within a period of 7 days of its initiation.

Art. 18 of the Law on Employment Promotion *formally* envisages a right of registration to seek work at the local employment office of the Employment Agency at the Ministry of Labour and Social Policy. Registered job-seekers that are members of the families of EU citizens have the same rights and obligations under the Law on Employment Promotion as Bulgarian nationals, with the exception of cases in which Bulgarian citizenship is explicitly required. However, this formally proclaimed right faces impediments with the administrative formalities in practice:

The required documents for registration as jobseeker of non-EEA citizen, but an EEA citizen family member are:<sup>4</sup>

1. Passport.
2. Translated and verified paper that ascertains that the person is an EEA citizen family member (marriage certificate, birth certificate, adoption court order, certificate for the address registration of the EEA citizen family member, etc.).
3. A paper that verifies the address registration on the territory of Republic of Bulgaria:

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<sup>4</sup> Source: National Employment Agency.  
[http://www.az.government.bg/eng/internal\\_en.asp?CatID=14/03/01&WA=Jobseekers/RegBT\\_EAAen.htm&BM=8](http://www.az.government.bg/eng/internal_en.asp?CatID=14/03/01&WA=Jobseekers/RegBT_EAAen.htm&BM=8).

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3.1. Certificate for the address registration on the territory of Bulgaria.

3.2. Residence papers:

- Paper for temporary residence which the person becomes until the paper for continuous residence is being issued (the paper is issued by the Police);
- Paper for continuous residence in Republic of Bulgaria – it can be issued 3 months after the arrival in the country (it is issued by the Police);
- Paper for permanent residence in Republic of Bulgaria (it is issued by the Police after 5 years of permanent residence in the country).

The required documents in point 3.2 impede the registration as a job seeker. Firstly, they allow for registration only after the elapse of 3 months of stay in the country. The “paper for temporary residence” is issued at the moment of submission of the application for residence over 3 months. Secondly, there is discrepancy between the requirements of the Ministry of Labour and Social Policy under the Law on Employment Promotion and the requirements of the Ministry of the Interior under LERD. LERD does not envisage issuance of residence certificates on the ground of seeking a job. A residence certificate can be issued on the ground that one is employed or self-employed. The Ministry of Labour and Social Policy requires that residence certificate in order to register a person as unemployed and seeking work. The residence regime is within the exclusive competence of the National Police Service at the Ministry of the Interior. Its powers with regard to the residence of EU citizens and their family members are exhaustively regulated in LERD.

There is no transposition in Bulgarian law of Art. 14 (4) (b) of the EU Citizens Directive providing that “Union citizens and their family members may not be expelled for as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged”.

### **C. ACCESS TO EDUCATION AND STUDY GRANTS**

National rules on recognition of school education, professional qualification and university education for academic purposes envisage no preferential regime for persons who are EU citizens’ family members. They must meet the general regime criteria.

The Law on Higher Education (LHE) does not envisage facilitation of the access to university education or equal treatment on study grants for third-country family members of EU citizens in comparison with the regime valid for other third-country nationals.

According to Art. 68 (6) LHE the admission of students, doctoral students and researchers who are citizens of EU Member States or of EEA states, is realized under the conditions and procedure provided for Bulgarian nationals. However no such provision exists for third-country family members.

According to Art. 91 (5) (4) LHE, unlike other foreigners, citizens of EU Member States or of EEA states are not excluded from state-subsidized scholarships. However third-country family members remain under the general foreigners’ regime.

According to Art. 95 (7) LHE, students, doctoral students and researchers who are citizens of EU Member States or of EEA states pay education fees according to the conditions and procedure provided for Bulgarian nationals. However third-country family members remain under the general foreigners’ regime.

#### **D. EQUAL TREATMENT TO SOCIAL BENEFITS AND TAXES**

EU citizens and their family members are entitled to the same social security rights and unemployment benefits under the same conditions valid for Bulgarian nationals according to the Code on Social Security.

The taxation legislation envisages rules preventing double taxation of incomes already taken into consideration in an EU Member State or an EEA country (Art. 37, Para. 7 of the Law on Taxation of the Incomes of Physical Persons).

With regard to national rules on the implementation of Regulation 1408/71, see Section III.D of the report.

#### **E. REVERSE DISCRIMINATION WITH REGARD TO FAMILY MEMBERS OF BULGARIAN NATIONALS**

As mentioned above, the regulation of the entry and residence rights of the family members of EU citizens is found in the Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family (LERD). However, Art. 1, Para.2 of the Law on the Foreigners in the Republic of Bulgaria (LFRB) stipulates that third-country nationals that are family members of *Bulgarian* citizens fall under its scope. This explicitly excludes family members of Bulgarian citizens from the facilitated regime of entry and residence for family members of other EU nationals.

Under Art. 24 of the Law on the Foreigners in the Republic of Bulgaria, a foreigner can receive a permit for continuous residence (valid for up to 1 year), only after entering Bulgaria with a long-term visa (called “D-type”). This precludes the legalization of the status of many third-country nationals who are family members of Bulgarian citizens, but for some reason have remained as undocumented immigrants and there are deportation orders pending against them. In order to complete the legal requirements of Art. 24 LFRB, they need to go out of Bulgaria and re-enter with a D-visa. However, such a D-visa is refused to persons against whom there has been a deportation order. Furthermore, deportation orders are usually accompanied by an explicit ban to enter Bulgaria for a number of years (from 3 to 10 years). Therefore, these third country nationals that are family members of Bulgarian citizens either remain in Bulgaria as illegal immigrants or are separated from their families by not allowing them re-entry to Bulgaria once they have come out of the country to get a D-visa.

By excluding family members of Bulgarian citizens from the ambit of the law transposing Directive 2004/38 – the Law on the Entry, Residence and Departure of the Republic of Bulgaria of EU Citizens and the Members of their Family (LERD) – a presumption is created for their *exclusion from the application of the guarantees stipulated in the MRAX judgment of the ICJ (C-459/99)*. This issue will be further discussed in Chapter 6 of the report by presenting concrete cases from the practice.

The reverse discrimination against the family members of Bulgarian nationals also concerns:

- The scope of the “family members” notion

According to Art. 2 (2) of the Law on the Foreigners in the Republic of Bulgaria, the partners under Art. 2 (2) of the EU Citizens Directive are not included in the “family” notion.

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- The administrative fee for issuing the residence permit  
The fee for the issuance of a continuous or permanent residence permit under LERD is 7 levs (3.5 Euro).  
The fee for the issuance of a *continuous* residence permit of family members of Bulgarian citizens under LFRB is 500 levs (250 Euro), if the residence permit is for a period of up to 1 year, and 200 levs (100 Euro), if the residence permit is for a period of up to 6 months.  
The fee for the issuance of a *permanent* residence permit under LFRB is 1000 levs (500 Euro) in principle. There is an exception only for the spouses of Bulgarian citizens where the fee is 150 levs (75 Euro).

## **Chapter VI**

### **Relevance/Influence/Follow-up of Recent Court of Justice Judgments**

#### ***C-212/05 Hartmann***

In Bulgaria a definition of a frontier worker is given in Administrative Instructions No 91-01-13/21.01.2008 issued by the National Social Security Institute. It transposes the one under Art. 1 (b) of Regulation 1408/71 and adds that “this term is most frequently used in connection with sickness and maternity, as well as unemployment benefits.” This official guideline is interpreted to be in line with the judgment of the ICJ in the case of *Hartmann* C-212/05, however it is too early to assess its implementation in practice.

#### ***C-213/05 Geven***

No legislative or administrative activity has taken place in Bulgaria in 2007 with regard to this judgment.

#### ***C-287/05 Hendrix***

The Law on the Integration of Disabled People and the Regulation for its Implementation, which regulate the provision of special non-contributory benefits to disabled people, do not stipulate an explicit requirement for residence in Bulgaria.

#### ***C-208/05 ITC***

In Bulgaria the Law on Employment Promotion does not provide for state subsidies for private recruitment agencies. The private sector intermediary services are only employer-funded.

#### ***C-97/05 Gattoussi***

No legislative or administrative activity has taken place in Bulgaria in 2007 with regard to this judgment.

#### ***C-291/05 Eind***

With regard to the *right of entry* referred to in Para.1 of the Operative part of the judgment, Art. 4 (3) of LERD transposes Art. 5 (2) of the EU Citizens Directive 2004/38/EC stipulating that possession of a valid residence card issued by another Member State shall exempt family members who are third country nationals from the visa requirement. Furthermore, with regard to third country nationals who are family members of *Bulgarian* citizens, Art. 8a (2) of the Law on the Foreigners in the Republic of Bulgaria stipulates that they are exempted from a visa requirement when they are in possession of a valid residence card, issued by:

- a) the Republic of Bulgaria, unless the grounds for its issuance are no longer valid;

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- b) another Member State of the European Union, as long as the person accompanies or joins the Bulgarian national.

With regard to the *right of residence* referred to in Para.2 of the Operative part of the judgment, Art. 24 (1) (18) of the Law on the Foreigners in the Republic of Bulgaria stipulates that a permission for continuous residence in the country (for up to one year) is given to family members of Bulgarian citizens. The legal provision poses no further conditions to this right.

### ***C-1/05 Jia***

With regard to the condition of previous lawful residence discussed in the *Akrich* and the *Jia* judgments, LERD and LFRB provide for no such explicit requirement.

With regard to the notion of a “dependent” family member, LERD and LFRB only provide that this is a person who is “provided for” by the EU/Bulgarian citizen or his/her spouse, without further elaboration.

### ***C-459/99 MRAX***

In the light of the issues discussed in Para V.E of this report, I will briefly present two cases that are exemplary of the fact that because of the exclusion of family members of Bulgarian citizens from the scope of LERD, third country nationals that are family members of Bulgarian citizens could find themselves in situations where they either remain in Bulgaria as illegal immigrants or are separated from their families by not allowing them re-entry to Bulgaria once they have come out of the country to get the necessary long-term (“D”) visa.

According to the Court in the *MRAX* judgment, Para. 1,

a Member State may not send back at the border a third country national who is married to a national of a Member State and attempts to enter its territory without being in possession of a valid identity card or passport or, if necessary, a visa, where he is able to prove his identity and the conjugal ties and there is no evidence to establish that he represents a risk to the requirements of public policy, public security or public health.

Hasan Ali Nasar is a Lebanese national who is married to a Bulgarian citizen, Polia Lazarova, with whom they have two minor children, Bulgarian nationals. In spite of the official marriage under Bulgarian law between Hasan and Polia, Hasan was refused issuance of a residence permit in Bulgaria, because he had entered the country illegally, after having been refused a visa. A deportation order was issued against him in September 2006, on which ground he was detained at the detention center for undocumented immigrants. He was deported to Lebanon one year later, in September 2007. Although Polia went to Lebanon so that they could apply together for a visa for him to enter Bulgaria, such a visa was refused to Hasan in December 2007 with the argument that a deportation order had been executed against him and there was a ban on Hasan to enter Bulgaria for 10 years.

According to the Court in the *MRAX* judgment, Para.3,

a Member State may neither refuse to issue a residence permit to a third country national who is married to a national of a Member State and entered the territory of that Member State lawfully, nor issue an order expelling him from the territory, on the sole ground that his visa expired before he applied for a residence permit.

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Ahmed Rahmani is an Algerian national who is married to a Bulgarian citizen, Dimka Rahmani. On the ground of his official marriage under Bulgarian law, Ahmed was issued a residence permit. However, at that time his wife had to undergo an urgent and expensive surgery and they could not afford to pay the state fee for the residence permit on time. As a result of that, a deportation order was issued against Ahmed, on the basis of which in August 2005 he was detained at the detention center for undocumented immigrants. After his detention, Dimka paid the fee together with the fine for the residence permit; however, this was considered not to change the circumstances that had led to the issuance of the deportation order. The order is not executed yet, although it has entered into force. Since August 2005 Ahmed stays detained pending deportation.

## Chapter VII

### Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

A fundamental change in Bulgarian law with a repercussion on free movement of workers is the explicit provision in the Law on the Foreigners in the Republic of Bulgaria (LFRB), according to which citizens from EU, EEA and Switzerland are no longer considered foreigners. According to Art. 2 (1) “a foreigner under this law is every person who is not a Bulgarian citizen or a citizen of a Member State of the European Union, the European Economic Area or Switzerland.” This conceptual change has the practical consequences that EU citizens and their family members no longer fall under the scope of the provisions of the Law on the Foreigners that allow for important limitations to basic human rights. For example, under LERD, the coercive measure “a ban to leave the country” is inadmissible, while under LFRB it is one of the possible measures imposed on foreigners. Furthermore, since LERD does not envisage the measure “deportation” (coercive return), but only expulsion on national security or public order grounds, no deportation could be imposed on an EU citizen or a member of his/her family. The only possible measure is “discontinuance of the right to residence”. Unlike the Law on the Foreigners, LERD guarantees the grant of a period for voluntary return of a person with an expulsion order. This constitutes an important guarantee against immigration detention, which under the Law on Foreigners can be imposed (and in practice usually is imposed) at the moment of notification of the deportation or expulsion order. Furthermore, since LERD does not envisage a possibility for immigration detention and EU citizens and their family members no longer fall under the scope of the Law on Foreigners, currently in Bulgaria there is no legal ground for administrative detention of this category of persons (a measure massively applied to undocumented immigrants from third countries).

The above conceptual change also provides for stronger procedural guarantees in the judicial review of expulsion orders, issued on national security or public orders grounds. Under Art. 46 (2) and (3) LFRB, the expulsion order does not state the factual grounds for its issuance and is subject to only one-instance judicial review. Under Art. 28 of LERD, expulsion orders are appealed under the general regime according to the Code on Administrative Procedure. That is, expulsion orders against EU citizens and members of their families are subject to two-instance judicial review.

Another change of general nature that might affect the free movement of workers within the European Union is the transposition in the Bulgarian Law on the Foreigners of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. This was done with the legislative amendments of 6 April 2007 (State Gazette No29). A new Chapter III “a” of the LFRB now deals with the residence of foreigners who have received a long-term residence permit in another Member State of the European Union.

Bulgarian legislation (LFRB and the Law on Asylum and Refugees) has also been amended with a view to transposing Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. However, there is a problem with regard to the issue of state discretion in deciding on the applications. A *right* to family reunification is recognized by Bulgarian law only to third country nationals, who are already long term residents in another EU MS and have established a family there, and have received a long term residence in Bulgaria. For all other third country nationals (including those, who are long term residents of

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another EU MS, but have established their family in a country outside the EU), the law does not say that they have the right to reunite, but that they can be authorised reunification. The Law on Asylum and Refugees also provides for the right of the refugee to apply for family reunification and not for a right to family reunification.

An important development with repercussions on free movement of workers is the creation of the new Bulgarian State Agency for National Security (SANS), the law on which was adopted in December 2007. One of the functions of the new agency is to exercise control over the stay of immigrants in Bulgaria. SANS organises and implements operative-discovery and operative-technical activities of surveillance and control of people, objects and activities. The Head of SANS has powers to issue orders for coercive administrative measures under LERD and LFRB.

Another important development in 2007 in Bulgaria is the creation of specialized first-instance courts dealing only with administrative law cases.

## **Chapter VIII**

### **EU Enlargement**

Bulgaria acceded to the European Union on 01 January 2007. In accordance with the provisions of the Accession Treaty, some European countries have availed of the possibility to apply transitional arrangements for the access to their labour market by workers who are Bulgarian citizens. Bulgaria has not applied reciprocal restrictions to those EU Member States.

#### ***1.1 Changes in national law and practice in all EU Member States since previous national reports***

This is the first national report on Bulgaria. No restrictions to EU workers have been imposed by Bulgaria.

#### ***1.2. Changes in position with regard to the second phase of the transitional arrangements***

Not applicable.

#### ***1.3. Details of the legal regime, including relevant legislation, applicable for the second phase***

Not applicable, as Bulgaria does not apply transitional arrangements.

#### ***1.4. Practical problems, individual cases and national case law pertaining to the transitional arrangements (e.g. concerning the application of 12-months rule)***

Not applicable.

## Chapter IX

### Statistics

According to the data provided to the national reporter by the Ministry of Labour and Social Policy of the Republic of Bulgaria, the workers with EU citizenship in Bulgaria in 2007 have been as follows:

*Citizens of the EU, EEA and Switzerland, who have worked under a labor contract in Bulgaria in 2007: 3,168 persons*

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Austria	74
Belgium	35
Cyprus	15
Czech Republic	191
Denmark	26
Estonia	6
Finland	3
Germany	341
Greece	504
Hungary	121
Iceland	4
Ireland	14
Italy	161
Latvia	22
Lithuania	32
Malta	1
Netherlands	61
Norway	5
Poland	625
Portugal	31
Romania	359
Slovakia	105
Slovenia	13
Spain	53
Sweden	23
Switzerland	9
United Kingdom	185

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*Citizens of the EU, EEA and Switzerland, who have been self-insured in Bulgaria in 2007:  
1,602 persons*

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Austria	50
Belgium	28
Cyprus	26
Czech Republic	138
Denmark	16
Estonia	6
Finland	3
Germany	158
Greece	496
Hungary	10
Iceland	0
Ireland	16
Italy	190
Latvia	7
Lithuania	9
Malta	0
Netherlands	45
Norway	2
Poland	68
Portugal	3
Romania	44
Slovakia	11
Slovenia	4
Spain	12
Sweden	12
Switzerland	13
United Kingdom	185

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Statistics kept by the National Employment Agency on registered job seekers do not make repartition by nationality.

No further concrete data are published neither by the National Statistical Institute, nor by the Migration Directorate at the Ministry of the Interior.

## Chapter X Miscellaneous

The analytical energy in Bulgaria has been channelized mainly in two spheres:

- 1) The *emigration* tendencies in Bulgaria and the access to the labour market of the EU Member States;
- 2) The harmonization of Bulgarian legislation in the field of recognition of diplomas and professional qualifications.

As part of the Round Table “Free Movement of Workers and Access to the Labour Market of the EU Member States”, that took place on 10 December 2002 in Sofia, the following lectures are published at the web site of the Ministry of Labour and Social Policy<sup>5</sup> (in Bulgarian language):

- “The Common System of Recognition of Diplomas and Professional Qualifications and the Way for Bulgaria’s Inclusion into it”, by Irina Bolcheva, senior expert at the Ministry of Science and Education;
- “The New Migration Policy of the Republic of Bulgaria. Bilateral Agreements for Exchange of Labour Force”, by Vladimir Kalchev from the Ministry of Labour and Social Policy.

At the web site of the Ministry of Labour and Social Policy<sup>6</sup> there is also a report on the “Conditions for Entry, Residence and Work in the EU Member States”.

Relevant European Union and Bulgarian legislation with regard to free movement of workers is published in Bulgarian language at the web site of the Ministry of Labour and Social Policy.<sup>7</sup>

The National Center for Information and Documentation<sup>8</sup> at the Ministry of Education and Science has created a very useful web site<sup>9</sup> both in Bulgarian and English language with profound and practical information on regulated professions and their recognition.

In 2006 and 2007 the Ministry of Labour and Social Policy assigned inquiries on the Emigration Attitudes of Bulgarian Citizens. The studies are available to the national rapporteur both in English and Bulgarian languages.

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<sup>5</sup> <http://www.mlsp.government.bg/bg/integration/forum/index.htm>.

<sup>6</sup> <http://www.mlsp.government.bg/bg/integration/forum/index.htm>.

<sup>7</sup> <http://www.mlsp.government.bg/bg/integration/euro/chapter-2/euro/index.htm>.

<sup>8</sup> <http://www.nacid.bg/>.

<sup>9</sup> <http://regprof.nacid.bg/>.