REPORT
on the Free Movement of Workers in Denmark in 2007

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Contents*

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Introduction

The three most important developments with regard to the implementation of EU free movement rules in Denmark in 2007 were

- The political agreement of 29 June 2007 to phase out the transitional arrangements for citizens of the new Member States (EU-8+2) taking up employment in Denmark. A draft bill was issued by the Ministry of Refugee, Immigration and Integration Affairs on 9 October 2007 with a view to entering into force on 1 January 2008. Due to the general elections in November 2007, the Bill was not tabled before the Parliament until 30 January 2008, now stipulating entry into force on 1 April 2008. The Bill was adopted on 17 April and entered into force on 1 May 2008. In addition to amending the transitional rules, the Bill also aimed at bringing the legislative terminology on the issuance of residence documents in conformity with Directive 2004/38 (Bill No. L 65/2007-08 (2. Session), further discussed below in Chapters I, III and VIII).
- The Danish government still seemed to be reluctant in implementing EU rules on residence rights for third country family members, in particular the *Singh* doctrine, due to the perceived risk of circumventing restrictive national rules on family reunification. Some development has taken place, as the ECJ judgment in *Eind* resulted in an adjustment in January 2008 of the administrative practice concerning residence for third country family members of Danish citizens returning from another Member State where they resided on the basis of EU rules (see Chapter V).
- The adoption of new legislation on supplementary pension schemes, following up on the ECJ judgment in C-150/04, *Commission v. Denmark* (see Chapters III and VI).

Chapter I
Entry, Residence, Departure

A. ENTRY

Texts in force

Laws

The Aliens Act[1] 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 EU law, cf. Section 2 (3). A footnote to the title of the Aliens Act is indicating that the Act includes provisions implementing Directive 2004/38. This footnote was inserted by Amendment Act No. 301 of 19 April 2006 which also included more specific provisions aiming to implement Directive 2004/38 (see below Chapter I.C). While these provisions and their necessity in order to implement the Directive were explained in detail in the Bill, no specific reasons were given for the insertion of the footnote.[2] It must, however, be seen in connection with Section 2 (3), emphasizing and highlighting the prevalence of EU law in case of any conflict or divergence with the Act. This may have particular relevance because Section 6 of the Aliens Act still stipulates the issuance of a *residence permit* to aliens falling within the EU rules.[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) states that it can be required that third country family members obtain a visa. See also Chapter V on family members' residence rights.

Aliens Act Section 9 a stipulates the conditions for granting residence permits to citizens of Bulgaria,[4] Estonia, Lithuania, Latvia, Poland, Romania,[5] Slovakia, Slovenia, the Czech Republic and Hungary.

The provision was amended in 2006 so the basic condition is that the citizen in question must have been offered a job for at least 30 hours a week instead of full-time, cf. Section 9 a (5) or there are essential employment considerations.[6] In 2007 a 'point system' (green card) was introduced in Section 9 a (20) by Act No. 379 of 25 April 2007, entering into force on 10 October 2007.[7]

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1 Consolidation Act No. 1044 of 6 August 2007.

2 Explanatory memorandum to Bill No. L 94/2005-06, pp. 26-28. See also Chapter I.C below.

3 However, in 2008, the Minister of Refugee, Immigration and Integration Affairs proposed an amendment to Aliens Act, which, among other things, has as its purpose to amend Section 6 and other sections in order to bring it in accordance with Directive 2004/38, see below draft legislation.

4 By Act No. 532 of 8 June 2006 the transitional rules were extended to cover citizens of Bulgaria and Romania on the same conditions as those applying to EU-8 workers, cf. Aliens Act Section 9 a (19). The Act entered into force on 1 January 2007, cf. Executive Order No. 1265 of 4 December 2006. As a consequence of this, Aliens Act Sections 6 and 14 (1) (ii) was amended by Act No. 504 of 6 June 2007 to include Bulgaria and Romania in the enumeration. See more below Chapter VIII.

5 See above note 4.

6 Cf. Act No. 532 of 8 June 2006. See more below Chapter VIII.

7 Cf. Executive Order No 1141 of 1 October 2007. Executive Order No. 1135 of 1 October 2007 specifies the rules.

Aliens Act Section 28 contains the general rules on refusal of entry.

Section 28 can only apply to EU citizens to the extent this is in accordance with EU 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) states that 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. EU/EEA citizens may not be refused entry due to insufficient means, cf. Section 28 (1), unless the person in question has insufficient means to pay for his/her return, cf. Section 28 (5).[8]
- 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 EU/EEA Residence Orders – now, the *EU Residence Order* – which is the central piece of legislation concerning free movement as it implements the Directives on free movement.

There were no amendments to the EU Residence Order in 2007, and the most recent versions of the Order entered into force on 1 January 2006[9] and 30 April 2006, [10] respectively.[11]

Executive Order No. 1255, 28 November 2005, entering into force 1 January 2006 provided changes to the 2004 EU/EEA Order[12] regarding citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary (see Chapter VIII on the EU enlargement).

Section 1 states that an EU residence certificate is granted to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary provided

8 See also Guidelines No. 91 of 19 June 1998 Chapter 1.3.

9 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 Residence Order), Ministry of Refugee, Immigration and Integration Affairs, 28 November 2005.

10 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.

11 However, the EU Residence Order was amended in 2008 as a consequence of the proposed amendment to the Aliens Act in 2008, see below draft legislation.

12 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 Residence Order), Ministry of Refugee, Immigration and Integration Affairs, 28 April 2004 and 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 Residence Order), Ministry of Refugee, Immigration and Integration Affairs, 29 June 2005.

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

Section 11 (1) and (2) exempt 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 citizens 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 work permit provided they have been legally active on the Danish labour market for a minimum period of 12 consecutive months.

As of 1 January 2007 the transitional rules were extended to cover citizens of Bulgaria and Romania on the same conditions as those applying to EU-8 workers.[13]

Executive Order No. 358, 21 April 2006, entering into force 30 April 2006 provided general changes, which are mainly of a formal and structural character; emphasizing that the right to reside is based directly on the EC treaty and not dependant on the issuance of a residence certificate.

According to Section 34 – and the subtitle to the Order ('EU Residence Order', contrary to the former Orders named 'EU/EEA Residence Order'), the 2006 EU Residence Order only applies to EU citizens, and the Executive EU/EEA Residence Order No. 1255 of 28 November 2005 no longer applies to EU citizens. Hence, the Executive EU/EEA Residence Order No.1255 of 28 November 2005 continues to apply to other EEA citizens (EFTA citizens) and only applied to EU citizens until 30 April 2006.

With regard to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary, the 2006 EU Residence Order contains the rule that these citizens obtain the right under the rules of the 2006 EU Residence Order, provided they have been legally active on the Danish labour market for a minimum period of 12 consecutive months, cf. Section 3.[14] As of 1 January 2007 the transitional rules were extended to cover citizens of Bulgaria and Romania on the same conditions as those applying to EU-8 workers.[15]

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. Furthermore, the Aliens Act was amended by Act No. 301 of 19 April 2006 in order to implement certain Directive provisions regarding expulsion (see below Chapter I.D). In 2008, the Minister of Refugee, Immigration and Integration Affairs proposed an amendment to the Aliens Act as a consequence of the implementation of Directive 2004/38, and a new EU Residence Order was issued (see more below draft legislation). As regards the possible retrogressive effects of the implementation of Directive 2004/38 for EU citizens and their family members, see below Chapter V.

With regard to the right to enter into Denmark, the EU Residence 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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13 Executive Order No. 1265 of 4 December 2006.

14 See more below Chapter VIII.

15 Executive Order No. 1265 of 4 December 2006.

Draft legislation, circulars etc.

On 30 January 2008 the Minister of Refugee, Immigration and Integration Affairs introduced a bill to amend the Aliens Act.[16] The Bill has as its purpose to phase out the transitional rules applicable on citizens of Bulgaria, Estonia, Lithuania, Latvia, Poland, Romania, Slovakia, Slovenia, the Czech Republic and Hungary, see more below Chapter VIII.

Furthermore, the Bill changes the term for EU citizens' and their family members' right to reside as the wording of Section 6 and other sections is changed from 'residence permit' to 'registration certificate' and 'residence card' (family members, see more below Chapter V) as a consequence of the implementation of Directive 2004/38. The Minister does not address the lack of amendment of Section 6 by Act No. 301 of 19 April 2006, which otherwise aimed to implement Directive 2004/38. The Bill was adopted by the Parliament on 17 April 2008 and entered into force on 1 May 2008. Furthermore, a new EU Residence Order has been issued in accordance with the Bill, and entered into force on 1 May 2008.[17]

Judicial practice

Nothing to report. 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 (administrative practices etc.)

Cases concerning EU citizens and their right to entry, residence etc. are – with some exceptions, including cases on workers from the EU-10 Member States – handled in the first instance by the Regional Government Administration ('Statsforvaltningerne'),[18] cf. EU Residence Order Section 29 (1). Residence permits pursuant to the transitional rules for citizens of Bulgaria, Estonia, Lithuania, Latvia, Poland, Romania, Slovakia, Slovenia, the Czech Republic and Hungary (see Chapter VIII) are granted by the Danish Immigration Service ('Udlændingeservice'),[19] cf. EU Residence Order Section 29 (2).

Decisions made by the Regional Government Administration can be appealed to the Danish Immigration Service (DIS), cf. EU Residence Order Section 30. When the competence to handle these cases was delegated to the Regional Government Administration 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 Regional Government Administration whenever DIS deems it necessary, cf. EU Residence Order Section 32.[20]

Decisions made by the Danish Immigration Service can be appealed to the Ministry of Refugee, Immigration and Integration, cf. EU Residence Order Section 31. The Ministry of Refugee, Immigration and Integration can issue guidelines for the processing of the cases, cf. EU Residence Order Section 32.

16 Bill No. L 65/2007-2008 (2. Session).

17 Executive Order No. 300 of 29 April 2008.

18 Official website: www.statsforvaltning.dk.

19 Official website: www.nyidanmark.dk.

20 Circular No. 31 of 7 June 2007 stipulates the most recent guidelines for the processing of cases.

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, p. 239-246.

Ruth Nielsen, *EU-arbejdsret*, 4. edition, 1. print, Copenhagen 2006.

B. 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/EEA citizens and members of their family, cf. Section 2 (2).

Aliens Act Section 6 states that a residence permit shall be granted to foreigners, to whom the EU rules apply. This provision was not amended by Act No. 301 of 19 April 2006 which otherwise aimed to implement Directive 2004/38 (see above).

Aliens Act Section 14 (1) (ii), cf. Section 13 and 2006 EU Residence Order Section 15, 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 Bulgaria, Estonia, Lithuania, Latvia, Poland, Romania, Slovakia, Slovenia, the Czech Republic and Hungary, cf. Section 14 (1) (ii). For this group of persons special rules apply (see below Chapter VIII).

With regard to citizens of Estonia, Lithuania, Latvia, Poland, Slovakia, Slovenia, the Czech Republic and Hungary, the 2006 EU Residence Order contains the rule that these citizens obtain the right under the rules of the 2006 EU Residence Order, provided they have been legally active on the Danish labour market for a minimum period of 12 consecutive months, cf. EU Residence Order Section 3 and 15. As of 1 January 2007 the transitional rules were extended to cover citizens of Bulgaria and Romania on the same conditions as those applying to EU-8 workers.[21]

Aliens Act Section 1, cf. Section 14 (1) (i), states that citizens from other Nordic countries can reside and take up employment without permits.

Citizens from Finland and Sweden, who satisfy the conditions acquire the rights under the rules of the EU Residence Order, cf. 2006 EU Residence Order Section 14.[22]

Citizens from Island and Norway 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 EU/EEA Residence Order, cf. 2005 EU/EEA Residence Order Section 10.[23]

Administrative rules

For EFTA citizens, the previous rules as mentioned above in Chapter I.A continue to apply. For EU citizens, however, there have been some changes in 2006 – primarily of a formal and

[21] Executive Order No. 1265 of 4 December 2006.

[22] Executive Order No. 358 of 21 April 2006.

[23] Executive Order No. 1255 of 28 November 2005.

structural character – due to the issuance of the 2006 EU Residence Order, entering into force 30 April 2006.

EU citizens have a *right to reside* in Denmark for more than the 3/6 months mentioned in Aliens Act Section 2 (1) if the person is self-employed or has taken up employment in Denmark, cf. EU Residence Order Section 3 (1).

This does not apply, however, to EU-10 citizens as this group obtains the same residence rights when they have been legally active on the Danish labour market for a minimum period of 12 consecutive months (see Chapter VIII).

EU citizens legally residing in Denmark for 5 consecutive years acquire the right to *permanent residence*, cf. EU Residence Order Section 16 (1). For family members specific rules apply, see below Chapter V.

The stay in Denmark is not considered interrupted due to temporary stays outside the country, when these stays in total do not exceed 6 months a year, if the stay abroad is due to obligatory military service or if one stay of maximum 12 months is caused by special circumstances, cf. EU Residence Order Section 16 (5).

Upon application a certificate for the right to permanent residence is issued, cf. EU Residence Order Section 24.

EU citizens encompassed by Sections 6, 10 and 11 (3) have the right to *permanent residence* without any further conditions, cf. EU Residence Order Section 17.

Section 6 concerns

- The right to continued residence when the EU citizen reaches the age for entitlement to old-age pension as laid down in the Pension Act[24] or takes early retirement provided he/she has been working 12 months up to this point and has resided in Denmark the previous 3 years, cf. Section 6 (1) (i). 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 6 (4).
- The right to continued residence 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, cf. Section 6 (1) (ii). 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 6 (4).
- The right to continued residence 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, cf. Section 6 (1) (iii).[25]

Section 10 concerns family members of the persons mentioned in Section 6 (see below Chapter V.1).

Section 11 concerns the retention of residence right for family members of deceased persons and persons having left the country (see below Chapter V.1).

EU citizens with the right to *time limited residence* under the rules of the Order have to apply for a *registration certificate*[26] within 3 months from entry provided the stay is expected

[24] Consolidation Act No. 484 of 29 May 2007.

[25] See more on frontier workers below Chapter III.3.

[26] This certificate was formerly named a *residence certificate*. The term *residence permit* is still used in Section 6 of the Aliens Act applicable for 2007, which, however, was amended in 2008, see above.

to exceed 3 months, cf. EU Residence Order Section 18. The registration certificate is not issued for a certain time period, since it is not a residence certificate, but the right to time limited residence ceases when the conditions mentioned in the specific provisions are no longer met, cf. Section 26 and below 1.C.

The issuing of a *registration certificate* for an EU citizen encompassed by Section 3 can be *conditioned* by valid identity card or passport and either documentation for self employment in Denmark or a declaration from his/her employer that he/she has paid employment in Denmark, cf. EU Residence Order Section 19 (1).

Jobseekers

If seeking job EU citizens have a right to reside in Denmark for up to 6 months without residence certificates/permits, cf. Aliens Act Section 2 (1). Within this period the EU citizen has to supply for him-/herself.[27]

If the EU citizen upon the expiration of the 6 months time limit can substantiate that he/she continues to seek job and has actual chances to obtain employment, he/she will not be sent out of the country.[28]
According to the webpage of the Ministry of Refugee, Immigration and Integration, an EU/EEA citizen seeking job can apply for a residence certificate under the EU/EEA Residence Order with the Regional Government Administration or a residence permit under the Aliens Act with the Danish Immigration Service if the person in question wishes to stay in Denmark for more than 6 months. The application has to be handed in within 6 months from entry.[29]

According to information obtained from an official within the Danish Immigration Service, situations where an applicant seeking job wishes to stay in Denmark for more than 6 months have not been experienced in practice. Hence, the Danish Immigration Service does not have any information on the criteria for extension of the 6 months time limit in Aliens Act Section 2 (1). The Danish Immigration Service further notes that the right to reside in Denmark for up to 6 months without residence certificates/permits starts over again upon renewed entry into Denmark provided the entry and leave did not take place with the purpose of circumvention.[30]

Miscellaneous (administrative practices etc.)

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 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

[27] See below Chapter II and VI.

[28] See Guidance No. 33 of 4 May 2004 to Section 12 a in the Act on Active Social Policy 1.1. note 1 , Guidelines issued by The National Directorate of Labour, 'Arbejdsdirektoratet', a body under The Ministry of Employment, official website: www.adir.dk.

[29] www.nyidanmark.dk/en-us/coming_to_dk/eu_and_nordic_citizens/eu_eea_citizens.htm.

[30] Cf. e-mail of 13 September 2007.

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.[31]

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, p. 246-258.

C. DEPARTURE

Texts in force

Laws

The general rules on *expulsion* in Aliens Act Sections 22-26 apply to EU citizens, but only to the extent that these rules are compatible with EU law, 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).
- Minor offences, cf. Section 25 a.
- Unlawful stay, cf. Section 25 b.[32]

The general rules on *lapse/revocation* of residence permits are laid down in Aliens Act Sections 17-21, cf. Section 2 (3). The modified application of these rules on EU citizens is described in the EU Residence Order, see below.

In all cases on *expulsion and revocation* of a residence certificate or residence permit Section 26 of the Aliens Act applies. 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 and the principle on proportionality.

Apart from the changes to Aliens Act 32 (7) and Section 50 b as described below in 1.D, the implementation of Directive 2004/38 by Act No. 301 of 19 April 2006 did not result in any changes of the rules on expulsion or exclusion in the Aliens Act. Of particular interest is the fact that Aliens Act Section 32 on entry prohibition has not been amended. Although

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31 Information letter from DIS to the state county offices No. 2/2004 of 28 June 2004.

32 It should be mentioned that for EU citizens invalid registration 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*, pp. 246-248.

Aliens Act 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, it could be questioned whether the protection offered by this provision is sufficient to comply with Art. 32 and the practice from ECJ.[33] Even when Aliens Act Section 2 (3) emphasizes the prevalence of EU law in case of any conflict or divergence with the Act, recent Danish judicial practice may suggest that the rules in Directive 2004/38 on expulsion and exclusion might not be complied with, see below judicial practice.

Administrative rules

The *time limited* right to reside ceases when the conditions mentioned in the specific provisions, on which the residence right has been based, are no longer met, cf. EU Residence Order Section 26 (1).

EU Residence Order Section 3 (2) secures that EU citizens *will not lose* their right to reside due to unemployment, sickness etc. The provision states that an EU citizen who has been encompassed by Section 3 (1), but no longer is active on the labour market preserves his/her status as an employee or self employed person, provided that the EU citizen

- Is temporarily disabled due to sickness or accident, cf. Section 3 (2) (i).
- Is involuntarily unemployed upon paid occupation for more than 1 year, which is documented, and has entered an employment agency as seeking work, cf. Section 3 (2) (ii).
- Has involuntarily lost his/her job within the first 12 months, which is documented, has entered an employment agency as seeking work or is involuntarily unemployed upon the expiration of a time limited employment contract of less than 1 year duration, cf. Section 3 (2) (iii). This group of EU citizens preserves the status as an employee or self employed person for 6 months, cf. Section 3 (3).
- Begins a business education related to the person's former occupation or is involuntarily unemployed and begins any form of business education, cf. Section 3 (2) (iv).

The *permanent* right to reside, cf. EU Residence Order Sections 16 and 17, ceases when the person in question has stayed outside the country for more than 2 consecutive years, cf. EU Residence Order Section 27.

The *residence document* ('registration certificate') proving the right to either time limited or permanent residence can be *revoked* in case of abuse of rights, if the basis on which the certificate was issued was incorrect or if the certificate was obtained by fraud. Fake marriage is specifically mentioned as fraud, cf. EU Residence Order Section 28 (2).

When the residence right ceases according to the EU Residence Order Sections 26, 27 and 28 (2), the Regional Government Administration decides whether the EU citizen can stay in Denmark, cf. Section 28 (1). This Section specifically refers to the provision in the Aliens Act Section 26 requiring the assessment of the alien's *personal situation*, including his/her attachment to the Danish society, family members here, the length of the stay etc. Such assessment must be made in order to evaluate whether expulsion or revocation would be excessively burdensome, cf. ECHR Art. 8.

[33] Cf. ECJ judgment of 18 May 1982 *Adoui and Cornuaille* (C-115-116/81) and ECJ judgment of 19 January 1999 *Donatella Calfa* (C-348/96).

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[34] 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 Supreme Court upheld the judgment of the High Court. The decision on expulsion was not appealed to the Supreme Court, however.[35]

In a Supreme Court judgment of 2006[36]a *Czech citizen* was sentenced to 5 years of imprisonment and *permanently expelled* for importing 79,5 kg heroin, 1,182 g cocaine and 1,956 g hash into Denmark.

As for the assessment under Aliens Act Section 26, the Court briefly stated that there were no circumstances which were decisively against expulsion.

In another Supreme Court judgment from 2006[37] a *Belgian citizen* was sentenced to 12 years of imprisonment for importing 22 kg of heroin and *permanently expelled*.

As for the circumstances on the defendant's stay in Denmark, the DIS stated that the defendant was not listed in the National Register of Persons. Furthermore, the defendant had not applied for an EU/EEA registration certificate. As the length of the stay in Denmark exceeded the 3-6 months allowed without permission by Aliens Act Section 2 (1), the defendant's stay was not legal in the sense of the rules on expulsion in the Aliens Act, cf. Section 27 (1).

As for the assessment under Aliens Act Section 26, it was stated that no circumstances were decisively against expulsion.

The Supreme Court upheld the judgment of the High Court. However, the defendant did not object to the prosecutor's claim on expulsion at the High Court, and the decision on expulsion was not appealed to the Supreme Court.

It could be questioned whether the Supreme Court's judgments are compatible with the prohibition of life-long exclusion as recognised by ECJ, cf. Art. 32.[38] However, given the fact that the Court does not address this aspect of the cases it is not possible to learn more about the Court's deliberations on the practice from ECJ.[39]

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

35 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.

36 Published in UfR 2006, p. 810H.

37 Published in UfR 2006, p. 2632H.

38 Cf. ECJ judgment of 18 May 1982 *Adoui and Cornuaille* (C-115-116/81) and ECJ judgment of 19 January 1999 *Donatella Calfa* (C-348/96).

39 The judgments are passed prior to the implementation of Directive 2004/38. However, the Supreme Court's judgment in UfR 2006, p. 2632H is passed in June 2006 and hence after the implementation of Directive 2004/38.

In a Supreme Court judgment of 2007[40] a *British citizen* was sentenced to be committed to psychiatric care for a maximum of 5 years and *permanently expelled* for the trading of 4,7 kg of heroin. As for the assessment under Aliens Act Section 26, the High Court found that notwithstanding the long stay in Denmark, his attachment to Denmark and the people resident hereof together with his attachment to Great Britain and the people resident thereof was not decisively against expulsion. The Court furthermore emphasized the character and the extent of the criminal acts of which he was found guilty.

The High Court briefly stated that *Directive 2004/38 Art. 28 (3)* could not lead to a different result. The Supreme Court upheld the verdict.

It could be questioned whether the Supreme Court's judgment is compatible with the contents and purpose of Directive 2004/38 Art. 28 (3), lit. a in particular, and this provision's protection against expulsion for EU citizens who are *long term residents*, and hence the requirement on *imperative grounds* of public security in decisions on expulsion. Furthermore, it could be questioned whether the requirement on proportionality in Art. 27 (2) and the prohibition of life-long exclusion as recognised by ECJ, cf. Art. 32[41] are complied with. Although Aliens Act 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, it could be questioned whether the protection offered by this provision is sufficient to comply with Art. 32 and the practice from ECJ.[42] However, given the short remarks of the High Court on Art. 28 (3) and the mere confirmation by the Supreme Court, it is not possible to learn more about the Court's deliberations on Directive 2004/38 or the practice from ECJ.

In another Supreme Court judgment of 2007[43] a person of Pakistani origin who was issued *time-unlimited* (permanent) residence permit for Denmark, was married to a person also of Pakistani origin, who held *British citizenship* and who was also issued *time-unlimited* residence permit for Denmark, and with whom he had 3 children, was sentenced to 10 years of imprisonment and *permanently expelled* for the complicity in manslaughter and an attempt to manslaughter.

As for the assessment under Aliens Act Section 26, the Supreme Court found that notwithstanding his strong attachment to Denmark, his attachment to Pakistan and the character and extent of the criminal acts he was found guilty of, lead to permanently expulsion. The Court furthermore stated that the fact that the defendant was encompassed by the *EC rules on expulsion of EU citizens* could not lead to a different result. It is interesting to note, that the Supreme Court reverses the decision of the High Court as regards the question on expulsion. The High Court found that the defendant's attachment to Denmark was against expulsion. Furthermore, at the Supreme Court, there was one dissenting opinion who found that the assessment under Section 26 could not lead to expulsion; this judge voted to uphold the decision of the High Court as regards the question on expulsion.

It could be questioned whether the Supreme Court's judgment is compatible with the contents and purpose of Directive 2004/38 Art. 28 (2) in particular, and this provision's reinforced protection against expulsion for *EU citizens and their family members* who have acquired a right to *permanent residence*.

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40 Published in UfR 2007, p. 2908H.

41 Cf. ECJ judgment of 18 May 1982 *Adoui and Cornuaille* (C-115-116/81) and ECJ judgment of 19 January 1999 *Donatella Calfa* (C-348/96).

42 See below 1.D on Section 32 (7).

43 Published in UfR 2007, p. 1340H.

Furthermore, it could be questioned whether the requirement on proportionality in Art. 27 (2) and Art. 28 (1), (3) and the prohibition of life-long exclusion as recognised by ECJ, cf. Art. 32[44] are complied with. Although Aliens Act 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, it could be questioned whether the protection offered by this provision is sufficient to comply with Art. 32 and the practice from ECJ.[45] However, given the short remarks of the Supreme Court on the EC rules, it is not possible to learn more about the Court's deliberations on Directive 2004/38 or the practice from ECJ.

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.

D. REMEDIES

Texts in force

Laws

Certain rules of procedure are valid for EU and EEA citizens, in accordance with Directive 64/221 and the successor Directive 2004/38.

Act No. 301 of 19 April 2006 (in force 1 May 2006) amended Section 32 (7) of the Aliens Act and inserted Section 50 b into the Aliens Act. These new provisions were considered necessary in order to implement Arts. 32 and 33, respectively, of Directive 2004/38:[46]

- 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.
- Section 50 b provides an automatic review of expulsion decisions concerning EU/EEA citizens if the expulsion has not been effectuated within 2 years, cf. Section 49.

Aliens Act Section 52 (1) (iii)-(iv), cf. Sections 25 a and 25 b, provides for special review by a competent court of administrative decisions on expulsion of EU/EEA citizens.

Administrative rules

EU Residence Order Section 33 (1)-(4) states that decisions regarding Section 18 applications (time limited right to reside) must be made immediately. Decisions regarding Sections 21 (third-country family members), 24 (permanent) and 25 (permanent for third-country family members) must be made as soon as possible and at the latest 6 months after the application has been handed in.

EU Residence Order Section 33 (5) states that 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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44 Cf. ECJ judgment of 18 May 1982 *Adoui and Cornuaille* (C-115-116/81) and ECJ judgment of 19 January 1999 *Donatella Calfa* (C-348/96).

45 See below 1.D on Section 32 (7).

46 See explanatory memorandum to Bill No. L 94/2005-2006, pp. 26, 31-32 and 38-39.

EU Residence Order Sections 30-31 state that decisions related to EU residence certificates can be appealed to the DIS or the Ministry of Refugee, Immigration and Integration Affairs.

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

Concerning basic *integration assistance*, the central piece of legislation is the Act on Integration.[47] This Act does not apply to EU/EEA citizens and members of their families, cf. the Act on Integration Section 2 (3). 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 Residence 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 EC rules on free movement of persons (see below Chapter V).

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

Texts in force

Concerning equal treatment in access to employment, the central piece of legislation is the Act on *Prohibition of Differential Treatment on the Labour Market*,[48] which prohibits direct and indirect discrimination, harassment and instructions on differential treatment on grounds of race, colour, religion or belief, political opinion, sexual orientation, age or handicap or national, social or ethnic origin in the relationship between an employer and an employee, cf. Sections 2-5.[49] The Act on *Prohibition of Differential Treatment on the Labour Market* was not amended in 2007.

The Act transposes parts of Directive 2000/43/EC on equal treatment of all regardless of race or ethnic origin into Danish law and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.[50]

According to the exemption clauses in Part III, the prohibition on differential treatment on grounds of political opinion, religion or belief does not apply to employers whose business has as its expressed purpose to promote a specific political or religious view or a specific belief, where the employee's political or religious belief may be deemed of importance for the company, cf. Section 6 (1).

If it is of crucial importance to certain forms of business or education that the practitioner is of a certain race, political opinion, religious belief, sexual orientation or national, social or ethnic origin or has a certain colour, age or handicap and the requirement of a certain affiliation is proportional with the given working activity, the concerned minister can deviate from the prohibition on differential treatment in Sections 2-5 upon procured statement from the Minister of Employment, cf. Section 6 (2).

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47 Consolidation Act No. 902 of 31 July 2006 with later amendments and the most recent Consolidation Act No. 1593 of 14 December 2007.

48 Consolidation Act No. 31 of 12 January 2005 and amendments from 2006 (No. 240 of 27 March 2006 and No. 1542 of 20 December 2006, see below).

49 As regards discrimination on the grounds of gender, this is regulated in a specific act, cf. Consolidation Act No. 1095 of 19 September 2007, which partly implements Directive 2004/113/EC.

50 Act No. 253 of 7 April 2004 and Act No. 1417 of 22 December 2004 amending Act No. 459 of 12 June 1996.

Concerning advertisement, an employer is allowed to advertise for a person of a specific race, colour, nationality, ethnicity, religion etc. if it is in accordance with the exemption clauses in the Act, cf. Section 5 (2).[51]

As regards discrimination on grounds of *nationality*, the Act does not encompass all kind of discrimination. Hence, differential treatment on the grounds of citizenship is not in itself encompassed by the Act. However, a requirement on citizenship may be categorized as indirect discrimination on the grounds of national or ethnic origin. There is no published jurisprudence on differential treatment on the grounds of nationality under the Act.

With regard to *public authorities*, a public employer is also subject to the principle on equality ('lighedsgrundsætning'), the principle on legality ('legalitetsprincippet') and the rule on instruction ('instruktionsreglen'). Also, a public employer has a special obligation to ensure equality for all employers regarding gender, ethnic origin, nationality etc. as stated in the Co-operative Agreement, Section 5 (5) ('Samarbejdsaftalen'), which is an agreement on co-operation and co-operation committees in the state's companies and institutions, see below Chapter IV.2.

The Danish Institute for Human Rights (DIHR) can hear complaints concerning violation of the prohibition against differential treatment on the grounds of race or ethnic origin and reprisals, cf. Section 8 a and below miscellaneous.[52] The Committee for Ethnic Equal Treatment established within the DIHR to hear the complaints has reaction possibilities in the form of guiding statements or recommendations expressing its opinion, cf. Section 8 a referring to the Act on *Equal Treatment Irrespective of Ethnic Origin* Part IV.[53] As mentioned below, no cases involving EU citizens concern the Act on Prohibition of Differential Treatment on the Labour Market. In 2007, the Minister of Employment introduced a bill on the Act on *Establishment of the Committee on Equal Treatment* replacing the Committee for Ethnic Equal Treatment, see below draft legislation.

According to Section 5 a, provisions violating Sections 2-5 are void. According to Section 7, persons violated by violations of Sections 2-4 or reprisals, may be given judgment for non financial compensation by the ordinary courts. According to Section 8, violation of Section 5 is punished by fine.

The Act on *Prohibition of Differential Treatment on the Labour Market* was amended twice in 2006.

Act No. 240, 27 March 2006 provided a provision allowing an employer to advertise for a person of a specific race, colour, nationality, ethnicity, religion etc. if it is in accordance with the exemption clauses in the Act, cf. Section 5 (2).

The Act also provided a provision allowing specific rules or standards to be made in collective agreements for people below 18. This provision also allows different treatment on the ground of age provided the employment is covered by a collective agreement with specific standards for payment of persons below 18, cf. Section 5 a (5).

The Act allows different treatment of people below 15 whose employment is not covered by a collective agreement, cf. Section 5 a (6). The Act entered into force 1 April 2006.

Act No. 1542, 20 December 2006 changed the age stipulation in Section 5 a (4) from 65 to 70. Hence, the Act raised the age stipulation in rules or standards of individual or collective agreements concerning termination of employment to the age of 70. The Act entered into force 1 January 2008.

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51 Adopted by Act No. 240 of 27 March 2006, entering into force 1 April 2006, see below.

52 This competence was introduced by Act No. 253 of 7 April 2004 amending Act No. 459 of 12 June 1996.

53 Act No. 374 of 28 May 2003 and amendment.

The Act on *Equal Treatment Irrespective of Ethnic Origin*[54] remained unchanged in 2007. 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, cf. Section 3 and a prohibition on reprisals, cf. Section 8.

The Committee for Ethnic Equal Treatment established within the DIHR to hear the complaints on violation of Sections 3 and 8 has reaction possibilities in form of guiding statements or recommendations expressing its opinion, cf. Part IV. The Committee has dealt with a smaller number of complaints, and the Committee has also taken up cases on its own initiative, see below miscellaneous.

According to Section 5, provisions violating Section 3 are void. According to Section 9, persons violated by violations of Sections 3 or 8, may be given judgment for non financial compensation by the ordinary courts. Section 9 supplements the general rule on compensation for injury in the Act on Liability for Damages[55] by strengthening the possibility of compensation.

Assistance of employment agencies

EU/EEA citizens may register with job centers,[56] make use of the facilities and receive guidance.[57]

The job centers must offer guidance on:

- the actual job opportunities in their geographical area;
- the use of www.jobnet.dk;
- entering CV on www.jobnet.dk;
- the work out of job applications and/or CV;
- work and residence permit/registration certificate, Civil Registration System number (CPR), tax card, language school and contact with the authorities;
- local, regional and national education or continuing education opportunities; and
- the Danish job market.[58]

The job centers have an international Section, *EURES*,[59] which is the co-operation between the European Commission and the Public Employment Services of the EEA countries and Switzerland and other partner organizations (such as unions, employers' associations and local/regional authorities) with the purpose of supporting the free movement of workers by facilitating information, advice and recruitment for citizens and companies.[60] For workers from the EU/EEA countries, EURES provides the same service as the job centers.

From 1 January 2007 4 nationwide special functions were established. The special functions handle counseling, information, development and follow-up within the areas of

54 Act No. 374 of 28 May 2003 and amendment.

55 Consolidation Act No. 885 of 20 September 2005 and amendments.

56 Consolidation Act No. 522 of 24 June 2005 on Responsibility for and Regulation of the Active Employment Initiative; cf. Consolidation Act No. 1074 of 7 September 2007 on Active Employment Initiative.

57 On the job centers, see www.ams.dk/sw884.asp and www.workindenmark.dk/Work.

58 Cf. information obtained from an official within the Ministry of Employment by e-mail of 17 June 2008.

59 Official website: www.eures.dk.

60 Cf. www.ec.europa.eu/eures/home.jsp.

handicap, equality, ethnic employment effort and EURES.[61] The special function for EURES is located at Job Center Aarhus,[62] Jutland. The EURES special function is to be closed down by 1 September 2008, see more below draft legislation.

Draft legislation, circulars etc.

The EURES special function is to be closed down on 1 September 2008. However, the tasks will be handled in 3 international centers, which will be established on 1 October 2008. The 3 international centers are to be established in the metropolitan area, Aarhus and Odense, respectively. The purpose of the establishment of the centers is to strengthen and professionalize the recruitment of foreign labour in Denmark. Hence, the centers' core area are focused directly on assisting companies in recruiting workers from abroad and on assisting alien workers in their job seeking in Denmark.

The job centers must continue to handle the tasks as described above. However, in situations where the job centers are not able to carry out a task, the task will be handled jointly with the new international centers, or the international centers will take over the handling of the task.

In connection with the establishment of the international centers, a special Polish hotline will be established in each of the 3 centers. The hotline must provide guidance on job seeking and establishment in Denmark in Polish.[63]

On 12 December 2007 the Minister of Employment introduced a bill on the Act on *Establishment of the Committee on Equal Treatment* ('Ligebehandlingsnævnet') with the purpose of promoting equal treatment on all grounds.[64]

The purpose of the Bill is to unite the processing of cases regarding equality of treatment both inside and outside the labour market in one authority and to extent the competence of the Committee to encompass also cases regarding equality of treatment on grounds of religion or belief, political opinion, sexual orientation, age, handicap and national or social origin in order to uniformize the access to complaints on violation of the prohibition on discrimination on all grounds encompassed by the Danish legislation on equal treatment. Hence, the proposal results in a union of the two existing Committees (the Committee for Ethnic Equal Treatment and the Committee on Gender Equal Treatment, respectively), changes of a formal character and does not result in any changes as regards the protection against differential treatment.[65]

According to the Bill, the *Committee on Equal Treatment* is competent to deal with complaints on differential treatment on the grounds of gender, race, colour, religion or belief, political opinion, sexual orientation, age, handicap or national, social or ethnic origin, cf. Section 1.

As for a comparison with the present Committee for Ethnic Equal Treatment established within the DIHR to hear complaints concerning differential treatment on the grounds of race or ethnic origin, the proposal results in an extension of the competence, both as regards an extension of the grounds (as described above) and as regards the Committee's reaction possibilities, see below on Section 2. However, the new Committee on Equal Treatment will not

61 www.ams.dk/sw18177.asp.

62 www.jobnet.dk/Dit+lokale+jobcenter/Midtjylland/%c3%85rhus/JobCenter+Aarhus.

63 Cf. information obtained from an official within the Ministry of Employment by e-mail of 17 June 2008.

64 Bill No. L41/2007-08.

65 Bill No. L41/2007-08, general remarks 1.

be able to take up cases on its own initiative. Furthermore, the proposal results in changes of organisational character as the Committee on Equal Treatment is organized in accordance with the model for the existing Committee on Gender Equal Treatment.[66]

With regard to the Act on *Prohibition of Differential Treatment on the Labour Market,*[67] the *Committee on Equal Treatment* deals with complaints on discrimination on grounds of race, colour, religion or belief, political orientation, national, social or ethnic origin under this Act and other acts, cf. Section 1 (3). Furthermore, the Committee deals with complaints from employees on violation of Collective Agreements containing an obligation to equal treatment similar to the Act on Prohibition of Differential Treatment on the Labour Market (Section 1 (6) and (7)) provided the case is not brought before the Industrial Committees/Courts, cf. Section 1 (5).

As regards the Act on *Equal Treatment Irrespective of Ethnic Origin*[68] the Committee deals with complaints on discrimination on grounds of race or ethnic origin under this Act, cf. Section 1 (4).

According to Section 2, the Committee can give judgment for non financial compensation and overrule dismissals in accordance with the Acts and Collective Agreements mentioned in Section 1 (2)-(5), cf. Section 2. Decisions of the Committee may be brought before the ordinary courts of which the parties should be notified, cf. Section 12 (1). If a decision of the Committee is not complied with, the Committee may bring the case before the ordinary courts on behalf of the complainant, cf. Section 12 (2). This competence is based on the fact that decisions of the Committee are not executable.[69]

With regard to the obligation under Directive 2000/43 Art. 13, the proposal does not contain any changes to the competence of DIHR as defined in the Act on Establishment of DIHR Section 2 (2)[70]and the Act on Equal Treatment Irrespective of Ethnic Origin Section 10 (1).[71]

The Bill was adopted by the Parliament on 13 May 2008 and enters into force on 1 January 2009.[72]

Miscellaneous

As mentioned above, DIHR[73] can hear complaints concerning violation of the *prohibitions against discrimination* on the grounds of *race* or *ethnic origin* both inside and outside the labour market. The Committee for Ethnic Equal Treatment established within the DIHR to hear the complaints has dealt with a smaller number of complaints and has also taken up cases on its own initiative.[74] As regards 2007, no cases concerned discrimination of EU citizens.

No cases involving EU citizens concern the Act on Prohibition of Differential Treatment on the Labour Market.

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66 Bill No. L41/2007-08, general remarks 2.2

67 Consolidation Act No. 31 of 12 January 2005 and amendments from 2006 (No. 240 of 27 March 2006 and No. 1542 of 20 December 2006, see below).

68 Act No. 374 of 28 May 2003 and amendment.

69 Bill No. L41/2007-08, specific remarks Section 12.

70 Consolidation Act No. 411 of 6 June 2002.

71 Bill No. L41/2007-08, general remarks 2.1.3.

72 Consolidation Act No. 387 of 27 May 2008.

73 Official website: www.humanrights.dk.

74 Information on this is found at the website of the Committee: www.klagekomite.dk.

Concerning the Act on Equal Treatment Irrespective of Ethnic Origin (outside the labour market):

2005: Two of the Committee's cases involved EU citizens.

- In a decision from 19 September 2005 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 further documentation of his Dutch citizenship than his Dutch passport. Further he 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 Residence Order, the citizen had not been subject to discrimination.[75]
- In a decision from 17 May 2005 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 being from an Iranian citizen, as the state county itself had admitted during the case. Since there was no indication that the error in the administrative procedure was deliberate in order to discriminate, the Committee found that the citizen had not been subject to discrimination.[76]

2006: One of the Committee's cases involved EU citizens.

- In a decision from 19 September 2006 the Committee dealt with a complaint from a person who claimed that a company renting out holiday houses had exposed him to indirect discrimination, cf. The Act on Equal Treatment Irrespective of Ethnic Origin Section 3 (3).[77]

  The claimant had consulted the company when he was living in Germany. Due to the claimant's address, the company had offered him a holiday house at a higher price than he would have been offered had he resided in Denmark.

  The company informed the Committee that the difference in prices was due to the difference in the markets, such as consumer laws. The German consumer law required cancellation insurance wider than the Danish one, and the insurance was mandatory and therefore part of the price. So were the costs of the insurance for insolvency, required by German law, and the costs of conversion of foreign exchange.

  The Committee stated that it was not of decisive importance whether the difference in prices corresponds the extra costs, since a company has the right to exercise a *wide discretion* in the determination of the price and that it was not decisive whether the German consumer law applied to all rental agreements involving customers residing in Germany, since a company has the right to *decide the conditions* for the terms and conditions in rental agreements with customers residing outside of Denmark.

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75 J.nr.711.9.

76 J.nr.711.31.

77 Consolidation Act No. 374 of 28 May 2003 and later amendment.

> The Committee concluded that the different prices were *objectively justified* in a *reasoned purpose* and that the means were *appropriate and necessary*, cf. the Act on Equal Treatment Irrespective of Ethnic Origin Section 3 (3) in fine.
> Therefore the claimant had not been subject to indirect discrimination.[78]

It could be questioned whether the Committee's decision is compatible with the contents and purpose of the Act on Equal Treatment Irrespective of Ethnic Origin Section 3 (3), since companies' discretion of determination of prices and decision on conditions in rental agreements with customers residing outside of Denmark indeed are limited by the provision. However, Section 3 (3) in fine states that measures which constitute indirect discrimination, are legal provided that the measures are objectively justified in a reasoned purpose and provided that the means are appropriate and necessary, which the Committee found the company's measures to be.

2. LANGUAGE REQUIREMENT (PRIVATE SECTOR)

Texts in force

The National Labour Market Authority ('Arbejdsmarkedsstyrelsen'[79]), which is an authority under the Ministry of Employment,[80] has issued a circular to the Act on *Prohibition of Differential Treatment on the Labour Market.*[81] The Circular concerns employment agencies and their dealing with employers and ethnic minorities and constitutes general guidelines to the prohibition of different treatment on the labour market.

According to the Circular, a language requirement is formally a neutral requirement. However, a language requirement may constitute indirect discrimination when an employer has a language requirement which is not reasoned/objectively justifiable. This will be the case if the requirement to the person's ability to speak or write Danish is disproportionate and without relevance for the maintenance of the job in question.[82]

According to the Circular, qualification requirements in general have to be justified by considerations of satisfactory maintenance of the job in question.

The Act on *Danish Courses for Adult Aliens* and the supplementing executive orders were amended in 2007.[83] However, the amending Act entered into force 1 January 2008, see below draft legislation.

Every adult alien residing in Denmark can receive education by attending Danish courses etc. arranged by the municipality, cf. Section 2. 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 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,[84] the mu-

78 J.nr.740.16.

79 Official website: www.ams.dk.

80 Official website: www.bm.dk.

81 Circular No. 60339 of 29 October 1998.

82 Chapter III.B.

83 Consolidation Act No. 259 of 16 March 2006 and amendments and Executive Orders No. 755 and 756 of 26 June 2007 and No. 737 of 28 June 2006. Executive Orders No. 1159 of 1 December 2005, No. 1270 of 7 December 2006 and No. 1498 of 12 December 2007.

84 Consolidation Act No. 1593 of 14 December 2007. Danish courses are mandatory for aliens encompassed by the Act on Integration, cf. Part IV of the Act.

nicipalities may require a fee from other categories of participants who are self-supporting, including EU citizens and their family members, according to guidelines from the Ministry of Refugee, Immigration and Integration, cf. Section 14.[85] The size of the fee is differentiated so that aliens residing in Denmark for a shorter period of time without an aim as regards to integration must pay a higher fee. Among other things, the adoption of the fee was considered to ensure a higher attendance at the courses. As a consequence of this differentiation, EU/EEA citizens are required to pay the lowest fee of a maximum of DKK 500, – (approx. Euro 67) per module. The government seems to have considered whether the adoption of the fee will raise questions of discrimination, since it is emphasised in the explanatory memorandum to the Bill that the language courses will provide general qualifications and will 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.[86]

Draft legislation, circulars etc.

On 4 October 2006, the Ministry of Refugee, Immigration and Integration proposed an amendment to the Act on *Danish Courses* (and other acts).[87] The Act was adopted by the Parliament 8 January 2007 and entered into force 1 January 2008.[88]

Among other changes, the proposal changed Section 15 in the Act on Danish Courses.

Section 15 concerns the states refund of the expenses the municipality has to Danish courses for participants not encompassed by the Act on Integration or the Act on Active Employment Initiative.[89]

The amount with which the state refunds the municipalities' expenses was proposed amended from DKK 33,- per lesson to 50 % of the expenses. This is an increase of the state's co-financing of the municipality offers on Danish courses and has as its purpose to strengthen the municipalities' supply of efficient Danish courses to aliens who are not encompassed by the Act on Integration (EU/EEA citizens and others).[90]

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85 Cf. Executive Order No. 737 of 28 June 2006 Section 15 (i) and (ii). EU/EEA citizens and members of their families are not encompassed by the Act on Integration, cf. Section 2 (3).

86 Bill No. L 158/2002-03. See below on Act No. 104 of 7 February 2007 increasing the state's co-financing of the municipalities' offers of Danish courses to strengthen the municipalities' supply of efficient Danish courses to aliens who are not encompassed by the Act on Integration (EU/EEA citizens and others).

87 Bill No. L 16/2006-07.

88 Act. No. 104 of 7 February 2007, cf. the most recent Executive Order No. 68 of 6 February 2008 replacing Executive Order No. 737 of 28 June 2006.

89 Cf. Executive Order No. 1498 of 12 December 2007 and letter No. 9047 of 19 January 2007 Section 11. Cf. Executive Order No. 104 of 22 February 2008.

90 See explanatory memorandum to Bill No. L 16/2006-2007, general comments para.1and specific comments to Section 2, para. 5-6, and the background Government plan for Integration 'En ny chance for alle', 17 June 2005, www.nyidanmark.dk/NR/rdonlyres/1311B350-281F-4CD1-ADD5-F9B717F16FAA/0/ en_ny chance_til_alle. pdf.

3. RECOGNITION OF DIPLOMAS (INCLUDING ACADEMIC DIPLOMAS), INITIATIVES TO TRANSPOSE DIRECTIVE 2005/36/EC

Texts in force

The Act on *Evaluation of Alien Educational Qualifications*[91] and the Executive Orders issued on the basis of the Act[92] regulate CIRIUS' evaluation[93] of alien qualifications with the purpose of easing the flow to the Danish labour market and educational system, cf. the Act Section 1. The Act was amended in 2007 by Act No. 315 of 30 March 2007 strengthening the possibilities of being credited for both Danish and alien educational qualifications (merit) in order to hinder extension of the time of study. Also, the competence of the Appeals Committee ('Kvalifikationsnævnet') was broadened to encompass qualifications obtained at Danish educational institutions as well, instead of just alien educational institutions, and complaints on pre-merits obtained upon a period of study abroad (such as in another Member State).

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.[94] With the establishment of CIRIUS, the international aspects of the education system have been united in one authority. In November 2007, the Ministry of Science, Technology and Innovation took over the responsibility for CIRIUS.[95]

Section 2 (1) describes who has the *right* to an evaluation. According to this provision, everybody with an alien education, authorities who require the evaluation as a part of their review, employers who require the evaluation in order to enable them to decide whether the person in question with alien qualifications should be hired and educational institutions have a right to an evaluation under certain circumstances. Exceptions to this right to evaluation exist when the profession is regulated by law, since the competent authority obtains an evaluation when handling applications concerning the access to take up jobs regulated by law, cf. Section 2 (2) and below on the Act to Take Up Certain Jobs in Denmark. Also, when a decision on merit is made by an educational institution, the alien does not have a right to evaluation for the purpose of this decision, cf. Section 2 (3) and below Chapter XI.

Section 2 a describes who has an *obligation* to obtain an evaluation under certain circumstances. According to this provision, authorities who are handling cases concerning the right to take up jobs regulated by law (see below) and professional committees deciding on shortening of the time frame for an education have an obligation to obtain an evaluation under certain circumstances.

According to Section 3, the basis of the evaluation is a comparison of the qualifications that the alien has with the similar Danish educational qualifications.

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91 Act No. 371 of 13 April 2007 and amendment.

92 Executive Order No. 602 of 25 June 2003 and amending Executive Order No. 448 of 10 May 2007 and Executive Order No. 447 of 10 May 2007 on the Appeals Committee.

93 The evaluations are available at http://ciriusonline.ciriusintra.dk/vdb/cvuu/Search.asp.

94 Cf. Executive Order No. 573 of 20 June 2001 on the coordinating function of the Minister of Education on the implementation of the directives on the evaluation on alien educational qualifications. Information about the establishment of CIRIUS is available in the report from the Ministry of Education to the Parliament, April 2004, available on http://pub.uvm.dk/2004/internationalisering.

95 Official website: www.vtu.dk.
Cf. Royal Resolution of 23 November 2007, www.stm.dk/Index/dokumenter.asp?o=15&n=1&d=2923&s=1.

According to Section 3 (4), public authorities have an obligation to let the evaluation be the basis of their decisions,[96] however, the evaluation is only considered as guidance to educational institutions' decisions on whether alien educational qualifications can replace parts of the institutions' education (merit), cf. Section 3 (6).[97] Authorities handling applications on the access to take up jobs regulated by law[98] have the obligation to let the evaluation be the basis of their decision, only when the evaluation is obtained for this purpose, cf. Section 3 (4) (iv), Section 3 (5) and Section 2 (2).

The Act on *Access to Take up Certain Jobs in Denmark*[99] originally 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 and to implement parts of the relevant Directives,[100] was amended in 2007 with the purpose of transposing Directive 2005/36, and the Act and the Executive Orders[101] carry out the implementation of the Directive 2005/36 on Recognition of Professional Qualifications,[102] see below.

The Act regulates the right to practise professions regulated by law (i.e. professions which require an authorisation), such as doctors, lawyers, veterinarians, etc. in Denmark, when the applicant has professional qualifications from another country.

The Act authorizes the Danish Ministry of Science, Technology and Innovation ('Videnskabsministeriet')[103] to set out rules for the purpose of coordinating implementation of Directive 2005/36, cf. Section 5. The competence has been delegated to CIRIUS, cf. Section 7.[104]

With respect to EU/EEA citizens – and citizens of countries with which EU has an agreement (Switzerland) – the substantial part of the Act is that when they satisfy the conditions in the Directive 2005/36 or Nordic agreements, these citizens are allowed – upon application or registration – to practise professions regulated by law in Denmark as self-employed or employed under the same circumstances as persons with Danish professional qualifications, cf. Section 2.

The application has to be handed in to the competent authority, which for some professions means the relevant ministry and for others CIRIUS, cf. Section 3.[105]

The practising of professions which are not regulated by law does not assume authorization and therefore there is no application requirement. However, CIRIUS can provide citizens with educations from another country with an evaluation of their education.[106]

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96 See below Chapter IV.

97 See below Chapter XI.

98 See below.

99 Act No. 334 of 20 March 2007.

100 Directive 1989/48/EEA, 1992/51/EEA, 1999/42/EC and 2001/19/EC.

101 Executive Order No. 818 of 22 July 2004, No. 839 of 29 September 1994 and No. 1174 of 10 October 2007. See more below on the specific orders implementing Directive 2005/36.

102 And the Lisbon Convention of 11 of April 1997.

103 Official website: www.vtu.dk. In November 2007, the Ministry of Science, Technology and Innovation took over the jurisdiction from the Minister of Education, cf. Royal Resolution of 23 November 2007, available at www.stm.dk/Index/dokumenter.asp?o=15&n=1&d=2923&s=1.

104 Executive Order No. 1174 of 10 October 2007 Section 10 (1), cf. Consolidation Act No. 334 of 20 March 2007 Sections 5 and 7 (1).

105 www.ciriusonline.dk/Default.aspx?ID=3583.

106 See above on The Act on Evaluation of Alien Educational Qualifications and www.ciriusonline.dk/Default.aspx?ID=3598.

Directive 2005/36/EC

By Act No. 123 of 13 February 2007, entering into force 1 October 2007, parts of Directive 2005/36 was transposed into Danish law. The Act is supplemented by an Executive Order regulating recognition of professional qualifications in general[107] and Executive Orders regulating the specific provisions[108] which in whole transposes Directive 2005/36.

Act No. 123 amended the Act on *Access to Take up Certain Jobs in Denmark*,[109] the Act on *State Authorized and Registered Accountants*,[110] the Act on *Trading of Real Estate*,[111] the Act on *Translators and Interpreters*,[112] the Act on *Average Adjusters*[113] and the Act on *Registered Architects*.[114]

Act No. 123 of 13 February 2007 transposes parts of Directive 2005/36/EC into Danish law, by inserting into the footnotes of the abovementioned Acts (except for the Act on Architects, which was revoked) amended by the Act that the specific Act contains provisions implementing parts of Directive 2005/36 and by[115]

- Extending the application of the Act on Access to Take up Certain Jobs to encompass *temporary or occasional practising* of a profession regulated by law.[116] In contrast to establishment, where an application is required upon practising of a profession regulated by law,[117] a temporary or occasional practising of a profession regulated by law requires a declaration only. If there is no legal basis for registration in the concrete act regulating the specific profession (i.e. no requirement of an authorisation), the temporary or occasional practising of a profession regulated by law can be practised freely. The application is to be renewed once a year provided the person in question wants to perform a temporary or occasional practising in the year ahead.[118]

  Furthermore, if considerations on grounds of public health and security demand it, a requirement on prior check of the professional qualifications may be imposed on the service provider by the competent authority prior to the first service provided. It must

[107] No. 1174 of 10 October 2007.

[108] Executive Orders No. 1600 of 20 December 2007 (pharmacies and staff at pharmacies), No. 1308 of 23 November 2007 (chimney sweepers), No. 1145 of 3 October 2007 (inseminators of pigs), No. 29 of 24 January 2008 (nurses), No. 1563 of 20 December 2007 (driving instructors), No. 1453 of 11 December 2007 (drilling personal), No. 1446 of 11 December 2007 (supervisors of wastewater plants), No. 1317 of 26 November 2007 (psychologists), No. 1311 of 26 November 2007 (accountants, translators, interpreters and average adjusters), No. 1307 of 23 November 2007 (real estate agents), No. 1275 of 1 November 2007 (pharmacists), No. 1201 of 17 October 2007 (certain professions within the areas of gas, water and drains), No. 1200 of 17 October 2007 (electricians), No. 1199 of 17 October 2007 (fireworks), No. 1176 of 11 October 2007 (veterinarians), No. 1167 of 4 October 2007 (veterinary technicians) and No. 1143 of 3 October 2007 (inseminators of livestock).

[109] Consolidation Act No. 476 of 8 June 2004; the present Consolidation Act No. 334 of 20 March 2007.

[110] Act No. 302 of 30 April 2003 and amendments.

[111] Act No. 1073 of 2 November 2006 and amendment.

[112] Act No. 181 of 25 March 1988 and amendments.

[113] Act No. 184 of 25 March 1988 and amendments.

[114] Act No. 202 of 28 May 1975 was revoked as the practice of the profession does not require an authorization in Denmark and as the Danish registration system lost its importance since this registration is not in itself enough to be recognized under the Directive.

[115] Bill No. L 11/2006-07, introduced on 4 October 2006 by the Minister of Education.

[116] Cf. Consolidation Act No. 334 of 20 March 2007 Section 1.

[117] See above.

[118] Cf. Consolidation Act No. 334 of 20 March 2007 Section 3 (4).

appear from the act regulating the specific profession whether a requirement on prior check of the professional qualifications may be imposed on the service provider.[119]

- Making the Ministry of Science, Technology and Innovation the representative in the Art. 58 Committee.[120] This competence has been delegated to CIRIUS.[121]
- Authorizing the Ministry of Science, Technology and Innovation to implement the Directive fully, cf. the abovementioned Executive Orders.[122] This competence has been delegated to CIRIUS.[123]
- Amending other acts on the areas of architects,[124] accountants,[125] real estate agents, translators, interpreters and average adjusters to encompass the temporary or occasional practicing of the specific profession. Furthermore, provisions on the exchange of information with the competent authorities of other EU/EEA countries or Switzerland are inserted.

Miscellaneous

The statistics on the administration of the rules on *Access to Take up Certain Jobs in Denmark*[126] show that there are only quite few negative decisions in 2007 on applications to be allowed to take up employment according to the national rules implementing the Directives on recognition of exams and professional qualifications – 3,3 %.[127] Also, the statistics show an increment of 70 % in the number of decisions made in 2007 as compared to the number of decisions made in the period of September 2005 – August 2006. Furthermore, the statistics show that the casework time in 2007 was below 3 months in 98 % of the cases, hereof below 1 month in 87 % of the cases.[128]

Recent legal literature

Ruth Nielsen, *EU's rammedirektiv 2000/78/EF og gennemførelsen i Danmark*, 2005.

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119 See "Beretning for 2007 om vurdering og anerkendelse af udenlandske uddannelseskvalifikationer" pp. 40-41 for a description of the professions within which 9 competent authorities have announced that a requirement on prior check of the service provider's professional qualifications may be imposed, available on www.ciriusonline.dk/Default.aspx?ID=3770.

120 Official website: www.vtu.dk. In November 2007, the Ministry of Science, Technology and Innovation took over the jurisdiction from the Minister of Education, cf. Royal Resolution of 23 November 2007, available at www.stm.dk/Index/dokumenter.asp?o=15&n=1&d=2923&s=1.

121 Executive Order No. 1174 of 10 October 2007 Section 10 (1), cf. Consolidation Act No. 334 of 20 March 2007 Sections 5 and 7 (1).

122 Official website: www.vtu.dk. In November 2007, the Ministry of Science, Technology and Innovation took over the jurisdiction from the Minister of Education, cf. Royal Resolution of 23 November 2007, available at www.stm.dk/Index/dokumenter.asp?o=15&n=1&d=2923&s=1.

123 Executive Order No. 1174 of 10 October 2007 Section 10 (1), cf. Consolidation Act No. 334 of 20 March 2007 Sections 5 and 7 (1).

124 The Act on Registered Architects was revoked, cf. above, but Consolidation Act No. 334 of 20 March 2007 Section 7a provides the legal basis for the Minister of Economic and Business Affairs to issue rules for the purpose of providing Danish architects and building technicians with the possibility of practising in other EU/EEA countries in which the profession(s) requires authorisation.

125 The Act on State Authorized and Registered Accountants also transposes Directive 2006/43.

126 Consolidation Act No. 334 of 20 March 2007.

127 See "Beretning for 2007 om vurdering og anerkendelse af udenlandske uddannelseskvalifikationer" pp. 32-33 and p. 4, available at www.ciriusonline.dk/Default.aspx?ID=3770.

128 Ibid., p. 38.

Ruth Nielsen, 'Princippet om forbud mod forskelsbehandling pga. alder som et almindeligt EU-retligt princip', in UfR (Weekly Legal Magazine) årg. 140, No. 34, 2006, pp. 259-266.
Ruth Nielsen, *Koncernarbejdsret*, 2. revised edition, Copenhagen 2006.
Ruth Nielsen, *EU-arbejdsret*, 4. edition, 1. print, Copenhagen 2006.
Ruth Nielsen, *Europæisk arbejdsret*, 1. edition, 1. print, Copenhagen 2003.
Ole Hasselbalch, *Arbejdsmarkedets regler*, 8. edition, Copenhagen 2007.
www.ciriusonline.dk.

Chapter III
Equality of Treatment on the Basis of Nationality

Employment under a collective agreement or on individual contract (as opposed to employment as a civil servant, see below Chapter IV) is not conditional on the applicant being a Danish citizen. Foreign citizens are generally free to hold such posts.[129]

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES

Working conditions

Lately, there have been some examples of exploitation of, underpayment of and poor working conditions for workers from the East European countries within various businesses in Denmark.

As for the *construction business* in particular, according to a survey published in 2008 by the Research Centre for Employment Relations by the Department of Sociology at the University of Copenhagen ('Forskningscenter for Arbejdsmarkeds- og Organisationsstudier', FAOS),[130] the salary for East European workers varies from DKK 30 to 177 an hour (approx. Euro 4-24), which is below the salary for Danish construction workers. In average, East European workers are paid DKK 22,50 (approx. Euro 3) less an hour than Danish workers hired within the same Danish company and 25-28% less than the average Danish worker. The survey also shows the tendency that East European workers are paid the minimum salary. Furthermore, 2-4% East European workers within construction are members of a Danish union.[131] The director of the Danish Construction ('Dansk Byggeri')[132] states that East European workers to a large extent are still covered by collective agreements.[133]

First and foremost the problems arise in connection with East European workers being stationed. With the purpose of strengthening the supervision and control, stationing companies must register with the Danish Commerce and Companies Agency ('Erhvervs- og Selskabsstyrelsen')[134] from 1 May 2008, thus providing the Danish authorities with more possibilities of checking and supervising the companies and the working conditions.[135]

The abovementioned survey performed by FAOS also showed that very few construction companies recruited East European workers through the public employment agencies.

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129 For general information on the Danish labour market, see 'Employment in the Danish State Sector', a publication from the State Employers' Authority on www.perst.dk/visSideforloebBeholder.asp?artikelID=14329.

130 Official website: http://faos.sociology.ku.dk.

131 *Østeuropæiske arbejdere i bygge- og anlægsbranchen, Rekrutteringsstrategier og konsekvenser for løn-, ansættelses- og aftaleforhold, Jens Arnholtz Hansen og Søren Kaj Andersen, January 2008, FAOS* available at http://faos.sociology.ku.dk/dokum/østrapport.pdf. A summary of the research project is available in English at http://faos.sociology.ku.dk/dokum/summery.pdf.

132 Official website: www.danskbyggeri.dk.

133 Articles on the Danish Labour Union 3f's website, available at http://forsiden.3f.dk/article/20080225/TELEGRAMMER/172256931/2380/ILLEGAL and www.ugebreveta4.dk/2008/200808/Baggrundoganalyse/DetVrimlerMedUorganiseredeOestarbejdere.aspx.

134 Official website: www.erhvervsogselskabsstyrelsen.dk.

135 www.erhvervsogselskabsstyrelsen.dk/sw21512.asp?nodeId=13719 and www.bm.dk/sw26167.asp. Information is available in English on www.bm.dk/graphics/dokumenter/presse%20og%20nyheder/pressemeddelelser/2008/jobplan/info_engelsk.pdf.

According to information obtained from the Ministry of Employment, 3 international centers will be established on 1 October 2008, including a Polish hotline, supplementing the job centers by strengthening and professionalizing the recruitment of foreign labour in Denmark.[136]

Social advantages

According to Section 3 (2) (ii) of the *Act on Active Social Policy*,[137] aliens legally residing in Denmark are entitled to cash benefits,[138] but only for a limited period. The right to such social assistance on a permanent basis is restricted to Danish citizens and EU citizens and members of their families 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.

It follows from Section 12 a, however, that EU/EEA citizens staying in Denmark as first-time jobseekers on the basis of Community law on *jobseekers' right to residence* are entitled to no other assistance under the Act than the coverage of costs related to the return to their home country[139] (see further in Chapter VI).

As a consequence of the 2004 enlargement of the European Union, Danish legislation on social welfare was amended on a few points (see Chapter VIII).

In April 2008 the National Directorate of Labour (an agency of the Ministry of Employment) published guidelines on EU/EEA citizens' right to social assistance and starting assistance.[140]

Tax advantages

As a consequence of the judgments in *Commission v. Denmark* and *van Lent*,[141] the Ministry of Taxation put forward a proposal to amend the Danish Act on Registration Tax on Motor Vehicles[142] in order for the Act to comply with these ECJ judgments.[143]

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

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136 Cf. information obtained from an official within the Ministry of Employment by e-mail of 17 June 2008. See more above Chapter II.1.

137 Consolidation Act No. 1460 of 12 December 2007.

138 According to the Danish Ministry of Employment (letter of 27 February 2008 to the European Commission with remarks to the Report for 2006, p. 3), for the correct understanding of the Danish rules the term 'benefits' should be changed to 'social assistance'. The ministerial proposal, giving no further reasons, will be generally followed in this Report, but the term 'cash benefits' is used above in order to maintain the distinction from social assistance granted in kind.

139 Cf. Guidelines No. 33 of 4 May 2004.

140 Guidelines No. 19 of 4 April 2008. As the Guidelines may be expected to be revised, and due to the time of publication, they will not be described or analysed in this Report.

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

142 Consolidation Act No. 977 of 2 December 2002, cf. the most recent Consolidation Act No. 804 of 29 June 2007 Section 1(4)-(7).

143 Bill No. L 225/2005-06. See also below Chapter VI.

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 Bill was adopted by the Parliament in June 2006, and entered into force shortly after.[144]

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

Starting assistance

While formally neutral as regards Danish and other EU citizens, Section 11 of the *Act on Active Social Policy*[145] may in practice result in reduced social assistance – the so-called 'starting assistance' – being paid to Danish citizens who have moved back to Denmark from another EU Member State, rather than to EU workers from other Member States staying in Denmark (see below Chapter VI.3). This interpretation and application of the Act may thus amount to an obstacle to free movement of workers.

Nationality and language requirements for families hosting au pairs

On 27 November 2007, a principled decision made in November 2006 by the Ministry of Refugee, Immigration and Integration concerning the nationality and language requirements for families encompassed by the EC rules on free movement hosting au pairs was published.[146]

The applicant applied for a residence permit under Aliens Act Section 9 c as an au pair with a host family residing in Denmark under the EC rules on free movement. The application was rejected by the Danish Immigration Service on grounds of *language and nationality* of the host family. As a main rule, at least one parent of the host family has to hold Danish citizenship in order for the family to be able to communicate the Danish language and culture. The host family did not hold Danish citizenship and the family communicated in English and Swedish.

The rejection was appealed to the Ministry of Refugee, Immigration and Integration, who found it to be in accordance with Denmark's obligations under EC law that requirements on *language and nationality* are *not* imposed on host families residing in Denmark under the EC rules on free movement.

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144 Act No. 519 of 7 June 2006 (entered into force on the second day upon official promulgation of the amendment), cf. the most recent Consolidation Act No. 804 of 29 June 2007 Section 1(4)-(7).

145 Consolidation Act No. 1460 of 12 December 2007.

146 www.nyidanmark.dk/da-dk/legalinfo/au_pair/krav_til_vaertsfamilien/sprog_og_nationalitetskrav_stilles_ikke_til_eu_vaertspesoner.htm

Tax issues, key employees and researchers

The Act on Pay-as-you-earn Taxation ('Kildeskatteloven')[147] Section 48 E contains a rule on optional *25% gross taxation* for key employees and researchers who are migrant workers. The application of the provision has no limitations as regards the line of business. However, the person may not have been involved in the management of the company in question within the past 5 years. Furthermore, the person in question may not have been stationed abroad by the future employer (research institute or company).

If the requirements on settlement and moving, the size of the fee (this condition does not apply to researchers whose qualifications have been approved/recognized by a public research institute or a research committee, see below) and the employer are fulfilled[148] the rule on 25 % gross taxation is applicable – both to Danish citizens and aliens, provided the person has not been encompassed by the Danish rules on tax liability within the past 3 years. As a main rule, the person in question has to be encompassed by the rules on unlimited tax liability in Denmark upon commencement of the employment by taking up residence in Denmark or staying for 6 consecutive months upon commencement of the employment (this rule does not apply to researchers, see below).[149]

The arrangement in Section 48 E contains a rule on *subsequent taxation* when the tax payer remains under the rules of unlimited tax liability in Denmark after the end of the employment encompassed by the 25 % gross taxation arrangement (this rule does not apply to researchers, see below). The rule on subsequent taxation has been revised through the years, and by Act No. 270 of 8 May 2002, entering into force on 1 January 2002, subsequent taxation was abolished for persons who have not been under the rules on unlimited or limited tax liability in Denmark within the past 5 years prior to the commencement of employment under the 25 % gross taxation arrangement. This means that this category of persons is not forced to leave Denmark for tax reasons.

In a case concerning subsequent taxation the Danish National Tax Tribunal ('Landsskatteretten') has ruled that the arrangement *does not affect the free movement of workers in a negative sense*. Hence, the arrangement was not considered to be incompatible with TEF Art. 39.[150]

Supplementary pension schemes

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

As regards taxation, Denmark was one of the countries in which pension schemes and life assurance established outside the country were treated differently from those established in the country.[151] Regarding the free movement of workers, the different treatment occurred

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147 Consolidation Act No. 1086 of 14 November 2005 and amendments.

148 As regards researchers, a requirement on approval/recognition also has to be fulfilled, see below.

149 Cf. Instruction2008-1 of 15 January 2008 'Ligningsvejledningen' D.B.5, available at www.skat.dk/SKAT.aspx?oId=102290&vId=201707&i=63&action=open#i102290.

150 SKM2005.407.LSR.

151 Consolidation Act No. 816 of 30 September 2003 on Taxation of Pensions etc. ('Pensionsbeskatningsloven'), present Consolidation Act No. 1120 of 10 November 2006. See also Communication of 19 April 2001 from the Commission on the elimination of tax obstacles to the cross-border provision of occupational pensions,

when contributions paid to pension institutions not established in Denmark were not tax deductible.[152]

Regarding the freedom to provide services and freedom of establishment, the different treatment occurred due to the requirement of the pension institute to be established in Denmark in order for the contributions to be deductible.

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."[153]

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 is still not dealing specifically with transfer to other EU Member States.[154]

On 23 March 2004 the Commission filed a case against Denmark before the ECJ, claiming a breach of the EC Treaty.[155] On 1 June 2006, the Advocate General proposed the ECJ to rule against Denmark for breaching the Treaty.

On 30 January 2007 the ECJ gave judgment in the case, ruling that the Danish rules are in breach of Articles 39, 43 and 49 in the EC treaty:

> "Consequently, it must be held that, by introducing and maintaining in force a system for life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in Denmark, whereas no such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States, the Kingdom of Denmark has failed to fulfill its obligations under Articles 39 EC, 43 EC and 49 EC."[156]

Following this judgment, the Ministry of Taxation announced that a proposal to amendment of the Act was expected to be made as soon as possible in order for the Act to comply with EC law.[157]

On 27 June 2007 a framework agreement on the future taxation of pension schemes was signed in the Parliament,[158] and a bill amending the Act on Taxation of Pensions and other acts was introduced.[159]

The Bill amending the Act on Taxation of Pensions allows tax relief on contributions paid to pension institutions not established in Denmark according to a 'bargaining model'.

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and Communication of 30 April 2001 from the Danish Ministry of Taxation to the Parliament (Skatteudvalget, Alm. Del bilag 519, EUU, alm. Del bilag 1137 (løbenr. 17406), available at www.folketinget.dk/Samling/20001/udvbilag/SAU/Almdel_bilag519.htm.

152 See also the Commission's decision of 9 July 2003 referring Denmark to the ECJ on discrimination.

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

154 The Ministry of Social Affairs: National strategy report on the Danish pension system, 2005, Chapter 3.3, available at www.social.dk/tvaergaaende_indgange/udgivelser/Publikationsdatabase/SM/SM05/strategirapportpension.html.

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

156 ECJ judgment of 30 January 2007, *Commission v. Denmark* (C-150/04), para. 77.

157 www.skm.dk/presse/pressemeddelelser/skatteministeriets/5328.html, accessed on 22 August 2007.

158 See www.skm.dk/presse/pressemeddelelser/ministeren/rammeaftaleompensionsbeskatningen.html, accessed on 25 March 2008. A summary is available at www.skm.dk/lovforslag/hoering/5723/5725/, accessed on 25 March 2008.

159 Bill No. L9 of 28 November 2007.

The bargaining model has the effect that foreign pension institutions must enter into a binding agreement on conducting reporting, withholding and payment of tax on similar lines as Danish institutions. The agreement also involves the pension saver.

In more detail, tax relief is granted payments under contracts entered into with pension institutions established in other Member States, provided:

1. The pension provider
   - in its home country has a license to operate life assurance business, pension fund business or credit institution business; and
   - satisfies the conditions for pension institutes in the Danish Act on Taxation of Pensions; and
   - takes on the obligations specified for pension providers offering pension schemes encompassed by the Act on Taxation of Pensions ('bargaining model'); and
2. The pension scheme
   - fulfils the general conditions in the Act on Taxation of Pensions; and
   - is constructed in such a way that there is a clear relationship between the pension obligations and the ongoing pension contributions for every single member; and
3. The pension saver
   - agrees to be liable to taxation to Denmark of payments from the pension scheme according to the Act on Taxation of Pensions also after leaving the country, in circumstances where the double taxation avoidance treaty with the new country of residence implies taxation of pension payments at source; and
   - agrees to be liable to taxation of payments from the pension scheme to Denmark according to the Act on Taxation of Pensions, in circumstances where the double taxation avoidance treaty with the country where the pension is established implies taxation of pension payments at source.

As for foreign pension schemes brought to Denmark by persons in connection with taking up residence in Denmark, special rules on favourable terms will apply, as tax relief may be granted even if the pension schemes do not fully satisfy the conditions in the Act on Taxation of Pensions.

The Bill was adopted by Act No. 1534 of 19 December 2007, entering into force on 1 January 2008.

3. SPECIFIC ISSUE: FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES), SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS, ARTISTS

Frontier workers

Residence

EU Residence Order Section 6 (1) (iii), cf. Section 6 (1), states that frontier workers have the right to reside for more than the 3/6 months mentioned in Aliens Act Section 2 (1) when the EU citizen takes up work in another Member State, provided he/she has had residence and has been working in Denmark for the previous 3 years and returns to his/her residence in Denmark at least once a week.

The period of time working in another Member State is considered spend in Denmark with regards to the acquisition of the rights in Section 6 (1) (i) and (ii), cf. Section 6 (3).[160]

EU citizens encompassed by Section 6 have the right to *permanent residence* without any further conditions, cf. EU Residence Order Section 17.

Taxation

The Act on Pay-as-you-earn Taxation ('Kildeskatteloven')[161] Part IA deals with frontier workers.[162]

Sections 5 A-5 D provides the frontier worker with a choice on how his/her income should be taxed.

Since a frontier worker does not reside in Denmark, the rules on unlimited tax liability in the Act on Pay-as-you-earn Taxation Section 1 do not encompass the worker. Instead the rules in Section 2 on limited tax liability apply, which limits the access to tax relief.

However, Section 5 A states that provided the frontier worker earns at least 75 % of his/her global income in Denmark in the form of payment for personal work or profit from performing business, he/she can choose to get access to deduction for expenses, cf. Sections 5 B-5 C, i.e. tax relief, which means the frontier worker will be in the position as an unlimited tax liable, cf. Section 1.

Sportsmen/sportswomen

A. Nationality quotas

In 2004, the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF)[163] replied to a query from the Ministry of Culture regarding the access for citizens of other EU Member States to exercise amateur sport in the Danish sport clubs.[164] The background for the query was the fact that the Ministry of Culture on a sport manager meeting in Brussels was asked to perform a hearing in Denmark, due to complaints on discrimination of citizens of other EU Member States who were not allowed to participate in championships on the grounds of citizenship. The Ministry of Culture was not informed of the home countries of the complainants or whether Denmark was involved in the complaints.

In its reply, DIF stated that there were no limitations in the laws of DIF relating to citizenship, nationality etc. at the Danish championships approved by DIF for members of sport clubs within the special, national sport federations. As regards other tournaments, the national sport federations issue the rules. DIF informed that DIF had no knowledge of limitations of participation in Danish tournaments imposed upon citizens of other EU Member States on the ground of nationality.[165] DIF furthermore emphasized its principles which, among other things, require the federations to be open for all.

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160 On the rights in Section 6 (1) (i) and (ii) see below Chapter X.

161 Consolidation Act No. 1086 of 14 November 2005 and amendments.

162 The rules on frontier workers were originally introduced by Act No. 1095 of 20 December 1995 on the background of the Commission's recommendation 1993-12-21 and the judgments in C-279/93 and C-80/94. The rules took effect from the income year 1992.

163 Official website: www.dif.dk.

164 DIF is the umbrella organisation for 58 national federations. The national federations are the governing body of their respective sports, while DIF handle tasks of common interest of all federations at national level.

165 www.dif.dk/OmDIF/Forside/Nyheder/2004/05/20040519_2.aspx.

According to information obtained from the Ministry of Culture in 2008, DIF states that there should be a due consideration of the special character of sport which should provide the possibility for clubs to reserve positions for national talents or to implement special tournament rules notwithstanding this would not be consistent with the EC rules on free movement of workers in a strict sense. The DIF further refers to its hearing statement for the EU Commission's White Book on Sports.[166]

Basket-Ball

The rules on Denmark's Basketball Federation ('Danmarks Basketball-Forbund', DBBF),[167] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF)[168] and the International Basketball Federation (FIBA Europe),[169] do not contain nationality quotas as regards players with citizenship from countries within Europe.[170] However, nationality quotas are applied with regard to players with citizenship from countries outside of Europe. Furthermore, special rules apply to national teams.

According to the rules on DBBF, any player who wishes to participate in the Basket League, the Women's League, the First Division for Men, the Second Division for Men and the First Division for Women must hold a player license with a license number.[171]

When applying for a player license, alien players must enclose work and residence permit, a copy of valid passport and letter of clearance with the registration form.[172]

Players with European citizenship who have applied for and received player license under the rules hereof, may participate freely in the Leagues and the Denmark Tournament.[173]

As for alien players with citizenship from countries outside of Europe who have applied for and received player license under the rules hereof, special rules apply. The teams in the League may use only 2 players of this category in each match, while other teams in the Denmark Tournament may use only 1 player of this category in each match.[174] At the National Cup, a maximum of 2 players with citizenship outside of Europe may be used in each match.[175]

Concerning alien players who do not hold Danish citizenship but who have resided in Denmark for more than 5 years, special rules apply as regards the application for player license. These players may apply for player license on equal terms with Danish citizens by submission of a certificate from the National Register of Persons. This category of players is not considered to be Danish players in alien tournaments and the players are registered in

166 Cf. e-mail of 30 June 2008.

167 Official website: www.danmarksbasketballforbund.basket.dk.

168 Official website: www.dif.dk.

169 Official website: www.fibaeurope.com.

170 Cf. also information obtained from an official within the Danish Ministry of Culture by e-mail of 30 June 2008.

171 *Danmarks Basketball-Forbund, love og reglementer 2007/08*, Part II: *Licensordning*, Section 31, available at www.danmarksbasketballforbund.basket.dk/Forbund/~/media/Specialforbund/Danmarks_Basketball_Forbund/dbbf1/dbbf1_forbund/love/love_og_reglementer%20pdf.ashx.

172 *Danmarks Basketball-forbund, love og reglementer 2007/08*, Part II: *Licensordning*, Section 32.

173 Ibid.

174 Ibid.

175 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part II: *Licensordning*, Section 38.

FIBA on equal terms with other players without Danish citizenship. For this reason, these players must submit a copy of valid passport and letter of clearance.[176]

A club wanting to use alien players must be able to document its capability of bearing the financial obligations associated hereby. All alien players without Danish citizenship, who participate in the abovementioned tournaments, are registered in FIBA and a fee is charged for the registration.[177]

As for alien players who want to participate in tournaments other than the abovementioned and nationwide Youth Tournaments, these players must submit a copy of valid passport and letter of clearance. However, youth players who do not hold Danish citizenship but reside in Denmark may participate in DBBF's tournaments on equal terms with Danish citizens. This category of players must submit an application for player license to DBBF.[178]

DBBF may dispense with the rules on non-Danish citizens in cases where application of the rules may result in unintended sporting consequences.[179]

As for tournaments other than the abovementioned, all players are entitled to participate. Non-Danish citizens from 18 years must submit a letter of clearance, if he/she has been registered as a player in a club under FIBA, or an academic institution player declaration, if the player has not been registered as a player in a FIBA club.[180]

FIBA's Regulations prescribe that as for international club competitions of FIBA, the composition of the team is not subject to any limitation concerning the legal nationality of the players. Each national federation may establish more restrictive regulations, whereas the governing body also may establish more restrictive regulation when the duration of the tournament does not exceed 15 days.[181]

As for national teams, FIBA's Regulations prescribe that a player must hold the legal nationality of the country for which national team he plays.[182] Furthermore, a national team may only have one player who has acquired the legal nationality of the country by naturalization or by any other way after having reached the age of 16.[183]

Cycling

The rules on Denmark's Cycle Association ('Danmarks Cykle Union', DCU),[184] a member of the Sports Confederation of Denmark ('Danmarks Idrætsforbund', DIF)[185] and the Union Cycliste Internationale (UCI),[186] do not contain nationality quotas.[187] However, special rules apply to Danish, national championships and national teams.

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176 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part II: *Licensordning,* Section 33.

177 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part II: *Licensordning,* Section 34.

178 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part II: *Licensordning,* Section 36.

179 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part II: *Licensordning,* Section 37.

180 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part III: *Reglement for øvrige turneringer,* Section 41.

181 *FIBA's Internal Regulations 2006,* Part H.2: *National Status of Players,* Section H.2.4, available at www.fiba.com/downloads/Regulations/Internal_Regulations_2006.pdf.

182 *FIBA's Internal Regulations,* Part H.2: *National Status of Players,* Section H.2.3.1.

183 *FIBA's Internal Regulations,* Part H.2: *National Status of Players,* Section H.2.3.3.

184 Official website: www.cyclingworld.dk.

185 Official website: www.dif.dk.

186 Official website: www.uci.ch.

187 Cf. also information obtained from an official within the Danish Ministry of Culture by e-mail of 30 June 2008.

According to the rules on DCU, any person who turns 9 years within the application year or has turned 9 years may apply for a license allowing the bike rider to participate in cycling sport arrangements under the DCU.[188]

Danish UCI teams (Pro Tour Teams, Pro Teams, Women Trade Teams and Continental Teams) may sign contracts with Danish or alien senior bike riders in accordance with the rules issued by the UCI.[189]

As for the rules on the Danish championships, a professional rider who wants to represent a Danish club at the Danish Championship (DM) must be a member of the Danish club. The membership must be registered upon the issuance of the license.[190]

Furthermore, only riders with Danish citizenship, valid U23- or Elite license belonging to the A Class may participate in the Danish championships for Elite Men,[191] and the Danish championships for Junior Men are open for Danish riders holding a license.[192] The Danish championships for Elite Women are open for Danish female riders,[193] and the Danish championships for Junior Women are open for Danish female riders holding a license.[194] Danish championships for U11-U16P and U17 are open for riders holding a Danish license and riders with Danish citizenship holding an alien license.[195]

As for the Danish championship in team races, alien bike riders may participate in a Danish unit and receive medals.[196]

As for national teams, UCI Regulations prescribe that a rider may be selected solely by the federation of his nationality. A stateless rider may be selected only by the national federation of a country where he has been continuously in residence for at least 5 years.[197] Furthermore, only riders holding the nationality of the country for the purposes of the UCI Regulations as from 1 January of the year may compete for the title of national champion and the relevant points.[198]

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188 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008)* Part 1: *Licensbestemmelser*, Section 2(15), available at www.cyclingworld.dk/images/pdf/BB08v00.pdf. The rules of 2007 are not available to the author; hence the rules of 2008 are applied for the purpose of this chapter.

189 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 2: *Kontraktcykling*, Section 1.

190 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 1: *Licensbestemmelser*, Section 4 (3) and (4).

191 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 12: *Nationale mesterskaber*, Section 3 (1).

192 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 12: *Nationale mesterskaber*, Section 7 (5).

193 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 12: *Nationale mesterskaber*, Section 7 (3).

194 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 12: *Nationale mesterskaber*, Section 7 (6).

195 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 12: *Nationale mesterskaber*, Section 7 (7).

196 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 12: *Nationale mesterskaber*, Section 6 (8)-(10).

197 *UCI Cycling Regulations 2008*, Part 1*: General Organisation of Cycling as a Sport*, Section 1: *Licenses*, Section 1.1.033, available at www.uci.ch/Modules/BUILTIN/getObject.asp?MenuId=MTkzNg&ObjTypeCode=FILE&type=FILE&id=34033&.

198 *UCI Cycling Regulations 2008*, Part 1*: General Organisation of Cycling as a Sport*, Section 7: *National championships*, Section 1.2.128.

Foot-Ball

The rules on the Danish Football Association ('Dansk Boldspil-Union', DBU),[199] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[200] Fédération Internationale de Football Association (FIFA)[201] and the Union des Associations Européennes de Football (UEFA)[202] and under the competence of the Court of Arbitration for Sport (CAS)[203] and the International Football Association Board (IFAB), do not contain nationality quotas with regard to players with citizenship from countries within Europe.[204] However, the rules contain special provisions on international matches ('landskampe'). Furthermore, nationality quotas are applied with regard to players with citizenship from countries outside of Europe.

As for the Denmark Tournament for Men ('Herre-DM') and for Women ('Kvinde-DM'), a team participating in the tournament may use an unlimited number of players with citizenship from the following countries:

1. EU Member States;
2. EEA Member States Norway, Iceland and Liechtenstein; and
3. Countries with which the EU has entered into an agreement on co-operation or association which is published in the Official Journal, provided the co-operation or association agreement prescribes equal treatment on the grounds of nationality as regards working conditions, payment or dismissals.[205]

As for players who are not citizens of the abovementioned countries, a team in the Denmark Tournament may use a maximum of 3 players on field at the same time, provided the players reside in Denmark and are registered with the National Register of Persons.[206]

The same rules apply to the Denmark Series for Men ('Herre-DS') and for Women ('Kvinde-DS').[207] However, the condition on the usage of a maximum of 3 players, who are not citizens of the abovementioned countries, may be dispensed with in situations of exceptional circumstances for the club in question.[208]

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199 Official website: www.dbu.dk.

200 Official website: www.dif.dk.

201 Official website: www.fifa.com.

202 Official website: www.uefa.com.

203 Official website: www.tas-cas.org.

204 Cf. also information obtained from an official within the Danish Ministry of Culture by e-mail of 30 June 2008.

205 *Propositioner for Danmarksturneringen i fodbold (Herre-DM)* Part VI: *Spilleberettigelse,* Section 14 (1), available at www.dbu.dk/law/lawShow.aspx?lawid=1 and *Propositioner for Danmarksturneringen i kvindefodbold (Kvinde-DM))* Part VI: *Spilleberettigelse,* Section 14 (1), available at www.dbu.dk/law/lawShow.aspx?lawid=25. See more below on the consequences of the Cotonou-Agreement.

206 *Propositioner for Danmarksturneringen i fodbold (Herre-DM)* Part VI: *Spilleberettigelse* Section 14 (2) and *Propositioner for Danmarksturneringen i kvindefodbold (Kvinde-DM)* Part VI: *Spilleberettigelse,* Section 14 (2).

207 *Propositioner for Danmarksserien for herrer (Herre-DS)* Part VI: *Spilleberettigelse,* Section 14 (2) and (3), available at www.dbu.dk/law/lawShow.aspx?lawid=6 and *Propositioner for Danmarksserien for kvinder (Kvinde-DS))* Part VI: *Spilleberettigelse,* Section 14 (2) and (3), available at www.dbu.dk/law/lawShow.aspx?lawid=26.

208 *Propositioner for Danmarksserien for herrer (Herre-DS)* Part VI: *Spilleberettigelse* Section 14 (4) and *Propositioner for Danmarksserien for kvinder (Kvinde-DS)* Part VI: *Spilleberettigelse,* Section 14 (4).

The same rules apply to the National Cup ('DBUs Landspokalturnering') with exceptions regarding transfer and quarantine and other disciplinary reasons.[209]

As for DBU's U/21, there are no rules on nationality quotas in the conditions for the specific tournaments, neither in the Common Regulations on Tournaments,[210] which apply to circumstances not described in the Conditions for DBU's U/21 Tournaments.[211]

As for the Old Boys and Veteran-LP Tournaments and the Danish Championship for Old Boys, the rules on entitlement to play in the Common Regulations on Tournaments apply.[212] There are no rules on nationality quotas in the Common Regulations on Tournaments.[213]

As for Denmark's Youth Tournaments for Men and Girls there are no rules on nationality quotas.[214]

As for the international matches, only players who are Danish citizens and entitled to play for a Danish club or an alien club organized under a football federation which is a member of FIFA, must be selected.[215]

Following the Cotonou-Agreement between the EU and the AVS countries,[216] DBU has been contemplating to regulate alien players' access to Danish football clubs in order to consider and motivate the development of Danish football talents. DBU refers to the models implemented by other national football associations in Europe, and in particular the possibility of implementing a minimum requirement of the number of players on field who are locally educated. According to DBU, such a quota would regulate the number of alien players.[217] See more below draft legislation on the most recent development in this area.

Ice-Hockey

The rules on Denmark's Ice-Hockey Association ('Danmarks Ishockey Union', DIU),[218] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF)[219] and the International Ice Hockey Federation (IIHF),[220] do contain nationality quotas. According

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209 *Propositioner for DBUs Landspokalturnering*, Part VI: *Spilleberettigelse* Section 9 (1), available at www.dbu.dk/page.aspx?id=3884.

210 *Turneringsreglement – Fællesbestemmelser*, Part IV: *Spilleberettigelse*, available at www.dbu.dk/law/lawShow.aspx?lawid=24.

211 Cf. *Propositioner for DBUs U/21-turnering*, Part XIII: *Øvrigt*, Section 13, available at www.dbu.dk/law/lawShow.aspx?lawid=65.

212 *Propositioner for Old Boys og Veteran-LP*, Part II: *Deltagere*, Section 2 (5), available at www.dbu.dk/law/lawShow.aspx?lawid=47. And *Propositioner for Old Boys-DM*, available at www.dbu.dk/law/lawShow.aspx?lawid=12. Cf. *Turneringsreglement – Fællesbestemmelser*, Part I: *Turneringer, administration m.v.*, Section 1 (1).

213 *Turneringsreglement – Fællesbestemmelser*, Part IV: *Spilleberettigelse*.

214 *Propositioner for Danmarksturneringen i herreungdomsfodbold (Ungdoms-DM)*, Part VI: *Spilleberettigelse* and *Propositioner for Danmarksturneringen for U-17 piger (U-17 Piger DM)*, Part VI: *Spilleberettigelse*, available at www.dbu.dk/law/lawShow.aspx?lawid=9 and www.dbu.dk/law/lawShow.aspx?lawid=31, respectively.

215 *Love for Dansk Boldspil-Union*, Part XIV: *Afsluttende bestemmelser*, Section 51 (1), available at www.dbu.dk/law/lawShow.aspx?lawid=2.

216 Concluded in Cotonou, Benin on 23 June 2000, entering into force on 1 April 2003, published in Official Journal No. L317, Vol. 43 of 15 December 2000 pp. 355-374.

217 Articles on DBU's website, available at www.dbu.dk/news/newsShow.aspx?id=237730 and www.dbu.dk/news/newsShow.aspx?id=237794.

218 Official website: www.ishockey.dk.

219 Official website: www.dif.dk.

220 Official website: www.iihf.com.

to DIU's rules on tournaments, a maximum of 10 players without Danish citizenship may be added to the match report's player list in a DIU tournament match or cup match.[221]

According to information obtained from the Ministry of Culture, this limit was adopted in 2007 as a sporting regulation to protect the integrity and competition and in the end to advance ice-hockey in Denmark. Furthermore, the principle is deemed essential to secure that Danish players have the opportunity to develop their full potential. Also, the Ministry adds that the rule is not considered as being anti-competitive or as having a negative financial effect since the rule applies to all teams.[222]

Volley-Ball

The rules on the Danish Volleyball Federation ('Dansk Volleyball Forbund', DVBF),[223] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[224]the International Volleyball Federation (FIVB)[225] and the International Volleyball Federation's European Volleyball Confederation (CEV),[226] do not seem to contain nationality quotas. However, DVBF is subject to the rules issued by FIVB as regards the number of alien players hired per team in the clubs and alien players simultaneously on court, see more below.[227]

DVBF imposes residence requirements upon non-Danish citizens in certain tournaments and special rules apply to national teams. According to the common rules on tournaments, the following persons may participate without limitation:

1. Danish citizens;
2. Stateless persons, who have resided in Denmark for a period of at least 2 years; and
3. Non-Danish citizens, who have resided in Denmark for a period of at least 2 years.

Furthermore, DVBF is subject to the rules on transfer issued by FIVB in relation to players who want to participate in DVBF's Denmark Tournament.[228]

When a club wishes to use players who are not Danish citizens and who do not fulfill the rules in the abovementioned provisions, the following requirements apply:

1. The player must be issued with a Danish residence/working permit;
2. Each club may apply for player license for an unlimited number of non-Danish/stateless citizens;
3. The application on use of non-Danish citizens enclosed the abovementioned documentation, must be submitted to the tournament management. The rules on transfer issued by FIVB must be complied with; and

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221 *Danmarks Ishockey Union, love og turneringsbestemmelser, juli 2007, Turneringsbestemmelser*, Part III: *Kampe*, Section 8, available at www.ishockey.dk/website/pdf/DIUs_love_og_turneringsbestemmelser_JULI_2007.pdf.

222 Cf. information obtained from an official within the Danish Ministry of Culture by e-mail of 30 June 2008.

223 Official website: www.volleyball.dk.

224 Official website: www.dif.dk.

225 Official website: www.fivb.com.

226 Official website: www.cev.lu.

227 Cf. *Reglement for benyttelse af udenlandske spillere i klubber under DVBF, 2008-2009* Section 2, available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-7-Reglement-for-benyttelse-af-udenlandske-spillere.pdf and *Fælles Turneringsreglement 2008-2009* Section 19 (1), available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-1-Faelles-turneringsreglement.pdf. The rules of 2007 are not available to the author; hence the rules of 2008-2009 are applied for the purpose of this chapter.

228 *Fælles Turneringsreglement* Section 19 (1).

4. The permission for the use of a non-Danish/stateless player is valid for 1 tournament year, unless otherwise stated in the transfer certificate issued by FIVB.[229]

DGF in Flensburg, representing the Danish minority in Southern Slesvig, may participate in Danish tournaments in accordance with the co-operation agreement approved by DVBF, regardless of the abovementioned provisions in Sections 19 and 20.[230]

As for national teams, the FIVB's Sports Regulations state that only nationals of the country may be enrolled in the national team. In principle, naturalized players may be enrolled in the national team, but special rules apply.[231]

As for the world competitions, only players holding the citizenship of the country they represent may be registered to participate. This may be dispensed with in exceptional rulings. Naturalized players may participate when the Sports Regulations allow them to do so.[232]

See more below draft legislation on the most recent development in the area.

B. Transfer fees

Basket-Ball

According to information obtained from the Ministry of Culture, transfer fees are not applied in Danish basketball.[233]

According to the rules on the Danish Basketball Federation ('Danmarks Basketball-Forbund', DBBF),[234] a member of the Sports Confederation of Denmark ('Danmarks Idrætsforbund', DIF)[235] and the International Basketball Federation (FIBA Europe),[236] DBBF may require an expedition fee upon the transfer of a player from a Danish club to an alien club. There is no information on the size of the fee, but according to FIBA's Regulations, the fee may amount to a maximum of CHF 150.[237]

Furthermore, any player who wants to transfer his/her license from a Danish club to an alien club must obtain prior approval from his/her Danish club and DBBF: Letter of clearance. The approval must substantiate that the player may leave his/her country freely, as the player has fulfilled all his/her obligations under his/her club and national league, such as obligations of contractual character. Any other obligation is not relevant for the provisions on transfer.

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229 *Fælles Turneringsreglement* Section 20.

230 *Fælles Turneringsreglement* Section 21.

231 *FIVB Sports Regulations 2004,* Section II: *Sports Regulations,* Chapter II: *Status of Referees and Teams,* Article 2.2: *Teams and International Competitions,* Article 2.2.1.2, available at www.fivb.com/EN/Volleyball/Rules/FIVBSportsRegulations2004.pdf.

232 *FIVB Sports Regulations 2004,* Section I: *General International Competition Regulations,* Chapter II: *Participation Conditions and Structure for World Competitions,* Article 5: Qualification of Players, Articles 5.2, 5.3 and 5.4.

233 Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.

234 Official website: www.danmarksbasketballforbund.basket.dk.

235 Official website: www.dif.dk.

236 Official website: www.fibaeurope.com.

237 *FIBA's Internal Regulations,* Part H.3: *International Transfer of Players,* Section H.3.3.1 lit. e, available at www.fiba.com/downloads/Regulations/Internal_Regulations_2006.pdf.

As for transfer from an alien club which is a member of FIBA to a Danish club, the player must have a letter of clearance issued by the alien league, regardless of the player's nationality.[238]

As for transfer between Danish clubs, the player must submit an application on transfer to DBBF. Such transfer results in 30 days of quarantine.[239]

As for young players, FIBA prescribes a *compensation sum* to be paid to the club of origin upon agreement (or alternatively upon determination by FIBA) between the club of origin and the new club when:

1. A player after his/her 18th birthday refuses to sign contract with the club for which the player is licensed; and
2. The player moves to a new club in another country.

The compensation shall be based on the investment(s) made by the club and take into considerations other factors when the circumstances may require this.

The player is not allowed to play for his new club until the compensation has been paid.[240]

According to FIBA's Regulations, national member federation may establish bilateral agreements regarding the transfer of players. These agreements must be approved by FIBA.[241]

Cycling

According to information obtained from the Ministry of Culture, transfer fees are not applied in Danish cycling.[242]

According to the rules on Denmark's Cycle Association ('Danmarks Cykle Union', DCU),[243] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF)[244] and the Union Cycliste Internationale (UCI),[245] the club or team may require transfer for move to a different club or team, provided the contract has not expired or is somehow invalid. There is no information on the size of the transfer.[246]

Regarding UCI ProTeams, professional continental teams, UCI continental teams, UCI women's teams, track teams and UCI MTB teams, the UCI's Regulations prohibit all transfer payment systems upon expiry of the term of the contract.[247] As for the transfer of riders

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238 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part II: *Licensordning,* Section 35. Cf. *FIBA's Internal Regulations,* Part H.3: *International Transfer of Players,* Section H.3.3.1.

239 *Danmarks Basketball-Forbund, love og reglementer 2007/08,* Part II: *Licensordning,* Section 35.

240 *FIBA's Internal Regulations,* Part H.3: *International Transfer of Players,* Article H.3.4.

241 *FIBA's Internal Regulations,* Part H.3: *International Transfer of Players,* Article H.3.6.5.

242 Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.

243 Official website: www.cyclingworld.dk.

244 Official website: www.dif.dk.

245 Official website: www.uci.ch.

246 *Danmarks Cykle Union, Reglement 2008, (DCU's Blå Bog 2008),* Part 1: *Licensbestemmelser,* Section 3, available at www.cyclingworld.dk/images/pdf/BB08v00.pdf.

247 *UCI Cycling Regulations 2008, Part II: Road Races,* Chapter XV: *UCI ProTour,* Section 4: UCI ProTeams, Article 2.15.120, Chapter XVI: *Professional Continental Teams,* Article 2.16.041, Chapter XVII: *UCI Continental Teams,* Article 2.17.004 lit. 5, Chapter XVIII: *UCI Women's Teams,* Article 2.18.004 lit. 3, available at www.uci.ch/Modules/BUILTIN/getObject.asp?MenuId=MTkzNg&ObjTypeCode=FILE&type=FILE&id=34028& and Part III: *Track Races,* Chapter VII: *Track Teams,* section 6: *End of Contract,* Article 3.7.026, available at

of UCI ProTeams, professional continental teams prior to expiry of the contract, a procedure of informing UCI and the paying agent prior to approaching and engaging the rider, and a requirement on reaching a global and written contract between the rider, the current paying agent and the new paying agent with the prior consent of the UCI, must be met. Violation of this provision is sanctioned with a fine and payment of compensation for the remaining period, but not less than 6 months' salary.[248]

Foot-Ball

According to the rules on the Danish Football Association ('Dansk Boldspil-Union', DBU),[249] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[250] Fédération Internationale de Football Association (FIFA)[251] and the Union des Associations Européennes de Football (UEFA)[252] and under the competence of the Court of Arbitration for Sport (CAS)[253] and the International Football Association Board (IFAB), FIFA's Regulations for the Status and Transfer of Players apply.[254]

According to FIFA's Regulations, a *training compensation* shall be paid to a player's training club(s), whether the transfer occurs during or at the end of the player's contract, when:

1. A player signs his first contract as a professional; and
2. A professional player is transferred until the end of the season of his 23rd birthday.

Furthermore, according to FIFA's Regulations, a *solidarity contribution* shall be paid to any of the player's training or education club(s) when a professional player is transferred before the expiry of his contract. The solidarity contribution is a proportion of the compensation paid to his former club.[255]

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www.uci.ch/Modules/BUILTIN/getObject.asp?MenuId=MTkzNg&ObjTypeCode=FILE&type=FILE&id=34042& and Part IV: *Mountain Bike Races*, Chapter X: *UCI MTB Teams*, Section 4: *Contract of Employment*, Article 4.10.022, available at www.uci.ch/Modules/BUILTIN/getObject.asp?MenuId=MTkzNg&ObjTypeCode=FILE&type=FILE&id=34424&.

248 *UCI Cycling Regulations 2008*, Part II: *Road Races*, Chapter XV: *UCI ProTour*, Section 4: UCI ProTeams, Articles 2.15.121 and 2.15.122 and Chapter XVI: *Professional Continental Teams*, Articles 2.16.042 and 2.16.043.

249 Official website: www.dbu.dk.

250 Official website: www.dif.dk.

251 Official website: www.fifa.com.

252 Official website: www.uefa.com.

253 Official website: www.tas-cas.org.

254 *Love for Dansk Boldspil-Union* Part I, Section 5 (2), available at www.dbu.dk/law/lawShow.aspx?lawid=2, cf. *Internationale klubskifter, overgangsperioder og kontraktstabilitet m.v, Cirkulære nr. 42 (2005)*, available at www.dbu.dk/page.aspx?id=1412, cf. *Regler for overførsel af spillercertifikater*, available at www.dbu.dk/law/lawShow.aspx?lawid=40, cf. *Regler for beregning af solidaritetsbidrag i forbindelse med internationale klubskifter*, available at www.dbu.dk/page.aspx?id=4010, cf. www.fifa.com/aboutfifa/federation/administration/playersagents/regulationstatustransfertsplayers.html.

255 *Regulations on the Status and Transfer of Players (2008)*, Article 20 on training compensation, cf. Annex 4, and Article 21 on solidarity mechanism, cf. Annex 5, available at www.fifa.com/mm/document/affederation/administration/regulations_on_the_status_and_transfer_of_players_en_33410.pdf.

According to information obtained from the Ministry of Culture, the compensation secures that the clubs are motivated to do talent work as it provides the clubs with financial profit despite of the clubs not being able to keep the player.[256]

Ice-Hockey

According to the rules on Denmark's Ice-Hockey Association ('Danmarks Ishockey Union', DIU),[257] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF)[258] and the International Ice Hockey Federation (IIHF),[259] transfer from/to an alien club is under the rules of IIHF on transfer. A fee of approximately Euro 1,000 (DKK 8,250) must be paid to IIHF for the issuance of the transfer card.[260]

According to IIHF's 2007 International Transfer Regulations, IIHF "... recognises that without compensation being paid for players trained by a club who move to a new club before the old club has recovered its investment, development of the sport will be severely curtailed. IIHF is working with its advisors and intends to replace the current system for compensation for players moving out of contract and replace it with a new system with worldwide applicability."[261]

According to information obtained from the Ministry of Culture, the DIU supports IIHF's desire to compensate the club training the player who is transferred to a new club. The Ministry further states that the DIU sympathizes with the idea that the compensation should be dependent on whether the Danish player moves to another Danish club or to a club abroad. Hence, in cases where the transfer is to a Danish club, the compensation should be lower, as the player is not lost for the Danish system and continues to pay back on the expenses used to develop the player in Denmark. Conversely, the compensation should be higher when the player transfers to an alien club, as the player in question no longer has any value for the national talent training programs.[262]

Volley-Ball

According to information obtained from the Ministry of Culture, transfer fees are not applied in Danish volley-ball.[263]

According to the rules on the Danish Volleyball Federation ('Dansk Volleyball Forbund', DVBF),[264] a member of the Sports Confederation of Denmark ('Danmarks Idræts-Forbund', DIF),[265] the International Volleyball Federation (FIVB)[266] and the International

256 Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.

257 Official website: www.ishockey.dk.

258 Official website: www.dif.dk.

259 Official website: www.iihf.com.

260 *Danmarks Ishockey Union, love og turneringsbestemmelser, juli 2007, Turneringsbestemmelser,* Part X: *Klubskifte og transfer,* Section 2. *(Love,* Part II: *DIUs medlemmer,* Section 12.3 concerns the write-off of transfer fees), available at www.ishockey.dk/website/pdf/DIUs_love_og_turneringsbestemmelser_JULI_2007.pdf. Cf. *International Transfer Regulations 2007* Section 8, available at www.eiha.co.uk/IIHF_International_Transfer_Regulations_-_July_2007.pdf.

261 *International Transfer Regulations 2007* Section 12.

262 Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.

263 Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.

264 Official website: www.volleyball.dk.

265 Official website: www.dif.dk.

Volleyball Federation's European Volleyball Confederation (CEV),[267] DVBF is subject to FIVB's rules on transfer.[268]
According to the rules on DVBF, a fee of Euro 1,000 must be paid to DVBF for the issuance of the transfer certificate upon transferring to an alien club.[269]

Players who are to represent Danish clubs in the European Cup Tournaments must go through a transfer as described by FIVB.[270] Players, who are to participate in tournaments under DVBF alone, must complete and sign DVBF's transfer form.[271]

A fee must be paid to FIVB and DVBF. DVBF's fee for processing of a player transfer under Sections 3 and 4 is approximately Euro 67 (DKK 500). FIVB's fee is CHF 2,000 for each year of the duration indicted on the International Transfer Certificate.[272] If it is documented that the player is staying in Denmark to study, the fee for FIVB is reduced according to the rules on transfer from FIVB,[273] resulting in CHF 1,000 for each year of the duration indicated on the International Transfer Certificate.[274]

All applications on approval of transfer must be enclosed a copy of the application on registration or residence certificate or residence and/or work permit.[275]

According to FIVB's rules on transfer, the size of the transfer fee to the national federation for transfer of players from countries in the World Ranking Top 12 is:

1. Not limited, but reasonable the 1st year the player is transferred;
2. Limited to a maximum of 75 % of the previous year's transfer fee the 2nd year the player is transferred to the same club;
3. Limited to a maximum of 50 % of the first year's transfer fee the 3rd year a player is transferred to the same club; and
4. Limited to a maximum of USD 15,000 or 25 % of the 1st year's transfer fee the 4th and following years a player is transferred to the same club.[276]

For all other players the transfer fee is:

1. Limited to USD 10,000 per year for the first 3 years; and
2. No fee can be requested from the 4th year.[277]

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266 Official website: www.fivb.com.

267 Official website: www.cev.lu.

268 Cf. *Fælles Turneringsreglement* Section 19 (1), available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-1-Faelles-turneringsreglement.pdf.

269 *Vejledning til spillere, der skal spille i udenlandske klubber,* available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-8-Vejledning-spillere-til-udlandet.pdf.

270 *Reglement for benyttelse af udenlandske spillere* Section 3, available at www.volleyball.dk/graphics/Docs/Gaeldende-reglementer/2-7-Reglement-for-benyttelse-af-udenlandske-spillere.pdf.

271 *Reglement for benyttelse af udenlandske spillere* Section 4.

272 *FIVB Sports Regulations 2004* Section II: *Sports Regulations,* Chapter 1: *Status of Players,* Article 1.6: *Transfer Fees,* Article 1.6.2.2 lit. a, available at www.fivb.com/EN/Volleyball/Rules/FIVBSportsRegulations2004.pdf.

273 *Reglement for benyttelse af udenlandske spillere* Section 5 (1), (3) and (2), respectively.

274 *FIVB Sports Regulations 2004* Section II: *Sports Regulations,* Chapter 1: *Status of Players,* Article 1.6: *Transfer Fees,* Article 1.6.2.2 lit. b.

275 *Reglement for benyttelse af udenlandske spillere* Section 7.

276 *FIVB Sports Regulations 2004* Section II: *Sports Regulations,* Chapter 1: *Status of Players,* Article 1.6: *Transfer Fees,* Article 1.6.2.1 lit. a.

277 *FIVB Sports Regulations 2004* Section II: *Sports Regulations,* Chapter 1: *Status of Players,* Article 1.6: *Transfer Fees,* Article 1.6.2.1 lit. b.

When a player leaves his country to take up residence in a new country, he must wait two years before taking part in competitions in his new country of residence, unless the transfer procedure established by FIVB is completed.[278]

A club is obliged to release or transfer a player without any transfer fee upon the termination of a contract.[279] However, the club of origin is entitled to be paid a single fixed sum determined by the two clubs, in the case of a transfer to another country within one year after the contract's termination.[280]

C. Taxation

The rule in Section 48 E of the Act on Pay-as-you-earn Taxation ('Kildeskatteloven')[281]on optional *25 % gross taxation* is also applicable to sportspersons, see above.[282]

Taxation of sign on fees

On 12 June 2007 an announcement from the Danish tax authority ('SKAT') changed the practice as regards taxation of sign on fees for sportsmen/-women with effect from the date of the announcement.[283] Hitherto, the tax authority was of the opinion that sign on fees – in the sense of a transitional sum paid to a sportsperson at the signing of a contract abroad – as a main rule was not liable to taxation to Denmark. Whether the person receiving the sign on fee was liable to taxation to Denmark was determined on a case-by-case basis, and the sign on fee was as a starting point not liable to taxation to Denmark, when the sign on fee fell due immediately upon signing of the contract and when the contract was signed before the sportsperson was encompassed by the Danish rules on unlimited tax liability, which typically meant when the person still resided outside of Denmark. The sign on fee was as a main rule not considered as a fee for personal work as an employee, except for situations where the sign on fee was disproportionate with the salary the sportsperson would be paid.[284]

This view was abandoned by the announcement from 2007, as the tax authority now considers sign on fees as an *advance on salary*. The reasoning of this new view is that upon the signing of the contract, the sportsperson obligates him-/herself to commence employment with his/her new employer. Therefore, the tax authority finds that a sign on fee cannot be considered payment for anything but the sportsperson's undertaking to perform personal work as an employee within the period of the contract.

Hence, the sign on fee is liable to taxation to Denmark under the Act on Pay-as-you-earn Taxation ('Kildeskatteloven') Section 43 (1) and the Danish payer has to withhold initial tax in accordance with Section 46 (1).[285]

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278 *FIVB Sports Regulations 2004* Section II: *Sports Regulations*, Chapter 1: *Status of Players*, Article 1.6: *Transfer Fees*, Article 1.6.6: *Change of Residence*, Article 1.6.6.2: *With two years wait*.

279 *FIVB Sports Regulations 2004* Section II: *Sports Regulations*, Chapter 1: *Status of Players*, Article 1.6.10: *Release of players*, Article 1.6.10.2.

280 *FIVB Sports Regulations 2004* Section II: *Sports Regulations*, Chapter 1: *Status of Players*, Article 1.6.10: *Release of players*, Article 1.6.10.6.

281 Consolidation Act No. 1086 of 14 November 2005 and amendments.

282 Cf. TfS1997.573.TSS.

283 SKM2007.370.SKAT, available at www.skat.dk/SKAT.aspx?oId=1650019&vId=0.

284 SKM2002.110.TSS, available at www.skat.dk/SKAT.aspx?oID=150111.

285 Consolidation Act No. 1086 of 14 November 2005 and amendments.

Maritime sector

Equal treatment in employment, working conditions and pay

With regard to *equal treatment in the maritime sector,* questions have been raised relating to the conditions for Polish seafarers on ships sailing under Danish colours. 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 disputed issue relates to the fact that the Act on *a Danish International Ship's Register*[286] 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 Industrial Court ('Arbejdsretten')[287] 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.[288] The Court turned down this argument as in the Court's opinion the residence criterion reflects the relevant objective differences in the employee's living conditions, such as taxation, in their respective home countries, and hereby provides a reasonable justification for differences in the terms and conditions in the respective collective agreements and individual employment contracts. The Court found that 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.

At the end of 2004, a case on this question was submitted to the Industrial Court by the Confederation of Danish Labour Unions ('LO') on behalf of Polish seafarers.[289] The LO claimed that around 4,000 Polish seafarers had been underpaid since 1994. The case was dismissed by the Industrial Court on 27 October 2005 on the grounds of *lacking industrial dispute*. The subject of the competence of the Industrial Court is cases concerning 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 Industrial Court's competence.

Subsequent to that decision, the LO has been corresponding with the European Commission regarding this matter and gathering documentation.[290] This resulted in LO filing two new cases on the same matter to the Industrial Court and on 24 January 2008 the Industrial Court passed its judgment.[291] In its judgment, the Industrial Court refers to the abovementioned judgments and in particular the case from 2005. The Court states that the circumstance that LO now has authorization from two Polish seafarers does not constitute any

[286] Consolidation Act No. 273 of 11 April 1997 and later amendments.

[287] Official website: www.arbejdsretten.dk.

[288] Judgment of 24 April 1997 in Case No. 96.017; upheld by judgment of 31 August 2006 in case No. 2001.335.

[289] Case No. 2004.435.

[290] Information obtained from correspondence with the LO in May 2006.

[291] Cases No. A2007.250 and A2007.255, available at www.arbejdsretten.dk/generelt/arbejdsretlige-afgoerelser/arbejdsretten/a2007250.aspx.

changes to the Court's competence as regards the evaluation of DIS Section 10 (2) and the case from 2005. Hence, the Industrial Court repeats its judgment from 2005 by dismissing the case as being *outside the scope* of the Industrial Court's competence. Furthermore, the Industrial Court notes that a case of this character which has as its purpose to extend or overrule DIS Section 10 (2) must be processed as a lawsuit against the Danish State – in the form of the competent Ministry – at the ordinary courts.

In October 2004 the Commission filed an *opening statement regarding breach of Article 39 (2) of the EC Treaty and Articles 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.[292]

By September 2008 the Act has not been amended.

Researchers

Taxation

The Act on Pay-as-you-earn Taxation ('Kildeskatteloven')[293] Section 48 E contains a rule on optional *25 % gross taxation* for alien researchers residing in Denmark for a limited period of time (36 months at a time), see above. Section 48 E applies to researchers who are under the rules of unlimited tax liability and limited tax liability, provided the researcher's qualifications have been approved/recognized by a public research institute or a research committee, or provided a research committee attests that the person in question is to perform research and development in Denmark.[294]

The condition on the size of the fee does not apply to researchers whose qualifications have been approved/recognized by a public research institute or a research committee. However, the condition applies to researchers who are not qualified as researchers but are to perform research and development in Denmark. The rule on *subsequent taxation* does not apply to researchers as it was abolished by Act No. 913 of 16 December 1998, entering into force on 13 May 2000.

On 28 March 2008 the Minister of Taxation introduced a bill to amend The Act on Pay-as-you-earn Taxation Section 48 E, see more below draft legislation.

On 30 January 2008 the Minister of Refugee, Immigration and Integration Affairs introduced a bill to amend the Aliens Act revising the transitional rules on work and residence for EU-10 citizens, see more below draft legislation.

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[292] E-mail of 13 April 2007 from an official within the Danish Ministry of Justice.

[293] Consolidation Act No. 1086 of 14 November 2005 and amendments.

[294] Cf. Instruction 2008-1 of 15 January 2008 'Indeholdelse af A-skat, AM-bidrag og SP-bidrag' C.1.10, available at www.skat.dk/SKAT.aspx?oId=1550841&chk=201704#pos.
Cf. Instruction 2008-1 of 15 January 2008 'Ligningsvejledningen' D.B.5, available at www.skat.dk/SKAT.aspx?oId=102290&vId=201707&i=63&action=open#i102290 and Executive Order No. 568 of 22 June 2000.

Artists

Equal treatment, legal status

Taxation
According to the Act on VAT Section 13 (1) lit. 7 artistic activities are exempted from VAT.[295]

Alien artists are not liable to taxation to Denmark under the Act on Pay-as-you-earn Taxation ('Kildeskatteloven') Section 2[296] unless the length of the stay in Denmark exceeds 6 months,[297] and the fee will rarely be considered as A income since engagement of artists will rarely be considered to be employment ('tjenesteforhold').

4. RELATIONSHIP BETWEEN REGULATION NO. 1408/71 AND REGULATION NO. 1612/68

Various legal problems concerning both principled and practical aspects of the impact of Regulation No. 1408/71 on Danish social welfare legislation may remain unsolved at lower administrative levels, not least in respect of the delimitation of benefits covered by the Regulation. However, focus on these problems seems to be increasing at higher administrative level, and the National Appeals Board on Social Welfare ('Ankestyrelsen') has clarified the impact of Regulation No. 1408/71 in a number of important decisions in recent years.

In 2005 the National Appeals Board examined three cases of a principled nature pertaining to Regulation No. 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 No. 1408/71.[298] In the second case, the National 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 No. 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.[299] The third case also involved mobility issues, the National 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 No. 1408/71 had been amended and residence within the territory of the EU Member States was therefore no longer required.[300]

In 2006 two decisions from the National Appeals Board were published regarding Regulation No. 1408/71. Both decisions, however, concerned issues of a very specific nature. The first case in principle pertained to issues of free movement, yet it dealt with a specific question regarding the geographical delimitation between Danish and German legisla-

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295 Consolidation Act No. 966 of 14 October 2005 and amendments.

296 Consolidation Act No. 1086 of 14 November 2005 and amendments.

297 Cf. Circular SDCirk1981.24 Section 1 (3).

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

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

300 National Appeals Board on Social Welfare, decision of 19 October 2005. Reported in P-30-05, 1 December 2005.

tion in connection with the particular conditions for frontier workers according to arts. 4 and 13 (2) of the Regulation.[301] The second appeals decision was based *a contrario* on the listing of social security benefits in the Regulation.[302]

Both of the two National Appeals Board decisions from 2007 clarified principled aspects of the obligations incumbent on the social welfare authorities under Regulation No. 1408/71. One of the appeals decisions concerned the extent of the obligation to provide information from the authorities in other Member States as a basis for decision-making, and the National Appeals Board set aside an administrative decision refusing to re-examine an application for social pension, due to the failure of the Danish administration to apply the rules on administrative assistance in accordance with Regulation No. 1408/71.[303] In the other decision, concerning the payment of child's allowance to a mother whose child was living with the father in France, it was stated that due to the direct effect and the primacy of Regulation No. 1408/71, a residence requirement in the domestic Act on Child Family Allowances could not be enforced.[304]

Reference could also be made to Chapter VI.3 regarding social assistance for Danish citizens returning from another EU country.

Draft legislation, circulars etc.

Regarding *football* and *nationality quotas: A*ccording to information obtained from the Ministry of Culture, the DBU voted for the President of FIFA's proposal on the 6 + 5 rule presented at the FIFA congress held 30 May 2008, requiring each club to field at least 6 players who are eligible to play for the national team of the country of the club.[305]

Regarding *volleyball* and *nationality quotas*: In 2008, the FIVB Board of Administration agreed to gradually increase the number of local players in each club with the purpose of protecting the identity and culture of each country. According to the Board, the ultimate goal for the Board is to have 9 local players and 3 players from another national federation, allowing only 2 players from other national federations simultaneously on court.[306]

According to information obtained from the Ministry of Culture, both DIF and DVBF consider the FIVB proposal as a violation of the EU rules on the free movement of workers. However, FIVB maintains the right to implement such a limit regarding alien players. The Ministry furthermore states that this leaves DVBF in a difficult situation as DVBF is forced to violate either the rules of EU or the rules of FIVB. If DVBF chooses to violate the rules of FIVB, DVBF risks exclusion from international competitions in general.

DVBF is currently seeking to clarify whether the rules must be implemented in own national tournaments or whether the national federations are free to choose.[307]

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[301] National Appeals Board on Social Welfare, decision of 23 November 2005. Reported in N-2-06, 3 February 2006.

[302] National Appeals Board on Social Welfare, decision of 26 April 2006. Reported in S-1-06, 29 September 2006.

[303] National Appeals Board on Social Welfare, decision of 15 August 2007. Reported in R-7-07.

[304] National Appeals Board on Social Welfare, decision of 10 October 2007. Reported in B-6-07.

[305] Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture, see also www.fifa.com/aboutfifa/federation/bodies/media/newsid=783657.html#fifa+congress+supports+objectives. Addendum forwarded to the World Congress in June 2008, see www.fivb.org/EN/FIVB/viewNews.asp?No=16935. FIVB's press releases from 2008 are available at www.fivb.com/EN/FIVB/viewnews.asp?No=15959 and www.fivb.com/EN/FIVB/viewnews.asp?No=15963.

[307] Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.

On 28 March 2008 the Minister of Taxation introduced a bill to amend The Act on Pay-as-you-earn Taxation ('Kildeskatteloven')[308] Section 48 E on *optional 25 % gross taxation for 3 years or 33% gross taxation for 5 years* for *researchers and key employees* with the purpose of making it more appealing for highly educated and qualified employees to reside in Denmark for a longer period of time. Furthermore, it is proposed that researchers may use the arrangement even though they have been liable to taxation to Denmark within the past 3 years as a result of shorter stays in Denmark.[309]

The Bill was adopted by the Parliament on 3 June 2008 and entered into force on 19 June 2008.[310]

On 30 January 2008 the Minister of Refugee, Immigration and Integration Affairs introduced a bill to amend the Aliens Act revising the transitional rules on work and residence for EU-10 citizens. Among other things, the Bill amends Aliens Act Section 6 (3) abolishing the requirements on residence and work permit to citizens from the East European EU Member States who are *highly educated researchers, teachers and specialists* and employed by a company covered by a collective agreement. Instead, this category of EU-10 citizens is encompassed by the rules under the EU Residence Order on the issuance of a registration certificate.

If the employer is not covered by a collective agreement, a work permit must be issued pursuant to Section 9 a (6) encompassing the requirement of employment for at least 30 hours per week.[311]

The Bill was adopted by the Parliament on 17 April 2008 and entered into force on 1 May 2008.[312]

As a consequence of ECJ judgment of 17 January 2008, *Theodor Jäger v. Finanzamt Kusel-Landstuhl* (C-256/06) the Danish tax authority ('SKAT') issued a message on 4 April 2008 changing the taxation of *real properties abroad*[313] obtained after 2001 and owned by a person who is encompassed by the Danish rules on unlimited tax liability.[314]

The Danish tax authority found that the taxation of alien properties under the Act on Taxation of Property Value ('Ejendomsværdiskatteloven') Sections 1 and 4, cf. Sections 4 (11) and 4 a (5) and (7)[315] was incompatible with the judgment in *Jäger* and hence, the free movement of capital, cf. TEF Art. 56, as properties abroad were not being taxed according to the same principles as properties located in Denmark. This was due to the Danish tax stop maintaining the taxable value of properties located in Denmark at the 2001/2002-level, while the taxable value of alien properties obtained after 2001 was not fixed, but amounted to the market value at the time of the acquisition.

The message from the Danish tax authority determines that real property abroad owned by a person who is encompassed by the Danish rules on unlimited tax liability must be valuated according to principles similar to the principles applicable to properties located in Den-

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308 Consolidation Act No. 1086 of 14 November 2005 and amendments.

309 L162 of 28 March 2008.

310 Act No. 522 of 17 June 2008.

311 See more below Chapter VIII.

312 Act No. 264 of 23 April 2008.

313 It should be noted, that the message refers to real property *abroad* and not just real property located in another Member State. It is not clear whether this extension of the applicability of the mentioned principles is aimed at, as the message refers to the ECJ judgment in *Jäger* relating (only) to other Member States.

314 SKM2008.320.SKAT, available at www.skat.dk/SKAT.aspx?oId=1747288&vId=0. See also below Chapter VI.

315 Consolidation Act No. 1017 of 18 August 2007.

mark. This valuation may take the alien valuation as its basis, provided the principles for the alien valuation only to a certain extent deviate from the Danish principles on valuation of real property. In situations without an alien valuation comparable to the Danish valuation, the taxable value of the real property should be calculated on the basis of the acquisition costs which should be regulated down according to the average price movement from 2001/2002 to the time of the acquisition. In the regulation of the acquisition costs, the Danish index for the development of prices for real property is applicable, unless it is established that a recognized alien index provides a higher or lower basis of calculation. Furthermore, there must be an adjustment for the average distance in percent between the Danish public valuations and the actual Danish market prices. Hence, the acquisition costs indexed to 2001/2002 should be reduced with the distance percentage. In addition to this, the real property owner has freedom of choice between the result for 2001 plus 5 % and the result for 2002.[316]

Miscellaneous

As mentioned above, DIHR can hear complaints concerning violation of the *prohibitions against discrimination* on the grounds of *race* or *ethnic origin* both inside and outside the labour market, see above Chapter II, miscellaneous.

Recent legal literature

Lars Halgreen *Sportsret: EU-retlige og kontraktmæssige aspekter ved sportsudøvelse i Danmark*, 1. edition, 1. printing, Copenhagen 2000.

Kirsten Ketscher, *Socialret – Principper, Rettigheder, Værdier*, 3. edition, Copenhagen 2008.

Ruth Nielsen, Svensk blockad blev olovlig när Arbejdsretten dömte enligt dansk lag, *EU och arbetsrätt*, No. 3, 2006.

Niels Winther-Sørensen in *Skatteretten 3*, 3. edition, Copenhagen 2000, p. 405 ff.

www.ciriusonline.dk.

[316] These principles were applied prior to the above mentioned message changing the taxation in general in a decision of the Danish Tax Committee ('Skatterådet') in SKM2008.274 on 25 March 2008 concerning a real property in Sweden obtained in 2005. The Danish Tax Committee found that the taxable value of the real property should be calculated on the basis of the acquisition costs which should be indexed back to 2001/2002. Furthermore, the acquisition costs indexed to 2001/2002 should be reduced with the distance percentage between the Danish valuations and the Danish market value of the type of property in question. The public valuation in Sweden was found to be so different from the Danish valuation that the Swedish valuation could not be taken as basis. The decision is available at www.skat.dk/SKAT.aspx?oId=1746079&vId=0.

Chapter IV
Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR

1.1 Nationality condition for access to positions in the public sector

Circular 210 of 11 December 2000 specifies the special positions where appointments as *civil servants* ('tjenestemænd') are confined.

If the position is not regulated by the Circular, the employment is not encompassed by the rules on civil servants, and aliens are free to hold such posts under the same circumstances as Danish citizens.

Danish nationality is a prerequisite for employment as a *civil servant*, cf. the Danish Constitutional Act Section 27.[317] This is modified, however, by the fact that foreign citizens can be employed on conditions similar to those of civil servants in positions where persons with Danish nationality are employed as civil servants. A rule on this is inserted in the Act on Civil Servants[318] and the Act on Civil Servants' Pension,[319] 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 public employers.[320]

The right to be employed under the same circumstances as civil servants is limited by restrictions that are justified by regard for public order, public security and public health.[321]

According to the Guidance on Personnel Administration 2007 and the updated version from 2008 Chapter 15.2.1.4 from the Ministry of Finance, job posting must not contain a requirement on Danish citizenship in a way that may restrain EU/EEA citizens from applying for the job, unless the job is encompassed by the exceptions for employment in the public sector, i.e. employment as a civil servant.[322]

In 2004 the State Employers' Authority ('Personalestyrelsen',[323] an agency within the Ministry of Finance[324]) carried out a survey on the extent to which a requirement on Danish citizenship exists regarding positions in the public sector. The survey covers all Danish ministries but not the regional and municipal parts of the public sector.[325] The conclusion of the

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317 Constitutional Act No. 169 of 5 June 1953.

318 Consolidation Act No. 531 of 11 June 2004 and later amendments, Section 58 c.

319 Consolidation Act No. 230 of 19 March 2004 and amendments, Section 19 (1).

320 Guidance on Personnel Administration ('Personale-Administrativ Vejledning'), issued by the Ministry of Finance, 2004, Chapter 17, 2007 and 2008 Chapters 15.2.2.2 and 15.2.2.3. The guidance is updated every year and is available at www.pav.perst.dk (registration is required).

321 See Guidance on Personnel Administration 2008 Chapter 15.2.2.3 and *Employment in the Danish State Sector*, publication from the State Employers' Authority, Chapters 1-3, available at www.perst.dk/visSideforloebBeholder.asp?artikelID=14329.

322 See also Circular No. 60339 of 29 October 1998, III, B, where it is stated that a requirement of Danish citizenship is indirect discrimination of EU citizens, where there is no exceptional rule regulating the position. Executive Order No. 403 of 22 July 1977 ('Opslagsbekendtgørelsen') contains rules on advertisement. According to Circular No. 10095 of 18 December 2006 from the State Employers' Authority ('Personalestyrelsen'), entering into force on 1 January 2007, advertisements must as a main rule contain an invitation for all who are interested in the position to apply for the position regardless of personal background.

323 Official website: www.perst.dk.

324 Official website: www.fm.dk.

325 Neither does the survey include information on positions for law graduates within the Danish courts.

survey is that within the public sector there are in general not posts 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.[326] A supplementary survey from 2006 has shown that in practice, for certain other posts, mainly within the police, the juridical system and the foreign services, Danish nationality is required.[327]

Nationality condition for captains of ships

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[328] led to a change in Danish law in 2004 as the Act on Ships' Crew[329] was amended with the specific aim to bring national law in compliance with Community law as it was interpreted in these two judgments.[330]

According to the Act on *Ships' Crew*, the starting point is that captains of merchant ships and fishery vessels must hold Danish citizenship, cf. Sections 13, 6 and 19. The amendment of the Act[331] meant an insertion of a provision authorizing the Danish Maritime Authority ('Søfartsstyrelsen')[332] 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,[333] it was stressed that international conventions require that captains of ships 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.

In October 2006 the Executive Order was issued.[334] The Order exempts persons encompassed by the rules on free movement from the requirement on nationality, cf. Section 1 (1).

Captains of merchant ships must have a Danish recognition certificate, cf. Section 2 (2).

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326 See *Employment in the Danish State Sector*, Chapter 3.

327 Cf. information from the Ministry of Employment in *Danish remarks to the Danish Report 2006*, p. 4 ad p. 24 and information obtained by e-mail from an official within the Ministry of Employment of 17 June 2008.

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

329 Cosolidation Act No. 15 of 13 January 1997 and amendments.

330 Act No. 1462 of 22 December 2004. The Act also had as its purpose to partly implement Council Directive 1999/70/EC of 28 June 1999 and Council Directive 2000/78/EC of 27 November 2000.

331 Act No. 1462 of 22 December 2004.

332 Official website: www.sofartsstyrelsen.dk.

333 Bill No. L 65/2004-05.

334 Executive Order No. 1010 of 9 October 2006 on exempting captains of merchant ships and fishery vessels from the nationality conditions in the Act on Ships' Crew (Access for captains from EU and EEA), entering into force on 18 October 2006.

According to Section 1 (3) in the Executive Order, there is an exception to the exemption from the requirement on nationality: The Danish Maritime Authority in consultation with the organisations of the ship owners and the mariners can insert a requirement in the crews contract for the ship in question that the captain must hold Danish citizenship when it is documented that rights under powers conferred by public law granted to the captain of a passenger ship or a ship transporting troops, military materiel or nuclear waste are in fact exercised on a regular basis and do not represent a minor part of their activities.

In May 2005 the Danish Maritime Authority ('Søfartsstyrelsen') issued the Executive Order on *Recognition of Foreign Qualifications for Service on Merchant Ships*[335] on the basis of Section 20 (5) and (6) in the Act on Ships' Crew. 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. In 2007 the Executive Order was replaced by Executive Order No. 1153 of 4 October 2007 also implementing Directive2005/45.

The Act on Access to Take up Certain Jobs in Denmark[336] is only applicable to professions under the competence of the Danish Maritime Authority provided the application has to be treated according to EU Directives on recognition of exams and professional qualifications.[337]

1.2. Language requirement

The National Market Authority ('Arbejdsmarkedsstyrelsen'[338]), which is an authority under the Ministry of Employment,[339] has issued a circular to the Act on *Prohibition of Differential Treatment on the Labour Market.*[340] The Circular concerns employment agencies and their dealing with employers and ethnic minorities and constitutes general guidelines for the prohibition against differential treatment on the labour market.[341]

According to the Circular, a language requirement is formally a neutral requirement. However, a language requirement may constitute indirect discrimination when an employer's language requirement is not reasoned/objectively justifiable. This will be the case if the requirement to the person's ability to speak or write Danish is disproportionate to and without relevance for the maintenance of the job in question.[342]

According to the Circular, qualification requirements in general have to be justified by considerations of satisfactory maintenance of the job in question.

In order to apply for admission to most of the higher educations in Denmark, an alien must pass a Danish language test.[343] This does not apply, however, to students from other Nordic countries if Danish, Norwegian or Swedish is incorporated in the qualifying exam.[344]

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335 Executive Order No. 315 of 4 May 2005.

336 Consolidation Act No. 334 of 20 March 2007.

337 Executive Order No. 818 of 22 July 2004 Section 1 (1), issued with the legal basis in The Act on Access to Take up Certain Jobs in Denmark Section 1 (2).

338 Official website: www.ams.dk.

339 Official website: www.bm.dk.

340 See above Chapter II.1.

341 Circular No. 60339 of 29 October 1998.

342 Chapter III.B.

343 See more on Danish courses above Chapter II.2.

1.3. Recruitment procedures: Follow-up of the Burbaud case

The situation giving cause to the ECJ judgment in the *Burbaud* case,[345] the use of competitions for access to training and afterwards employment in the public sector does not seem to be relevant in Denmark.

1.4. Recognition of diplomas

Regarding the *recognition of diplomas for access to employment in the public sector*, degrees obtained at foreign universities are to be evaluated by CIRIUS.[346]

The Act on *Evaluation of Alien Educational Qualifications*[347] and the Executive Orders issued on the basis of the act[348] regulate CIRIUS' evaluation of alien qualifications with the purpose of easing the flow to the Danish labour market and educational system, cf. the Act Section 1. The system of recognition of diplomas does not generally distinguish between posts in the public sector and posts in the private sector.[349] CIRIUS is to evaluate on a case-by-case basis which foreign degrees are comparable to the relevant Danish degrees. According to Section 3, the basis of the evaluation is a comparison of the alien's qualifications with the similar Danish educational qualifications.[350]

A requirement on a specific education is considered fulfilled when an applicant has an alien degree equivalent with the similar Danish degree.[351]
According to Section 3 (4) (iii), *public authorities* have an *obligation* to let the evaluation be the basis of their decisions on *employment* (as do unemployment insurance funds in their decisions on acceptance, cf. Section 3 (4) (ii) and public recognized educational institutions in their decisions on acceptance, cf. Section 3 (4) (i)).[352]

1.5. Recognition of professional experience for access to the public sector

In 2007 there were no major developments regarding the right to be credited for *previous employment in the public administration* in other EU Member States. In a paragraph in the Guidance on Personnel Administration 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.[353] This applies to Danish citizens and other EU/EEA citizens alike. In the

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344 www.ciriusonline.dk/Default.aspx?ID=3783. Consolidation Act No. 319 of 16 May 1990 authorizing the Ministry of Education to issue regulations on numerus clausus for higher educations, cf. Executive Order No. 96 of 20 February 2008 Section 6 (2), Executive Order No. 802 of 22 September 2003 Section 8 (3) on vocational training schemes and Executive Order No. 32 of 29 January 2008 Section 10 on Access to Universities ('Adgangsbekendtgørelsen') and the regulations for the specific institutions published at the institutions' websites. See more on students below Chapter V.

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

346 Official website: www.ciriusonline.dk, see above Chapter II.3.

347 Consolidation Act No. 371 of 13 April 2007.

348 Executive Order No. 602 of 25 June 2003 and amending Executive Order No. 448 of 10 May 2007 and Executive Order No. 447 of 10 May 2007 on the Appeals Committee.

349 See above Chapter II.3 for a description of the Act.

350 See www.cvuu.dk/Default.aspx?ID=3509 and www.cvuu.dk/default.aspx?id=3510.

351 Guidance on Personnel Administration, 2007 and 2008, Chapter 15.3.2.5.

352 This is also mentioned in the Guidance on Personnel Administration, 2007 and 2008, Chapter 15.3.2.5. See above Chapter II.3 on the exception to this.

353 Guidance on Personnel Administration, 2004, Chapter 18.

guidelines reference is made to the jurisprudence of ECJ and the Communication from the Commission from December 2002.[354]

2. EQUALITY OF TREATMENT

A public employer has a special obligation to ensure equality for all employees regarding gender, ethnic origin, nationality etc.[355] as stated in the Co-operative Agreement, Section 5 (5) ('Samarbejdsaftalen'), which is an agreement on co-operation and co-operation committees in the state's companies and institutions.[356] Apart from the legislation on prohibition of differential treatment on specific grounds, a public employer is subject to the principle on equality ('lighedsgrundsætning'), the principle on legality ('legalitetsprincippet') and the rule on instruction ('instruktionsreglen'). See also above Chapter II.1.

2.1. Recognition of professional experience for the purpose of determining the professional advantages

Regarding salary, the Guidance on Personnel Administration, 2007 and 2008 Chapter 16.2.4.1 states that *professional experience obtained in another EU/EEA country* has to be accounted for in the same manner as had the occupation been in Denmark.[357]

Hence, the comparison of previous occupation has to be done on an objective and non-discriminatory basis, and without accounting for whether the previous employment was under the conditions for civil servants or collective agreements.

These principles apply to both workers from other Member States and Danish citizens working in another Member State.

In the guidelines reference is made to the jurisprudence of ECJ and the Communication from the Commission from December 2002.

Regarding grade, the seniority is estimated from the first employment within the Danish State only (previous employment within the state in Greenland is included).[358]

Miscellaneous (administrative practices etc.)

The statistics show that 86 % of the evaluations performed by CIRIUS regarding professions not regulated by law, were evaluations obtained by the person holding the educational qualifications. The rest of the evaluations were mainly obtained by a public employer (7,6 % and 2 % as regards public employers and municipalities, respectively) or job-centers (1,4 %).[359]

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

355 Guidance on Personnel Administration, 2007 and 2008 Chapter 15.2.2.9.

356 Circular No. 9209 of 29 April 2005.

357 Circular No. 6633 of 16 July 1987 on Salary Seniority contains the detailed rules on determination of advantages.

358 Circular No. 186 of 28 December 1989 and amendments. Cf. the Guidance on Personnel Administration, 2007 and 2008 Chapter 16.4.1.2

359 www.ciriusonline.dk/Default.aspx?ID=3770, see "Beretning for 2007 om vurdering og anerkendelse af udenlandske uddannelseskvalifikationer", pp. 7-8.

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www.ciriusonline.dk.

Chapter V
Members of the Family

1. RESIDENCE RIGHTS

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 the rules applying specifically to family members will be described below.

The 2006 EU Residence Order[360]

The 2005 EU/EEA Order contained detailed rules on the issuance of residence certificates to family members, largely upholding the requirements of the 2004 EU/EEA Order, including those concerning housing and economic support. While economic requirements in certain cases still have a basis in the 2006 EU Residence Order (see below), the *housing requirement* for family members of EU workers has been abandoned in the rules on family reunification that entered into force on 30 April 2006.

Section 2 of the 2006 EU Residence Order defines the family members eligible for residence under the EU rules. For this purpose Section 2 (1) includes the following categories of family members:

1) The EU citizen's spouse
2) Descendants (of the EU citizen or the spouse) under 21 years of age
3) Other descendants (of the EU citizen or the spouse) who are dependent on the EU citizen
4) Relatives in the ascending line (of the EU citizen or the spouse) if they are dependent on the EU citizen
5) Other relatives of the EU citizen if they, in the country of origin, are dependent on the EU citizen or are (were) living under the roof of the EU citizen
6) Other relatives of the EU citizen, if serious health reasons make it absolutely necessary that the EU citizen personally takes care of such relatives.

According to Section 2 (2) a *registered partner* will be treated equally with a spouse.

The rules on spouses also apply to *cohabiting partners* in a *stable relationship*. This concept is defined in Section 13 (1) of the Order as "regular cohabitation of prolonged duration", in practice normally at least 1½ years. For this category it is always a condition for family reunification that the EU citizen undertakes to support the applicant, cf. Section 13 (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).

The *right of residence* for family members, as defined in Section 2, is laid down in Sections 7-13 of the 2006 EU Residence Order, in some instances subject to a requirement of economic support:

[360] For detailed reference, see above note 10. The minor amendments made in the 2008 EU Residence Order will be described in the Report for 2008.

- Family members of *workers and self-employed persons* have the right of residence in Denmark, if they accompany or join the EU citizen and already have permanent lawful residence ("fast, lovligt ophold") in an EU Member State, cf. Section 7 (1). For those family members defined in Section 2 (1) No. (3)-(5) (see above) the residence right is, unless exceptional reasons make it inappropriate, conditioned on the EU citizen's ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system, cf. Section 7 (2). These provisions also apply to family members of EU-10 citizens having lawful and actual paid employment in Denmark, provided that their income from such employment is to be considered more than just a marginal supplement to their other means, cf. Section 7 (3).
- Family members of an EU *student* encompassed by Section 4 of the EU Residence Order have the right of residence in Denmark, if they accompany or join the EU citizen and already have permanent lawful residence ("fast, lovligt ophold") in an EU Member State, cf. Section 8 (1). According to Section 8 (2) the residence right is, unless exceptional reasons make it inappropriate, conditioned on the EU citizen's ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system.
- Family members of an EU citizen with *sufficient means* encompassed by Section 5 of the EU Residence Order have the right of residence in Denmark, if they accompany or join the EU citizen and already have permanent lawful residence ("fast, lovligt ophold") in an EU Member State, cf. Section 9 (1). According to Section 9 (2) the residence right is, unless exceptional reasons make it inappropriate, conditioned on the EU citizen's ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system.
- Family members of an EU citizen encompassed by Section 6 of the EU Residence Order (*pensioners* etc., see Chapter I.B above) have the right of residence in Denmark, if they accompany or join the EU citizen and already have permanent lawful residence ("fast, lovligt ophold") in an EU Member State, cf. Section 10 (1). According to Section 10 (2) the residence right for those family members defined in Section 2 (1) No. (3)-(5) is, unless exceptional reasons make it inappropriate, conditioned on the EU citizen's ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system.

As described above, all these provisions of the 2006 EU Residence Order are conditioning the right of residence for family members on their *previous lawful residence* of a permanent or long-duration nature ("i forvejen har fast, lovligt ophold") in an EU Member State. According to the Ministry of Refugee, Immigration and Integration Affairs, this requirement is based on the *Akrich* judgment,[361] of which special reference was made to paras. 49-54.[362] The exact meaning of this requirement is still unclear, in particular as regards the *duration and stability* of the required residence in another EU Member State. The Ministry is not known to have given any precise definition of the required duration of the previous residence, apart from stating that a visa-based stay cannot be considered sufficient for this pur-

[361] ECJ judgment of 23 September 2003 *Akrich* (C-109/01). The Ministry's assessment of the impact of the ECJ judgment of 15 January 2007 *Jia* (C-1/05), if any, is not known yet.

[362] Letter of 26 September 2006 from the Ministry of Refugee, Immigration and Integration Affairs to Aarhus Free Legal Aid Office.

pose.[363] While more than 3 months is therefore necessary, it remains an open question whether some degree of permanency is generally required, as might be suggested by the Danish wording ("fast ophold"). The Ministry further argued that, despite the fact that Article 10 of Regulation No. 1612/68 has now been repealed, it cannot be assumed that Directive 2004/38 was intended to challenge the asserted *Akrich* interpretation of the Regulation.[364]

The condition of economic support mentioned above can be enforced by requiring *economical documentation* in connection with the issuance of residence documents, depending on the status of the EU citizen (the 'sponsor') and, in some cases, on the family relationship:

- If the sponsor is a *worker or self-employed person*, or a *pensioner* or another EU citizen encompassed by Section 6 of the EU Residence Order, the issuance of a residence document ('registration certificate') for those family members defined in Section 2 (1) No. (3)-(5) – i.e., other dependent descendants, dependent ascendants or other dependent relatives (see listing above) – can be conditioned on the sponsor's presentation of documentation for his or her ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system, cf. Sections 20 (3) and 22 (3) of the EU Residence Order.
- If the sponsor is an EU citizen with *sufficient means*, the issuance of a residence document ('registration certificate') for all the family members defined in Section 2 (1) can be conditioned on the sponsor's presentation of documentation for his or her ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system, cf. Sections 20 (3) and 22 (3) of the EU Residence Order.
- If the sponsor is a *student*, the issuance of a residence document ('registration certificate') for those family members defined in Section 2 (1) No. (1), (2) and (6) can be conditioned on the sponsor's presentation of a *declaration* on his or her ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system, cf. Sections 20 (2) and 22 (2) of the EU Residence Order. The issuance of a residence document ('registration certificate') for those family members defined in Section 2 (1) No. (3)-(5) can be conditioned on the sponsor's presentation of *documentation* for his or her ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system, cf. Sections 20 (3) and 22 (3).

In assessing economical documentation, as required according to Sections 20 (3) and 22 (3) of the EU Residence Order, regard must be had to the personal circumstances of the sponsor and his or her family. The *documentation requirement* will always be fulfilled if the sponsor and the applicant family member together dispose of total income or other economic means corresponding to the sum of the cash benefits for which they would be eligible under Section 25 (12) and Section 34 of the Act on Active Social Policy.[365] These provisions refer to the so-called starting assistance ('starthjælp') which is the lowest social allowance under the Act on Active Social Policy (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 laid down in Section 23 of the EU Residence Order.

[363] Ibid., p. 1.
[364] Ibid., p. 2.
[365] Consolidation Act No. 1460 of 12 December 2007.

While the requirement of documentation for the economic ability to support EU citizens' family members can be made at the time of the issuance of the residence document to the applicant family member(s), the condition of economic support is generally not supposed to be enforced *subsequent* to the actual family reunification.[366]

The requirement of economic support in relation to residence right for some family members of EU citizens – as well as the housing requirement in relation to family members of EU workers (not upheld in the 2006 EU Residence Order) – was introduced in the 2004 EU/EEA Order. The background of these changes was the enlargement of the European Union and the Danish political agreement on transitional arrangements, as described 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.[367] Here it was stated 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 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.[368]

Against this background, *discrimination* against EU workers is not likely to occur in connection with 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. Sections 7 (2), 8 (2), 9 (2) and 10 (2) of the EU Residence Order. While this criterion is similarly phrased as that previously governing dispensation from the economic support requirement for the sponsors of spouses under Section 9 (3) of the Aliens Act, it should be noted that the general requirement of economic support for applicants for family reunification in this provision was made more lenient in 2007.[369] Instead, the spouses will normally be excluded from receiving social assistance in the form of cash benefits during a number of years upon family reunification, cf. Section 9 (5) of the Aliens Act. This modification might cause examples of differential treatment of EU workers as compared to Danish citizens, but no concrete cases on this issue have been reported yet.

Cessation of residence right

The time limited residence right of a family member of an EU citizen ceases in the same situations as that of the principal EU citizen, i.e. if the conditions according to the relevant provisions on the right of residence are no longer met, cf. Section 26 (1) of the 2006 EU Residence Order (see also Chapter I.C above).

The special rule in Section 26 (2) of the EU Residence Order applies to family members having the right to remain after the sponsoring EU citizen's death or departure or after divorce, according to Sections 11 and 12, respectively (see below). The time limited residence right of such family members ceases if they give up their residence in Denmark or stay outside the country for more than 12 months.

366 Cf. the explanatory memorandum to Bill No. L 157/2003-04, para. 3 in fine, and Section s 26-27 of the 2006 EU Residence Order.

367 Act No. 283 of 26 April 2004 (see Chapter VIII).

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

369 Act No. 89 of 30 January 2007 amending the Aliens Act as of 1 February 2007.

Sections 11 and 12 of the 2006 EU Residence Order lay down detailed rules on family members' right to remain in Denmark after the sponsoring EU citizen's death or departure and after the dissolution of marriage.

In case of the principal person's *death or departure* from Denmark,

- Family members being EU citizens maintain the right of residence, cf. Section 11 (1).
- Family members being third country citizens maintain the right of residence, provided they have been staying in Denmark for at least 1 year before the death of the principal person, cf. Section 11 (2). The continued residence right is, however, conditioned on the family member(s) being in paid employment or self-employed and proving his or her ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system, as well as taking out a health insurance.
- The latter economic requirements can be dispensed with, according to Section 11 (3), if
  - the principal person had resided in Denmark for at least 2 years at his or her death, or
  - the death of the principal person was due to an industrial accident or an occupational illness, or
  - the family member was the principal person's spouse and lost his or her Danish citizenship by marriage to the principal person.

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[370] did hitherto not seem to be covered by specific Danish rules. This has changed as a result of the 2006 EU Residence Order, Section 11 (4) stipulating that a third country citizen being the child of an EU citizen maintains the right of residence in case of the EU parent's death or departure, provided that the child is staying in the country and is registered with an educational institution. The residence right continues until the child has finalised the actual education. The person holding custody – defined as 'actual' or 'de facto' custody – of the child has a right to stay with the child.

In case of dissolution of an EU citizen's marriage by way of *divorce or annulment*,

- Family members being EU citizens maintain the right of residence, cf. Section 12 (1).
- Family members being third country citizens maintain the right of residence according to Section 12 (2), if
  - the marriage has existed for at least 3 years, of which at least 1 year within Denmark, at the point in time when the dissolution proceedings begin, or
  - custody of the principal person's child(ren) has been transferred to the third country spouse, or
  - particularly difficult circumstances exist, e.g. as the result of domestic violence during the time of marriage, or
  - the third country spouse has the right of access to a minor child and such access has to be exercised in Denmark.
- According to Section 12 (3), however, the continued residence right as described under Section 12 (2) is conditioned on the third country spouse being in paid employment or self-employed and proving his or her ability to dispose of such income or other means of support that the family member(s) cannot be assumed to become a burden to the public welfare system, as well as taking out a health insurance.

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

Right of residence for third country spouses of Danish citizens

The ECJ judgments in the *Singh* and *Akrich* cases[371] have gained attention and importance due to the tightening of the general Danish rules on family reunification over the past 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, as specified and discussed below. In this respect it makes no difference whether the couple would be unable to fulfil the strict requirements for family reunification in the Danish Aliens Act (see Chapter VII).

The rules guiding the administrative practice concerning the scope of the *Singh* principles were modified in 2006 with a view to adapting them to the 2006 EU Residence Order and in particular to the categories of persons under Directive 2004/38, while maintaining the narrow scope of application. According to the prevailing guidelines, a residence permit will be granted on the basis of EU law in the following circumstances:[372]

- The Danish spouse has resided in another EU Member State or EEA State as a *worker, self-employed person or service provider* or as *retired* from activity in one of these categories,
- The Danish spouse returns to Denmark and takes up economic activity here that would qualify for residence as a *worker, self-employed person or service provider* or as *retired* from activity in one of these categories, if he/she had taken up residence in a third EU/EEA State instead,[373]
- The couple must be married by the time they enter Denmark and during the third country spouse's continued residence in the country,[374] and
- The foreign spouse must have stayed lawfully in the EU/EEA State in which the Danish spouse exercised the right to residence as a worker, self-employed person or service provider or as retired from activity in one of these categories.

Although 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 Danish Immigration Service that the Danish spouse's motives for

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

372 Danish Immigration Service, Family Reunification Guidelines No. 1/06 of 4 October 2006 on applications for family reunification with Danish citizens applying the right to free movement under the EC Treaty, pp. 2-3. These Guidelines replaced Residence Guidelines No. 16/06 of 7 July 2006 (not available) replacing Guidelines No. 3/06 of 9 January 2006, the latter being essentially the same as the previous guidelines.

373 This requirement has been abolished in 2008 as a result of the ECJ Judgment in *Eind*, see below.

374 As an alternative to marriage, regular cohabitation of prolonged duration also qualifies as a basis for family reunification, see above on Section 13 of the 2006 EU Residence Order.

moving in order to be able to invoke EU law are not a relevant consideration. Abuse of EU residence rights will only be an issue in case of marriage of convenience or forced marriage.[375]

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 Regional Government Administration offices.[376] In case of a positive decision by the Danish 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.[377]

The scope of application of the *Singh* principles was discussed and examined also in 2007. The main issue 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 other *economically active persons*, 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 the Directives 93/96, 90/365 and 90/364, respectively, or the successor Directive 2004/38. The primary reason for the emergence of this issue 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 December 2004 the Ministry of Refugee, Immigration and Integration Affairs noted in a general statement on the issue that the ECJ had not answered the question whether the *Singh* principles can be extended to the groups mentioned above, and that the judgment seemed 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 under 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.[378]

This ministerial interpretation of the scope of application is now being implemented in practice by the Danish Immigration Service.[379] However, the most recent guidelines include an additional restriction, since Danish citizens having been *recipients of services* are no longer considered as qualifying for family reunification under the *Singh* principles upon return to Denmark.[380] As an extension of their scope of application, on the other hand, Danish

[375] Danish Immigration Service, Family Reunification Guidelines No. 1/06 of 4 October 2006, pp. 5 and 9.

[376] Previously this could be formally motivated by the fact that the EU Residence Order only applies to family members of non-Danish EU citizens. This has been changed in the 2008 EU Residence Order, in which Section 13 states that family members of Danish citizens have the right of residence to the extent such right follows from EU law. Decisions on the issuance or withdrawal of registration certificates and residence cards under this provision are still the competence of the Danish Immigration Service, cf. Section 33 (3) of the 2008 EU Residence Order.

[377] Danish Immigration Service, Family Reunification Guidelines No. 1/06 of 4 October 2006, pp. 6 and 9.

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

[379] Danish Immigration Service, Family Reunification Guidelines No. 1/06 of 4 October 2006, p. 4.

[380] Danish Immigration Service, Family Reunification Guidelines No. 1/06 of 4 October 2006, p. 3.

citizens returning to Denmark for *retirement* are now being considered as covered by the *Singh* principles.[381]

The restrictive implementation of the 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 (DACoRD) in February 2005 complained 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 impediment to the right of free movement for the affected groups of citizens.[382] 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.[383]

In March 2006 the European Commission submitted the matters complained of to the Permanent Representation of Denmark before the EU in order to have the Danish Government's comments.[384] The Government responded in October 2006.[385] The abovementioned extension of the scope of application of the *Singh* principles to cover Danish citizens returning for retirement resulted from the administrative contemplations in connection with the preparation of this response to the Commission, in particular on the advice of the Ministry of Justice to the Ministry of Refugee, Immigration and Integration Affairs. Criticism of the latter has subsequently been raised by the Parliament's Ombudsman due to the lack of publicly available information about this change of administrative practice concerning the implementation of EU law.[386]

Public interest in the issue continued in 2007, 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 before the courts. 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.

In addition, there has been parliamentary action against the policy change that took place in 2004. Following the newspaper disclosure of internal discussions and reservations within the Ministry of Refugee, Immigration and Integration Affairs during the preparation

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381 See Danish Immigration Service, Family Reunification Guidelines No. 1/06 of 4 October 2006, p. 3 (quoted above). While this extension was expressly noted by the Danish Ministry of Employment (letter of 30 March 2007 to the European Commission, commenting on the European Report 2005), the ministerial letter does not seem to include information about the aforementioned restriction of the *Singh* principles.

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

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

384 Cf. letter of 20 April 2006 from the European Commission to DACoRD. See also letter of 11 May 2006 from the European Commission to staff reporter Henrik Vinther Olesen at the Danish newspaper Morgenavisen Jyllands-Posten.

385 Letter of 19 October 2006 from the Permanent Representation of Denmark to the European Commission.

386 Danish Parliament's Ombudsman, statement of 7 May 2007 to the Ministry of Refugee, Immigration and Integration Affairs. The Ombudsman made it explicit that his examination of the matter did not concern the legality of the change of administrative practice.

of the change of administrative practice in 2004, questions were raised to the Minister by opposition party members in December 2006 and January 2007.[387] In a recent attempt to disclose possible divergences between the two ministries involved in the matter, the Minister of Justice was questioned in a parliamentary committee hearing on 12 March 2007, yet with no detailed information about the internal discussions between the two ministries.[388]

In early 2008 an adjustment was made in the administrative practice concerning the right of residence for third country family members of Danish citizens returning from stay in another Member State on the basis of the EU rules on free movement. As a result of the ECJ judgment in *Eind*[389] the Ministry of Refugee, Immigration and Integration Affairs adopted new guidelines according to which the returning Danish citizen will be entitled to bring his or her family back to Denmark even if he or she is not employed or carrying out other economic activity at the time of return from abroad.[390]

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.[391] 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.

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387 Cf. transcript of the Minister hearing by the Parliament Committee on Aliens and Integration, 14 December 2006, question J, and answers of 4 January 2007 from the Minister of Refugee, Immigration and Integration Affairs to questions No. S 1625, S 1626, S 1627, S 1629, S 1630, S 1633, S 1634, and S 1635, raised by MP Morten Østergaard, FT 2006-07.

388 Cf. transcript of the Minister of Justice hearing by the Parliament Committee on Aliens and Integration, 12 March 2007, question P.

389 ECJ judgment of 11 December 2007 *Eind* (C-291/05).

390 Press release of 15 January 2008 from the Ministry of Refugee, Immigration and Integration Affairs. According to the Danish Ministry of Employment (letter of 27 February 2008 to the European Commission with remarks to the Report for 2006, p. 4), the change of administrative practice took place already on 11 December 2007. From the transcript of the hearing of the Minister of Refugee, Immigration and Integration Affairs by the Parliament Committee on Aliens and Integration, 15 January 2008, question A, it may be assumed that the administrative practice would be changed as of that date, while no concrete cases raising this issue were known to be pending at the time. According to a memorandum of 10 April 2008 from the Ministry of Refugee, Immigration and Integration Affairs, the change of practice would have legal effect as of 11 December 2007, whereas decisions made before that date were not to be re-examined on the authorities' own motion.

391 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.

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 (approx. 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 recognition – 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.[392]

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.[393]

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 revok-

[392] Danish Immigration Service, news release 21 March 2006: "Ny dom ændrer udlændingemyndighedernes praksis" (available at www.udlst.dk/Nyheder).

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

ing a residence certificate on the basis of an alert in SIS,[394] when the person in question is a family member of an EU citizen performing his or her right to free movement. The main point of 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.[395]

2. ACCESS TO WORK

According to the Aliens Act Section 14 (1) (ii) aliens are exempt from the requirement of a work permit if they are encompassed by the EU rules on free movement of persons, as described in Sections 2 and 6 of the Act. This exemption does not apply to EU-10 citizens.

Section 15 of the 2006 EU Residence Order, by contrast, exempts from the requirement to hold a work permit all persons who have the right of residence under the EU Residence Order. Given that Section 15 includes a reference to Section 14 (1) (ii) of the Aliens Act, the express rule for EU-10 citizens laid down in the Act seems to prevail, despite the fact that EU-10 citizens may in some circumstances qualify for residence right under the EU Residence Order.[396]

3. ACCESS TO EDUCATION AND STUDY GRANTS

Tuition is free for all EU/EEA students as well as for students participating in an exchange programme. As from 2006 all other students normally have to pay a tuition fee.[397]

By Act No. 312 of 18 April 2006 the Act on the State Education Grant ('SU-loven')[398] was amended to implement parts of Directive 2004/38 among other factors. The relevant provisions are Section 2 a (2) and (3), cf. Executive Order No. 1408 of 7 December 2007 ('SU-bekendtgørelsen') Sections 67-69, issued by the Ministry of Education in accordance with Section 2 a (4) of the Act authorizing the Minister to lay down rules on aliens' right to study grants. The Act and the Executive Order limit access to study grants for EU/EEA citizens who are *not economically active* in Denmark.[399]

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394 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.

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

396 According to the Danish Ministry of Employment (letter of 27 February 2008 to the European Commission with remarks to the Report for 2006, p. 4), the exemption under Section 15 of the EU Residence Order also applies to EU-10 citizens. While this may hold true in the example mentioned by the Ministry – an EU-10 citizen having the right to reside in Denmark as a student – it is probably incorrect as regards EU-10 workers. The recent amendments of the transitional rules have only changed the state of law on this point as regards those EU-10 workers who fulfil the conditions for EU residence right under Section 6 of the Aliens Act, cf. amended Section 14 (1) (ii) of the Act and Section 18 of the 2008 EU Residence Order (see also Chapter VIII.4).

397 Cf. Act No. 337 of 18 May 2005 amending the University Act, cf. the most recent Consolidation Act No. 1368 of 7 December 2007.

398 Consolidation Act No. 628 of 23 June 2005. The amending Act entered into force on 30 April 2006 as regards the relevant provisions. Cf. the most recent Consolidation Act No. 983 of 27 July 2007.

399 Cf. the explanatory memorandum to Bill No. L 95/2005-06, and see below.

According to Section 2 a (2) of the Act on the State Education Grant, students who are EU/EEA citizens and their family members can obtain study grants for education in Denmark and abroad on the conditions following from the EU rules or the EEA agreement. EU/EEA citizens who are not workers or self-employed and their family members do not acquire the right to study grants until they have resided for 5 consecutive years in Denmark, cf. Section 2 a (3).[400]

Aliens who are not Danish citizens or EU/EEA citizens

According to Executive Order No. 1408 of 7 December 2007 Section 66, students who are not Danish citizens or EU/EEA citizens can obtain study grants on equal conditions as for Danish citizens when the alien either

- is a German citizen belonging to the Danish minority in Southern Slesvig, or
- is an Icelandic citizen having resided in Denmark the 6 March 1946 or within 10 years before that date, or
- is encompassed by the Act on Integration, or
- upon entry in Denmark was below 20 and together with his/her parents took up residence in Denmark and the family still resides in Denmark, or
- just prior to the application has resided in Denmark for 2 consecutive years and has been, and still is, married or in a registered partnership with a Danish citizen for minimum 2 years, or
- just prior to the start of the education has resided in Denmark for minimum 2 years as a main rule and been working as an employee or self-employed for a minimum of 30 hours a week, or
- just prior to the application has resided in Denmark for 5 consecutive years when the stay in Denmark was not with the object of studying.

In cases of more than 2 years consecutive stay abroad, the right to study grants ceases until one of the above or below mentioned conditions once again are fulfilled, cf. Section 68 (3).

Students who are not Danish citizens cannot receive study grants if they can receive study grants in their home country, unless they are EU/EEA citizens, neither can foreign students receive study grants if they actually do receive study grants in their homeland, cf. Section 69.

Aliens who are EU/EEA citizens

According to Executive Order No. 1408 of 7 December 2007 Section 67, EU/EEA citizens can obtain study grants on equal conditions as for Danish citizens when the alien is either

- considered a *worker or self-employed person* under the EU rules
  The following categories are also considered encompassed by the concepts of worker or self-employed:
  - an EU/EEA citizen who has been working in Denmark as an employee or self-employed person, when there is relation between the education and the former work in terms of contents and time
  - an EU citizen who is involuntarily unemployed and as a consequence of health grounds or structural circumstances in the labour market is in need of re-education

[400] Consolidation Act No. 983 of 27 July 2007. See more below.

with the purpose of employment in a profession without relation to the former work in Denmark in terms of contents and time, or

- a *spouse* of an EU/EEA citizen who is considered a *worker or self-employed* under the EU rules, if he/she is or has been living with the EU/EEA citizen in the period of time when the EU/EEA citizen was a worker or self-employed in Denmark, or
- a *child* of an EU/EEA citizen who is considered a *worker or self-employed* under the EU rules, if the child resided in Denmark with the EU/EEA citizen and is or has been living with the EU/EEA citizen in the period of time when the EU/EEA citizen was a worker or self-employed in Denmark. It is a condition that the student is not of such age or status making it unreasonable to put emphasis on the parent's circumstances. If the child is not residing in Denmark at the time of the beginning of the education, the child is only entitled to study grants if the EU/EEA citizen is considered a worker or self-employed under the EU rules and has provided for the child until the time for the beginning of the education, or
- a *parent* to an EU/EEA citizen who is considered a *worker or self-employed* under the EU rules, if the parent is provided for by and lives with or has lived with the EU/EEA citizen in a period of time when the EU/EEA citizen is or was a worker or self-employed in Denmark, or
- an *EU/EEA citizen or family member* thereof who has resided for *5 consecutive years* in Denmark:
  - According to Consolidation Act No. 983 of 27 July 2007 Section 2 a (3), the stay in Denmark is not considered interrupted due to temporary stays outside the country when these stays in total do not exceed 6 months a year or when the stay abroad is of longer duration due to obligatory military service or if one stay of maximum 12 consecutive months is caused by special circumstances, such as pregnancy and birth, serious illness, studies or foreign assignment. In cases of more than 2 years consecutive stay abroad, the right to study grants cannot be required until a following stay in Denmark of 5 consecutive years.

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. 261-271.

Chapter VI
Relevance/Influence/Follow-up of Recent Court of Justice Judgments

1. RIGHT OF RESIDENCE FOR THIRD COUNTRY FAMILY MEMBERS OF DANISH CITIZENS

The impact of the ECJ judgments in *Singh*, *Akrich* and *Eind* is described and discussed in Chapter V.1, where also *Jia* is mentioned.

2. JOBSEEKERS' ENTITLEMENT TO SOCIAL ASSISTANCE

According to Section 12 a of the Act on *Active Social Policy*,[401] EU/EEA citizens residing in Denmark as first-time jobseekers on the basis of Community law are entitled to no other economic assistance than coverage of costs related to the return to their home country. This provision was inserted into the Act in implementation of the political agreement on access to the labour market following the EU enlargement.[402] In that connection it was 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 social assistance on a current basis during their stay in Denmark as first-time jobseekers.[403]

According to the available information, by the end of 2007 the National Appeals Board on Social Welfare ('Ankestyrelsen') had not examined any cases concerning Section 12 a of the Act on Active Social Policy.[404] Thus, the impact of the ECJ judgments in *Collins*, *Trojani* and *Ioannidis*[405] on the application of that provision has not yet been clarified by the National Appeals Board.

3. SOCIAL ASSISTANCE TO 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 social assistance ('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 *starting assistance* ('starthjælp') will be paid out instead. The provisions on reduced assistance and the residence requirement for entitlement to full social assistance were adopted in 2002. [406]

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401 Consolidation Act No. 1460 of 12 December 2007.

402 Act No. 282 of 26 April 2004. The transitional arrangements are described in Chapter VIII.

403 Explanatory memorandum to Bill No. L 153/2003-04, paras. II.1 and IX and specific comments on Section 12 a.

404 Search result from the list of appeals cases examined by the National Appeals Board on Social Welfare ('Ankestyrelsen'), available at www.dsa.dk/afgoerelser/principafgoerelser/default.asp?mode=search_result.

405 ECJ judgments of 23 March 2004 *Collins* (C-138/02), 7 September 2004 *Trojani* (C-456/02), and 15 September 2005 *Ioannidis* (C-258/04).

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

The purpose of the residence requirement and the reduced assistance that follows from non-compliance, as officially stated in the preparatory works of the legislation, was to create stronger incentives for refugees and immigrants to seek employment and become self-sufficient as an alternative to receiving social benefits.[407] From the political background and the legislative context it could be assumed that an additional, yet only implicit, purpose was to make it less attractive for third country citizens to come to Denmark and apply for asylum or other kinds of residence permit.[408] In any event, it was not intended to make the residence requirement an obstacle to the free movement of EU citizens.

This is demonstrated by Section 11 (6) of the Act on Active Social Policy, stating 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 the ECJ case law 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, nor to Danish citizens comprised by Regulation No. 1612/68, such as Danish citizens having resided as workers in another EU/EEA country.[409] Against this background, Section 11 (6) seems to imply that Danes and other EU/EEA citizens would only rarely, and mainly due to residence periods outside the EU/EEA Member States, be referred to the starting assistance as a result of non-compliance with the residence requirement.

A couple of decisions from the National Appeals Board on Social Welfare have created doubts about the scope of this EU exemption, in particular regarding Danish citizens who have resided under the EU rules in another Member State, and then move back to Denmark.

In the first case the applicant had returned to Denmark after a number of years of residence and work in another EU/EEA country. Upon return he applied for full social assistance, but was only granted the lower starting assistance. 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 requirement 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 case law of the ECJ, in particular the *Tsiotras* judgment,[410] invoking this as a basis of the assumption that the status of worker is lost in

[407] Cf. Ministry of Refugee, Immigration and Integration Affairs, *En ny udlændingepolitik* ('A new aliens policy'), government policy paper 17 January 2002, pp. 6-7, and the explanatory memorandum to Bill No. 126/2001-02 (2. Session), paras. 1 and 4.

[408] Ibid., p. 1, and explanatory memorandum to Bill No. 126/2001-02 (2. Session), para. 1. According to the Danish Ministry of Employment (letter of 27 February 2008 to the European Commission with remarks to the Report for 2006, p. 3), focus on the latter aspect of the legislative purpose in the 2006 Report should be seen as a result of "the expert's political opinion on starting allowance … it seems improper in report describing legislation. The purpose of the starting allowance is to give the individual an incentive to work and is based on a qualification principle – a principle which is in accordance with EU-legislation." The author of this part of the Report does not agree that focussing on the aspect mentioned above is a matter of political opinion, as it was considered relevant to the understanding of the EU law implications of the residence requirement.

[409] Explanatory memorandum to Bill No. L 126/2001-02 (2. Session), para. 5.4 and specific comments on Section 11 (4) (the EU exemption was moved to Section 11 (6) by amending Act No. 379 of 25 April 2007).

[410] ECJ judgment of 26 May 2003 *Tsiotras* (C-171/91). Particular reference was made to para. 11 of the judgment.

case of cessation of an employment contract unless it is documented that the EU citizen is genuinely job-seeking in the Member State in which he or she got unemployed.[411]

The National Appeals Board's decision cannot be considered legally sustainable, as it seems to be based on a 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. The National Appeals Board also confused 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 case law such as *Collins* or *Trojani*. Remarkably, already a month after the publication of this decision the National Appeals Board admitted another case concerning starting assistance in order to carry out a new principled examination "as a supplement" to the abovementioned decision.[412]

In its decision on the latter case, the National Appeals Board on Social Welfare maintained focus on the issue of having *acquired the status of worker* upon the Danish citizen's return to Denmark from another Member State.[413] While that criterion was rather obviously met in this case, it seems at the same time to detract attention from the more pertinent question of whether the person actually had such status while staying in another EU Member State. In the most recent appeals case the Danish citizen who applied for cash benefits had been living in Germany as a housewife for 21 years, when returning to Denmark with her four children. Although she might have been eligible for residence right under EU law in Germany, and she perhaps actually did hold an EU residence certificate there, that issue was never highlighted in the appeals case, and did not appear to be considered relevant at all by the National Appeals Board. While the latter decision is therefore questionable under Danish social welfare law for similar reasons as the abovementioned decision from December 2005 – and possibly also raises problems under EU law – it cannot as such be considered an impediment to the free movement of workers between Member States.

4. SIS CHECKS ON THIRD COUNTRY FAMILY MEMBERS

The guidelines described above in Chapter V.1 seem to comply with the recent judgment in *Commission v. Spain*.[414]

5. FOREIGN COMPANY VEHICLES

As a consequence of the judgments in *Commission v. Denmark* and *van Lent*,[415] the Ministry of Taxation introduced a bill to amend the Danish Act on Registration Tax on Motor Vehicles[416] in order for the Act to comply with these ECJ judgments.[417]

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411 National Appeals Board on Social Welfare ('Ankestyrelsen'), decision of 14 December 2005. Reported in A-1-06, 3 February 2006.

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

413 National Appeals Board on Social Welfare ('Ankestyrelsen'), decision of 30 August 2006. Reported in A-34-06, 1 December 2006.

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

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

416 Consolidation Act No. 977 of 2 December 2002, cf. the most recent Consolidation Act No. 804 of 29 June 2007 Section 1 (4)-(7).

417 Bill No. L 225/2005-06.

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 Act was adopted by the Parliament in June 2006, and entered into force shortly after.[418]

6. SUPPLEMENTARY PENSION SCHEMES

As a consequence of ECJ judgment of 30 January 2007, *Commission v. Denmark* (C-150/04) the Ministry of Taxation introduced a bill amending the Act on Taxation of Pensions and other acts.[419]

The Bill amending the Act on Taxation of Pensions allows tax relief on contributions paid to pension institutions not established in Denmark according to a 'bargaining model'.

The bargaining model has the effect that foreign pension institutions must enter into a binding agreement on conducting reporting, withholding and payment of tax on similar lines as Danish institutions. The agreement also involves the pension saver.

In more detail, tax relief is granted payments under contracts entered into with pension institutions established in other Member States, provided:

1. The pension provider
   - in its home country has a license to operate life assurance business, pension fund business or credit institution business; and
   - satisfies the conditions for pension institutes in the Danish Act on Taxation of Pensions; and
   - takes on the obligations specified for pension providers offering pension schemes encompassed by the Act on Taxation of Pensions ('bargaining model'); and
2. The pension scheme
   - fulfils the general conditions in the Act on Taxation of Pensions; and
   - is constructed in such a way that there is a clear relationship between the pension obligations and the ongoing pension contributions for every single member; and
3. The pension saver
   - agrees to be liable to taxation to Denmark of payments from the pension scheme according to the Act on Taxation of Pensions also after leaving the country, in circumstances where the double taxation avoidance treaty with the new country of residence implies taxation of pension payments at source; and

[418] Act No. 519 of 7 June 2006 (entered into force on the second day upon official promulgation of the amendment), cf. the most recent Consolidation Act No. 804 of 29 June 2007 Section 1 (4)-(7).

[419] Bill No. L 9 of 28 November 2007. For a detailed description of the course of events see above Chapter III.2.

- agrees to be liable to taxation of payments from the pension scheme to Denmark according to the Act on Taxation of Pensions, in circumstances where the double taxation avoidance treaty with the country where the pension is established implies taxation of pension payments at source.

As for foreign pension schemes brought to Denmark by persons in connection with taking up residence in Denmark, special rules on favourable terms will apply, as tax relief may be granted even if the pension schemes do not fully satisfy the conditions in the Act on Taxation of Pensions.

The Bill was adopted by Act No. 1534 of 19 December 2007, entering into force on 1 January 2008.

7. REAL PROPERTY ABROAD

As a consequence of ECJ judgment of 17 January 2008, *Theodor Jäger v. Finanzamt Kusel-Landstuhl* (C-256/06) the Danish tax authority ('SKAT') issued a message on 4 April 2008 changing the taxation of properties abroad[420] obtained after 2001 and owned by a person who is encompassed by the Danish rules on unlimited tax liability.[421]

The Danish tax authority found that the taxation of alien properties under the Act on Taxation of Property Value ('Ejendomsværdiskatteloven') Sections 1 and 4, cf. Sections 4 (11) and 4 a (5) and (7)[422] was incompatible with the judgment in *Jäger* and hence, the free movement of capital, cf. TEF Art. 56, as properties abroad were not being taxed according to the same principles as properties located in Denmark. This was due to the Danish tax stop maintaining the taxable value of properties located in Denmark at the 2001/2002-level, while the taxable value of alien properties obtained after 2001 was not fixed, but amounted to the market value at the time of the acquisition.

The message from the Danish tax authority determines that real property abroad owned by a person who is encompassed by the Danish rules on unlimited tax liability must be valuated according to principles similar to the principles applicable to properties located in Denmark. This valuation may take the alien valuation as its basis; provided the principles for the alien valuation do not deviate to a certain extend from the Danish principles on valuation of real property. In situations without an alien valuation comparable to the Danish valuation, the taxable value of the real property should be calculated on the basis of the acquisition costs which should be regulated down according to the average price movement from 2001/2002 to the time of the acquisition. In the regulation of the acquisitions costs, the Danish index for development in the prices for real property is applicable, unless it is established that a recognized alien index provides a higher or lower basis of calculation. Furthermore, there must be an adjustment for the average distance in percent between the Danish public valuations and the actual Danish market prices. Hence, the acquisition costs indexed to 2001/2002 should be reduced with the distance percentage. In addition to this, the real prop-

[420] It should be noted, that the message refers to real property *abroad* and not just real property located in another Member State. It is not clear whether this extension of the applicability of the mentioned principles is deliberate, as the message refers to the ECJ judgment in *Jäger* relating (only) to other Member States.

[421] SKM2008.320.SKAT, available at www.skat.dk/SKAT.aspx?oId=1747288&vId=0.

[422] Consolidation Act No. 1017 of 18 August 2007.

erty owner has freedom of choice between the result for 2001 plus 5% and the result for 2002.[423]

8. OTHER ECJ JUDGMENTS

As far as the possible relevance of the ECJ judgments in *Hartmann*, *Geven*, *Hendrix*, *ITC* and *Gattoussi* is concerned, no information was made publicly available, and the Ministry of Refugee, Immigration and Integration Affairs has not been able to identify any follow-up at the domestic level of these judgments.[424]

[423] These principles were applied prior to the above mentioned message changing the taxation in general in a decision of the Danish Tax Committee ('Skatterådet') in SKM2008.274 on 25 March 2008 concerning a real property in Sweden obtained in 2005. The Danish Tax Committee found that the taxable value of the real property should be calculated on the basis of the acquisition costs which should be indexed back to 2001/2002. Furthermore, the acquisition costs indexed to 2001/2002 should be reduced with the distance percentage between the Danish valuations and the Danish market value of the type of property in question. The public valuation in Sweden was found to be so different from the Danish valuation that the Swedish valuation could not be taken as basis. The decision is available at www.skat.dk/SKAT.aspx?oId=1746079&vId=0.

[424] Email of 26 June 2008 from the Ministry of Refugee, Immigration and Integration Affairs, followed up by telephone call and email of 5 September 2008 from the author to the Ministry.

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

1. FAMILY REUNIFICATION

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. In 2007 only less significant amendments – mainly involving streamlining of administrative procedures – were adopted with regard to family reunification.

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 Residence Order. Nonetheless, there is a link between the general Danish rules and EU law on free movement, because quite many persons being 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 (see further details in Chapter V.1). For that reason an overview shall be given of the most important general requirements concerning family reunification, primarily focusing on the reunification of spouses:[425]

- 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 in certain circumstances.[426]
- A *housing requirement* must be met.
- An *economic guarantee* of approx. 56,500 DKK (approx. 7,500 Euros) must be provided by the sponsor to cover any future public expenses to support the spouse.
- The sponsor must *not* have received *social 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. In addition, the spouses will normally be excluded from receiving social assistance in the form of cash benefits during a number of years upon family reunification.
- 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 normally not be granted.

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[425] Cf. Section 9 of the Aliens Act. It should be noted that most of the requirements mentioned above can be dispensed with in exceptional cases, generally under very restrictive criteria.

[426] This requirement was made more lenient as of 1 February 2007, cf. Act No. 89 of 30 January 2007 amending the Aliens Act. Instead, the spouses will normally be excluded from cash benefits under social welfare legislation during a number of years upon family reunification, see below.

- 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)*.
- 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. While signing such a declaration is an indispensable requirement for the issue of a permit for family reunification under the Aliens Act, it cannot be enforced by specific means directed towards the residence permit once the applicant has taken up residence in Denmark.

An amendment of the Aliens Act in 2005 aimed to accommodate parts of the criticism of the Danish rules on family reunification pronounced in 2004 by the Council of Europe's Commissioner for Human Rights. In a number of provisions of the Aliens Act wording was inserted in order to put emphasis on the particular weight to be given to *family unity considerations* in various cases involving the possible issuance of a residence permit for a family member, mostly as regards the criteria for dispensing with the normal requirements for family reunification.[427] Since family unity was already to be taken into account in such cases, the amendment may appear to be mainly 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*.[428]

Recent legal literature

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

2. 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.[429] 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.[430]

[427] Act No. 324 of 18 May 2005 amending the Aliens Act.

[428] Published in UfR (Weekly Legal Magazine) 2006, p. 711. The judgment is summarised and discussed above in Chapter V.

[429] Act No. 428 of 9 June 2004 amending the Aliens Act.

[430] Act No. 324 of 18 May 2005 amending the Aliens Act.

Chapter VIII
EU Enlargement

A political agreement was concluded on 29 June 2007 aiming to phase out the transitional arrangements for citizens of the new Member States (EU-8+2) taking up employment in Denmark. The draft Bill to implement the agreement was issued by the Ministry of Refugee, Immigration and Integration Affairs on 9 October 2007 with a view to entering into force on 1 January 2008. Due to the general elections in November this Bill was not tabled before the Parliament until 30 January 2008, and the amending act entered into force on 1 May 2008 (see further details below in section 4).

1. TRANSITIONAL ARRANGEMENTS REGARDING EU-8 MEMBER STATES

The EU enlargement as of 1 May 2004 was a major political focal point throughout 2004, and still has been in 2005 and 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 concern has continued, 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.[431] 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. And finally, the political agreement to revise the transitional arrangements for access to the Danish labour market and the changes of legislation adopted in 2006 will be presented. In addition, Chapter IX will include statistical information illustrating 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

[431] *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 at www.bm.dk/graphics/Dokumenter/Temaer/EU). The 4. edition was published in Danish in September 2006.

of the EU-8 Member States, to the Danish labour market, and their access to social benefits.[432] 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.[433] The main new provisions in Section 9 a (5)-(11) stipulated 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 was 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 Danish labour market. The employment had to be based either on a collective agreement, on an individual contract for researchers, specialists etc., or for other employees on individual contract conditions that could 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 had to be registered with the customs and tax authorities and must not be the subject of a lawful 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 contained specific information on a number of things, including a work description, rights with respect to holidays etc., and the employer was obliged to make a declaration on the fulfilment of all of the conditions mentioned above to the Danish Immigration Service which was processing applications for residence permits under this scheme, cf. Section 9 a (8) and (9).

When needed, the Danish Immigration Service could ask the Regional Labour Market Council to certify that the conditions listed in Section 9 a (5) and (8) were fulfilled, and the Immigration Service could transmit relevant information on the issue 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 (16).

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[432] The agreement is available in an English version at the website of the Danish Ministry of Employment (www.bm.dk). At this website the development with regard to the number of residence permits issued to workers from the EU-10 Member States, the impact on the labour market etc. can also be followed.

[433] Act No. 283 of 26 April 2004.

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

When the situation for EU-8 workers was 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 was like this:

- *Citizens from the EU-15 Member States, Cyprus and Malta*: Enjoying full free movement under the rules of the EU/EEA Order, as described in Chapter I.
- *Third country citizens*: A residence permit on the basis of employment would only be granted when essential employment considerations made it appropriate, cf. Aliens Act Section 9 a (1).
- *Citizens from the EU-8 Member States*: Were not encompassed by the EU/EEA Order's provisions on workers. The Aliens Act Section 9 a (5)-(11) was the relevant set of rules, meaning on the one hand that no labour market test would be applied, but on the other hand that a full-time job on the terms described above was 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) would thus be stricter than those under Section 9 a (1). Therefore, EU-8 citizens were entitled to have their application examined under Section 9 a (1) if it had been rejected under Section 9 a (5).

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*[434] was amended by inserting a requirement, according to which persons wanting to take leave under this Act should notify the authorities before 1 April 2004.[435] 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*[436] 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.[437]

The Act on *Active Social Policy*[438] was amended to specify that EU citizens on short term stay in Denmark, including persons seeking work for the first time, will not be eligible for economic assistance except for assistance in relation to the return to the home country.[439]

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

[435] Act No. 135 of 2 March 2004.

[436] Consolidation Act No. 761 of 11 September 2002 (later version: Consolidation Act No. 1047 of 28 October 2004, replaced by Act No. 563 of 9 June 2006).

[437] Act No. 282 of 26 April 2004. These amendments were specified in Executive Order No. 306 of 3 May 2004.

[438] Consolidation Act No. 709 of 13 August 2003 (later version: Consolidation Act No. 1460 of 12 December 2007).

[439] Act No. 282 of 26 April 2004. See also Chapter VI above.

Amendments of the EU/EEA Order and the Aliens Order

The EU enlargement was the main background for some of the amendments of the EU/EEA Order in 2004, especially the introduction of housing and support requirements in relation to family reunification.[440] 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[441] 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.[442]

Legislative amendments in 2005

In 2004 a number of legal and administrative questions were raised as a result of the experiences with the Danish transitional arrangements during the first months after the EU enlargement. In response to some of these questions, the transitional rules were amended and partly modified in 2005 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.[443]

Second, as a special rule concerning students from the EU-8 Member States, the new Section 13 (3) of the EU/EEA Order stated that a work permit *shall* be issued to an EU-8 citizen who is entitled to an EU residence certificate as a student (Section 2 of the EU/EEA Order) for the purpose of employment up to 15 hours a week, and full-time employment in the months of June, July and August.[444]

Third, a *12 months limitation* of the concrete effects of the transitional arrangements on the individual EU-8 worker was adopted in response to a question raised by the European Commission. This meant 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 em-

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[440] 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.

[441] 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. 810 of 20 June 2007).

[442] Executive Order No. 293 of 29 April 2004, amending Section 26 of the Aliens Order.

[443] Executive Order No. 655 of 29 June 2005, amending Section 13 of the 2004 EU/EEA Order (in force 1 July 2005).

[444] Executive Order No. 655 of 29 June 2005, amending Section 13 of the 2004 EU/EEA Order (in force 1 July 2005).

ployment for EU-8 citizens should cease to apply if the individual worker has been active on the Danish labour market for a minimum period of 12 consecutive months.[445]

The 2006 EU Residence Order upheld the 12 months limitation by stating that EU-8 workers acquire the right of residence in accordance with general EU free movement rules at the time when they have been affiliated with the Danish labour market during the past 12 consecutive months.[446]

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.[447]

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.[448]

2. 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 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

[445] 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. Section s 2-4 of the EU/EEA Order (the initial adoption of Section 13 (2) is described above).

[446] 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, Section 3 (1).

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

[448] Danish Immigration Service, Newsletter No. 4, 2 May 2006: "Hurtigere adgang for østarbejdere" (available at 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.[449]

3. THE LEGAL REGIME APPLICABLE FOR THE SECOND PHASE

As far as the residence rights of EU-8 citizens were concerned, the political agreement was followed up by amendments of the Aliens Act.[450] The main elements of the legislative amendments were the following:

- EU-8 workers could 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 could 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* might, however, be lifted subsequently by the Minister of Refugee, Immigration and Integration Affairs (cf. Section 9 a (17)).
- An EU-8 citizen having concluded a contract or having been offered employment with an employer who had obtained such general approval, would be *allowed to reside and work upon registration* with the Danish Immigration Service. If and when issued, the residence permit would have to be taken out by the worker within a period of 30 days after notification of the issuance by the Immigration Service (new Section 9 a (13) of the Aliens Act).
- EU-8 *students* would have the same *right to work* as students from other EU Member States (Sections 4 and 15 of the 2006 EU Residence Order).

Subsequently, the Aliens Order was amended in order to put into practice the revised agreement, in particular as regards the possibility for workers to obtain a work permit while residing abroad.[451] As an administrative follow-up, new guidelines were issued on the processing of requests from the Danish Immigration Service to the Regional Employment Councils for information concerning workers from the new Member States.[452]

Transitional measures for workers from Bulgaria and Romania

Already the political agreement of 5 April 2006 decided that, upon accession to the EU, Bulgaria and Romania would be encompassed by the same transitional arrangements as the EU-8 Member States, including the modifications adopted in 2006. As a result, Section 9 a (19) was adopted, authorising the Minister of Refugee, Immigration and Integration Affairs to put the transitional provisions of Section 9 a (5)-(18), as amended, into force for Bulgarian and Romanian citizens. Thus, it was left with the Minister to decide the date of entry into force, depending on the actual accession date for the two new Member States, as well as to limit

[449] Ministry of Employment, Overview of the revised agreement, 6 April 2006 (available at www.bm.dk/graphics/Dokumenter/Temaer/EU).

[450] 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.

[451] Cf. Executive Order No. 63 of 22 January 2007 (Aliens Order), Section 34 (6).

[452] Guidelines No. 9758 on the Regional Employment Councils' processing of information requests from the Danish Immigration Service, Ministry of Employment, 6 July 2007.

the scope of these transitional arrangements by making the provisions only partly applicable to citizens from Bulgaria and Romania.[453]

As of 1 January 2007 the transitional rules were extended to cover citizens of Bulgaria and Romania on the same conditions as those applying to EU-8 workers.[454]

4. PHASING OUT THE TRANSITIONAL ARRANGEMENTS (2008)

On 29 June 2007 a political agreement was concluded with the aim of phasing out the transitional arrangements for citizens of the new Member States (EU-10) taking up employment in Denmark.[455] According to a memo published by the Ministry of Employment, the revised 'East Agreement' contains the following elements aiming to ease access for EU-10 workers to Denmark while at the same time ensuring the relevant Danish authorities better possibilities to check that the work is carried out on decent terms:

1. Revised transitional rules for workers from the EU-10

• All workers from the EU-10 who are covered by a collective agreement will be exempted from the requirement for a work permit. It must be documentable from the beginning that the person is employed under a collective agreement. The proposal also applies to highly-skilled researchers, teachers and specialists who are employed in companies covered by a collective agreement (even if their pay and working conditions are regulated through individual employment contracts).

• Workers from the EU-10 who stay for more than three months in Denmark must have an EU/EAA residence certificate from the regional state administrations. The regional state administrations will request documentation that the terms and conditions of the employment are covered by a collective agreement.

• Workers from the EU-10 with more than 12 months of consecutive legal employment in Denmark, will be on an equal footing with nationals from the other EU Member States.

• For workers from the EU-10 who are employed in a job not covered by a collective agreement, the existing rules with requirements for a work permit, apply. However, efforts will be made to bring down the case-processing time.

2. Enhanced monitoring

• The National Labour Market Authority will establish a new monitoring system to monitor the in-flow of foreign labour to the Danish labour market. This monitoring system will be based on information from the regional state administrations' register and from the Danish Immigration Service.

3. Enhanced regulatory enforcement

• The Ministry of Taxation, the Ministry of Economic and Business Affairs and the Ministry of Employment will create a common register of foreign companies and workers posted to Denmark. The objective is to improve the monitoring of health and safety conditions, illegal work and VAT and tax payments.

• The Working Environment Authority will perform unannounced screening visits and adapted inspection of foreign building and construction companies in the same way as applies to Danish companies. At least four annual actions are planned for 2008 and 2009.

• In cases where there is a risk the company will leave the country quickly, the Danish Working Environment Authority may carry out an adapted inspection without prior warning.

• In 2008, the Danish central tax administration will concentrate on tax and VAT payments by foreign companies, posted/hired-out labour or foreign self-employed persons. The central tax administration is planning to carry out at least four inspection actions in 2008 aimed at e.g. foreign companies.

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453 Section 2 (2) of Act No. 532 of 8 June 2006, amending the Aliens Act.

454 Executive Order No. 1265 of 4 December 2006.

455 An English version of the agreement is available at www.bm.dk/sw7008.asp.

• Measures against illegal work will be enhanced in the new police districts. Future measures by the police will include supervision of the use of foreign drivers, for example in connection with cabotage (domestic) transport.
• The police districts will carry out intelligence-based actions against illegal work. These will be on the basis of systematic collection, processing and analyses of information on illegal work.
• The Danish Immigration Service will perform random administrative controls of whether workers from the EU-10 employed at companies not covered by collective agreements are complying with the conditions for the work permits. In cases of well-founded suspicion, the police can carry out inspections at specific companies.
• Furthermore, special inspection actions aimed at illegal work will be carried out by relevant authorities in collaboration.

4. The role of the social partners
• The social partners continue to play a central role in ensuring decent terms and conditions in the Danish labour market. This also applies with regard to foreign companies posting employees to Denmark.
• Within the framework laid down by Community law and the Danish Act on Processing of Personal Data, the social partners will thus have access to information about foreign companies' name, business address in the home country, contact person in Denmark, sector, and periods of operation in Denmark.
• Disputes as to the interpretation of current collective agreements must be clarified within the collective labour law system. This also applies for foreign nationals posted to Denmark by foreign companies covered by a Danish collective agreement.
• If a foreign employer is judged and liable for penalties, back-payments and/or compensation for violating a current collective agreement, the judgement can be enforced in the home country of the company via the national courts.

5. Improved information about terms and rules in the Danish labour market
• A pool with funds will be established, earmarked to provide information about Danish labour market conditions and terms and rules of relevance to foreign workers or service providers.
• The website "posting.dk" will be updated. The leaflet "Working in Denmark – a guide to the Danish labour market" and the manual "Rules on residence and work for citizens" will also be updated.

6. Continuous analyses of trends in the labour market
• The Ministry of Employment will take initiative to perform analyses of the challenges facing the Danish labour market as a consequence of EU enlargement and increased mobility.

7. Social benefits
• As a consequence of the changes to the transitional rules, workers from the EU-10 who become unemployed and stay on in Denmark to look for a job are entitled to daily benefits or cash benefits, if they otherwise meet the relevant conditions. This means that nationals from the EU-10 will be on an equal footing with nationals from the other EU Member States.
• The National Directorate of Labour will monitor the development and ensure control of the allocation of benefits to workers from EU-10.[456]

A draft bill to implement the first element, revising the transitional rules on work and residence for EU-10 citizens, was issued for public consultation by the Ministry of Refugee, Immigration and Integration Affairs on 9 October 2007 with a view to entering into force on 1 January 2008. Due to the general elections in November 2007, the bill was not formally tabled before the Parliament until 30 January 2008.[457] The amending act was adopted by the Parliament on 17 April and entered into force on 1 May 2008.[458]

[456] Ministry of Employment, Memo about the revised Danish East Agreement, no date (available at www.bm.dk/graphics/English/Documents/2007/Pressenotat_revision_220607_MAAL_ENG.pdf).
[457] Bill No. L 65/2007-08 (2. Session).
[458] Act No. 264 of 23 April 2008, amending the Aliens Act.

The main principle guiding the amendments of the Aliens Act is the distinction between jobs and companies covered by *collective agreements*, and those which are not covered by such agreements. According to the amended Section 6 of the Aliens Act, EU-10 workers employed under a collective agreement will have the right of residence in Denmark on equal footing with other EU workers (Section 6 (2)). Researchers, teachers, managers and highly-skilled specialists will have the same right of residence even if their terms of employment are settled in an individual contract, provided that the company is otherwise covered by a collective agreement (Section 6 (3)).[459] In the latter case, the employer must issue an affidavit on the employment conditions to the Regional Government Administration, and the company must provide workers employed under a collective agreement with written documentation stating the collective agreement applicable, cf. Section 6 (3) in fine and Section 6 (4), respectively.

While EU-10 citizens employed under a collective agreement or by a company covered by such an agreement, in accordance with the abovementioned provisions in Section 6 (2) and (3) of the Aliens Act, are exempted from the requirement of *work permits*, this requirement is upheld for other EU-10 workers. For those who are neither personally covered by a collective agreement nor employed as highly-skilled specialists etc. in companies covered by such an agreement, the transitional rules continue to apply.

These rules have been formally modified in the sense that *only a work permit* is required under the amended Section 9 a (5) and (6). The former provision deals with EU-10 workers in general, the latter with researchers, teachers, managers and highly-skilled specialists. According to the 2008 EU Residence Order, these categories of workers will have the *right of residence* if they fulfil the conditions for a work permit under Section 9 a (5) or (6) of the Aliens Act.[460] This modification was introduced in order to bring the transitional rules in line with Directive 2004/38, as the possibility of maintaining transitional arrangements was considered to relate only to the right to seek and take up employment.[461] In any case, once an EU-10 worker has been affiliated with the Danish labour market for 12 consecutive months, he or she will be entitled to residence under the general EU rules on free movement.[462]

As a consequence of the amended rules on EU-10 workers, the system of *prior general approval* of employers covered by a collective agreement introduced in 2006 (see above Section 3) was considered unnecessary, and the provision to this effect was therefore abolished. However, with a view to further easing access to the Danish labour market for EU-10 citizens, the Minister of Refugee, Immigration and Integration has been authorised to issue rules on such an approval system for employers *not* covered by a collective agreement.[463]

Judicial practice

No court decisions have been published concerning the interpretation of the transitional rules in the Aliens Act. As it appears from the above, this should not be taken to suggest that the application of these rules do not raise any practical problems.

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[459] The delimitation of these categories of employees, which is thus decisive to the applicability of the general EU rules on free movement, was clarified in the explanatory memorandum to Bill No. L 65/2007-08 (2. Session), pp. 14-15.

[460] Section 3 (3) of the 2008 EU Residence Order.

[461] Explanatory memorandum to Bill No. L 65/2007-08 (2. Session), pp. 8-9.

[462] Section 9 a (7) of the Aliens Act, and Section 3 (4) of the 2008 EU Residence Order.

[463] Section 9 a (14) of the Aliens Act, cf. explanatory memorandum to Bill No. L 65/2007-08 (2. Session), p. 17.

According to a High Court judgment from January 2006, an employer was sentenced a fine of 50,000 DKK for the illegal employment of a Latvian worker from November 2004 until March 2005 and again for some weeks in May 2005.[464] Since the employer admitted to have been aware of the fact that the Latvian had no work permit, but unaware that such permit was required under the Aliens Act, the judgment does not settle any principled legal issues relating to the application of the transitional rules.

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. 257-258.

[464] High Court of Western Denmark, judgment of 16 January 2006. Published in UfR (Weekly Legal Magazine) 2006, p. 1323.

Chapter IX
Statistics

GENERAL STATISTICS ON EU/EEA CITIZENS

14,620 new residence certificates were issued pursuant to the EU/EEA Residence Order in 2007, as compared to 12,802 in 2006. The basis of these certificates varied according to these main categories: Paid employment 31%, students 41%, family members 20%, and others 8%.[465]

In absolute figures, the various categories of certificates and the main EU countries of origin were the following:[466]

EU/EEA residence certificates issued

Category	2007 Total	Germany	Poland	Great Britain	2006 Total
Residence certificates	**14,620**	**4,287**	**1,710**	**1,214**	**12,802**
▪ *Persons in paid employment*	*4,532*	*2,187*		*681*	*3,684*
▪ *Students*	*5,996*	*932*	*897*	*146*	*5,753*
▪ *Family members of EU/EEA citizens*	*2,980*	*856*	*731*	*181*	*1,941*
▪ *Others, including* o Self-employed persons o Persons of sufficient means o Retired persons	*1,112* 94 1,007 *11*	*312*	*82*	*206*	*1,424*
Refusal of certificate	**71**	**4**	**37**	**0**	**136**
Total	**14,691**	**4,291**	**1,747**	**1,214**	**12,938**

Next to Germany, Poland and Great Britain, the main EU countries of origin were France, Spain, Italy, Netherlands, Lithuania, Rumania, Latvia, Austria, Portugal, Bulgaria, Hungary, Belgium, the Czech Republic, Switzerland, Greece, Estonia, Ireland, Slovakia, Slovenia, Sweden, Norway, Cyprus, Finland, Liechtenstein, Malta and Luxembourg.[467]

Statistics pertaining to the EU enlargement

13,773 new residence (and work) permits were issued pursuant to Section 9 a (5) of the Aliens Act to workers from the EU-10 Member States in 2007, as compared to 10,353 in 2006. Among these a number of 'new' residence permits were issued to EU-10 workers who previously held a residence permit based on another employment contract. In this figure ap-

[465] *Tal og fakta på udlændingeområdet 2007*, The Ministry of Refugee, Immigration and Integration and the Danish Immigration Service, March 2008, p. 24, available at www.nyidanmark.dk/NR/rdonlyres/F496DBF0-6520-4666-BD73-FFA22A74687A/0/tal_og_fakta_2007.pdf.

[466] *Ibid*., p. 24 (author's translation).

[467] *Ibid*., p. 25.

proximately 10,000 workers without a formal permission should be included, as enterprises covered by a collective agreement may obtain prior approval for employment of citizens from the East European EU Member States.[468]

The residence permits in 2007 varied according to their basis and the countries of origin of the applicant EU-10 workers as follows:[469]

Section 9 a (5) residence permits issued

Category Nationality	**2007 total**	Employers covered by collective agreement (Section 9 a (5) (i))	Individual contracts (Section 9 a (5) (ii))	Usual conditions of pay and employment (Section 9 a (5) (iii))
Bulgaria	239	161	19	59
Estonia	155	129	13	13
Latvia	621	503	7	111
Lithuania	1,795	1,514	26	255
Poland	9,394	8,468	154	772
Rumania	632	382	63	187
Slovakia	428	393	11	24
Slovenia	15	6	4	5
Czech Republic	87	56	16	15
Hungary	407	279	20	108
Total	**13,773**	**11,891**	**333**	**1,549**

The 13,773 residence permits to EU-10 workers issued in 2007 were based on the three different types of employment under Section 9 a (5) of the Aliens Act (see above Chapter VIII) as follows:

- 86,33% (11,891 permits) were issued pursuant to Section 9 a (5) (i) on employers covered by collective agreements,
- 2,42% (333 permits) were issued pursuant to Section 9 a (5) (ii) on individual contracts for researchers, specialists etc.,
- 11,25% (1,549 permits) were issued pursuant to Section 9 a (5) (iii) on employees with individual contracts providing usual conditions of pay and employment.

In 2007, the residence permits issued to persons actually working in Denmark were divided between the following branches of the labour market: Construction, business service, agriculture, gardening and forestry, food, beverage and tobacco industry, iron and metal industry, post and telecommunication, hotels and restaurants, associations, culture and renovation, transportation, health care, wooden, paper and graphic industry and furniture industry and

[468] *Ibid*., p. 3 and p. 16. See above Chapter VIII on prior approval.
[469] *Ibid*., p. 16 (author's translation).

other industry. Next to construction, the main branches were business service and agriculture, gardening and forestry.[470]

[470] *Ibid*., p. 17 showing a graph illustrating the branches prioritized beginning with the branches having the largest numbers of residence permits.

Chapter X
Miscellaneous

LEGISLATION LINKS

The Aliens Act, Consolidation Act No. 808 of 8 July 2008
- in Danish: www.retsinformation.dk/Forms/R0710.aspx?id=120712
- in English (not updated – most recent translation is Consolidation Act No. 945 of 1 September 2006): www.inm.dk/resources.ashx/Resources/Lovstof/Love/UK/aliens_act_945_eng.pdf

The 2006 EU Residence Order, Executive Order No. 358 of 21 April 2006
- in Danish: www.retsinformation.dk/Forms/R0710.aspx?id=29033

The 2008 EU Residence Order, Executive Order No. 300 of 29 April 2008
- in Danish: www.retsinformation.dk/Forms/R0710.aspx?id=116794

The 2007 Aliens Order, Executive Order No. 810 of 20 June 2007
- in Danish: www.retsinformation.dk/Forms/R0710.aspx?id=29075
- in English (not updated – most recent translation is Executive Order No. 943 of 5 October 2005): www.inm.dk/resources.ashx/Resources/Lovstof/Love/UK/udlaendingebktg_943_eng.pdf