

REPORT
on the Free Movement of Workers
in Latvia in 2008-2009

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Chapter I

Entry, Residence, Departure

Entry, residence and departure are generally regulated by the Immigration Law.¹ Articles 69 and 70 of the Immigration Law entrust the Cabinet of Ministers to adopt relevant regulations for free movement of European Union (EU) citizens and citizens of the European Economic Area (EEA) and the Swiss Confederation.

The issues relating to entry, residence and departure are regulated in detail by the Regulations No. 586 ‘On the Procedure by which EU Citizens, EEA Citizens and Citizens of Swiss Confederation and Their Family Members enter and reside in the Republic of Latvia’² (hereinafter – Regulations No. 586) adopted by the Cabinet of Ministers on July 18, 2006. The Regulations implement Directives 96/71/EC and 2004/38.

Regulations No. 586 have not been amended since the adoption.

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Article 7(1)(a)

First, Article 6(1) provides that all European Union citizens shall have the right to reside within the territory of another EU Member State (further – MS) for the period of up to three months. Implementation of this provision is inaccurate in mathematic terms. Points 12 and 18 of Regulations No. 586 provide that a European Union citizen (including citizens of EU, EEA and the Swiss Confederation) has the right to reside without registration for 90 days from the day of arrival. It follows that provisions of Regulations No. 586 are less favourable, because more frequently consecutive three months constitutes more than 90 days.

Point 20 of Regulations No. 586 implements Article 7(1)(a) of the Directive 2004/38.

A European Union Citizen is not under an obligation to obtain a registration certificate if he/she resides in Latvia longer than 90 days and:

- resides in Latvia for up to six months within a period of one year for the reason of employment;
- is employed in Latvia but resides in another country of the European Union where he/she returns weekly.

Article 7(3)(a)-(d)

Point 22 of Regulations No. 586 implements requirements of Article 7(3) (a)-(d) of the Directive 2004/38.

1 *Official Gazette* (further *OG*) No. 169, 20.11.2002 as amended until 2008 *OG* No. 80, 23.05.2008. A number of new amendments, including amendments of the Immigration Law, are published on the OCMA website <http://www.pmlp.gov.lv>. All laws and regulations referred to in this report are taken from the commercial database www.likumi.lv available at <http://www.likumi.lv>. Translations of some laws are available at <http://www.ttc.lv/?id=59>. However, not all of these include the latest amendments and the list is incomplete.

2 *OG* No. 114, 20.07.2006.

Point 22 of Regulations No. 586 provides that a European Union Citizen retains the status of an employee or a self-employed person if he/she:

- is unable to work due to an illness or accident;
- is registered as an unemployed person or jobseeker at the State Employment Agency and has previously been employed for a longer period than one year and unemployment has occurred due to the circumstances not depending upon him/her;
- is registered as an unemployed person or as a jobseeker at the State Employment Agency in the first 12 months after engagement in employment. In this case, an employment status must be retained for up to 6 months;
- has started to obtain a professional education connected with previous professional activities in an educational establishment registered by the Register of Educational Establishments.

Thereby, requirements of Article 7(3) (a)-(a) of the Directive 2004/38 are implemented correctly.

Article 8(3)(a)

For the purposes of getting a registration card, Point 21 of Regulations No. 586 requires production of a valid travel document and submission of an official questionnaire and confirmation that his/her status corresponds to Point 20 of Regulations No. 586, namely, a European Union citizen is an employed or self-employed person.

Practical application of the requirements of Point 21 of Regulations No. 586 is more complicated. Complications concern the official questionnaire. In practice a European Union citizen must complete the same official questionnaire as any third country national wishing to obtain a residency permit.

An official questionnaire is adopted by Regulations No. 813³. There are twofold problems.

First, Regulations No. 813 are adopted on the basis of several articles of the Immigration Law. None of these articles regulates free movement of the European Union citizens and their family members. The Articles of the Immigration law which regulate free movement of the European Union citizens of their family members are Articles 69 and 70. Regulations No. 813 however are not adopted on the basis of Article 69 and 70, thus, formally Regulations No. 813 may not be applicable to the European Union citizen and his/her family member. Nevertheless, in practice the Office of Citizenship and Migration Affairs (hereinafter: OCMA) applies Regulations No. 813 to the European Union citizens and their family members.

Second, the official questionnaire of Regulations No. 813 is very detailed and obviously requires excessive information in the context of free movement of the European Union citizen and his/her family members. The official questionnaire requires the following data:⁴

- i. The purpose of immigration (reason of residing, desirable length of stay, profession, if the purpose of the stay is employment);

3 Regulations No. 813 of the Cabinet of Ministers 'Regulations regarding Residence Permits', adopted on 03.10.2006.

4 For more detailed information see the official questionnaire on the web page of OCMA at http://www.pmlp.gov.lv/lv/documents/pakalpojumi/uzturesanas/veidlapa_UA.pdf.

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- ii. Personal data (name, former names, if they has been changed, date and place of birth, registration of birth and birth registration number, issuing state and authority, sex, nationality, place of residence in the home country, expected place of residence in Latvia);
- iii. Travel document valid for obtaining a residence permit (issuing country, authority, date of issue, date of expiration);
- iv. Do you have a permission to reside in another country (if yes, what kind of a residence permit do you have – permanent, temporary up to 12 months, over 12 months);
- v. Marital status (married (name of spouse, date of birth or personal code, nationality, place of residence, place of marriage), single, divorced (names of ex-spouses, date of birth, date and place of marriages, date and institution in charge of divorce), widower (date of death));
- vi. Information on your relative (children of spouse, including adult child (name, date of birth, sex, nationality, marital status, place of residence), parents (name, date of birth, sex, nationality, marital status, place of residence), brothers and sisters (name, date of birth, sex, nationality, marital status, place of residence, if dead – indicate the date of death), guardian or trustee (name, date of birth, sex, nationality, marital status, place of residence, date of establishment of guardianship, place and country, registration number and institution, term for guardianship), persons in your guardianship (name, date of birth, sex, nationality, marital status, place of residence, date of establishment of guardianship, place and country, registration number and institution, term for guardianship);
- vii. Knowledge of languages (fluent/sufficiently to communicate, no proficiency – an obligation to indicate proficiency of Latvian; native language, communication language in family);
- viii. Employment (places of employment within the last five years (period of time, employer, occupation/position));
- ix. Education (primary/secondary/vocational, higher (acquired education, name of educational institution, year of entry and graduation));
- x. Your previous stay in Latvia (period of time, place of residence, reason of stay, refusal of stay, expel);
- xi. Residence in foreign countries (registered places of residence outside Latvia from 1991, period of time, country, address, refused entry in another country, expel);
- xii. Have you ever served in military (except compulsory) service or any special service;
- xiii. Criminal record;
- xiv. Person who invites;
- xv. Additional information;
- xvi. Declaration (testify of truthful and full data provided in questionnaire, testify of non-existence of health disorders and diseases listed in Regulations, have sufficient means to reside in Latvia.

There are two reasons of requesting such detailed information. One of them is stated already above – a questionnaire is intended for third-country nationals. The second reason is a necessity to include all persons having residency permit into the Population Register. According to the Law on Population Register⁵ the Population Register must contain detailed data on a person and his/her family members, such as children (personal data), martial status, spouse (personal data), parents (personal data). The problem is that, on the one hand, legal regula-

5 OG No. 261/264, 10.09.1998 as amended until 2007, OG No. 107, 05.07.2007.

tion of the Population Register falls within the national competence and it requires detailed data because it serves as a central data base for permanent residents of Latvia such as citizens and non-citizens. On the other hand, in the light of free movement of the European Union citizens, the amount of information requested by the Population Register is disproportionate.

The official questionnaire requires evidence of sufficient financial resources. It is first, in breach of Article 7(1)(a). Second, in practice OCMA considers a minimum wage as defined by Latvian normative acts as 'sufficient resources'. On 2008, a minimum wage was LVL 160,⁶ while the threshold below which Latvian citizens are entitled to social assistance was LVL 27.⁷ Such practice is contrary to the Article 8(4) of Directive 2004/38.

However, that is not all. Point 38 of Regulations No. 586 provides that OCMA has the right to require and receive information on the purpose of the residence of the particular European Union citizen and his/her family member from a European Union from executive institutions and from the courts. Besides OCMA has the right to request information on previous violations of law committed by the European Union citizen and/or his/her family member from the state of their previous residence within three months after application for the residence right.

OCMA issues a registration certificate for an indefinite term. However, there is one more practical problem which a European Union citizen may experience after obtaining the registration certificate. The registration certificate provides an address of the place of residence. Consequently, in case if a European Union citizen changes his/her place of residence, he/she must change the registration certificate, as well. It is more likely that a migrant worker would change his/her place of residence in Latvia, because usually they are tenants rather than owners of the immovable property where they reside. Such regulation creates obstacles for free movement. Besides there are no obvious legitimates aim. Consequently such obstacle is more likely unjustified.

Article 14 (4) (a)-(b)

Point 48.1 of Regulations No. 586 stipulates that a European Union citizen and his/her family member lose their rights to reside in Latvia if he/she has become an unreasonable burden of the social assistance system, unless this citizen is an employed or self-employed person in Latvia. Requirement of Article 14(b) of Directive 2004/38 does not appear in Regulations No. 586.

It is also indefinitely established under what conditions a person may be considered as 'an unreasonable burden of the social assistance system'. Unlike as stated in the Report of the Commission to the European Parliament and the Council,⁸ Latvia does not have a detailed regulation on what constitutes an unreasonable burden. The only legal regulation on this matter is found in the last sentence of Point 48.1 of Regulations No. 586 stating that in the course of assessment of the burden such aspects as term of residence of a person in Lat-

6 Regulations No. 592 'Regulations regarding the Minimum Monthly Salary and the Minimum Hourly Wage Rate' adopted by the Cabinet of Ministers on 28.08.2007.

7 Regulations of the Cabinet of Ministers No. 693 'Regulations on the Level of the Guaranteed Minimum Income and Amount of Allowance for the Provision of the Level of Guaranteed Minimum Income', *OG* No. 176, 12.12.2003, as amended until 2006 *OG* No. 204, 22.12.2006.

8 COM(2008) 840/3

via, amount of allowance, regularity of request of such allowance, as well as reason for requesting the allowance must be considered as the basic reason for deeming a European Union citizen or his/her family members as unreasonable burden Latvian social assistance system.

Article 17

The requirement of Article 17(1) (a) – (c) of Directive 2004/38 is implemented by Points 24 and 25 of Regulations No. 586. Point 24 prescribes:

A European Union citizen who has resided in Latvia as an employed or self-employed person for less than five years, has the right to permanent residence if he/she:

- has reached the retirement age, provided that he/she has been working in Latvia for at least 12 months and has resided there continuously for more than three years. Periods of the employment spent in another MS of EU, EEA or Confederation of Switzerland shall be regarded as having spent in Latvia.
- has resided in Latvia for more than two years and has stopped working as a result of permanent incapacity for work. If such incapacity for work has occurred due to the accident at work or occupational disease entitling person to the right to a benefit in Latvia, a condition on the length of residence is not applicable. The periods of employment spent in another MS of EU, EEA or Confederation of Switzerland shall be regarded as having spent in Latvia.
- after three years of continuous employment and residence in Latvia, working in the capacity of an employee or a self-employed person in another Member State, while retaining their place of residence in Latvia, to which he/she returns each day or at least once a week.

Point 25 provides that unemployment periods registered in the State Employment Agency which occurred involuntary, and periods of absence from work or cessation due to the illness or accident shall be regarded as periods of employment.

Point 26 of Regulations No. 586 implements requirements of Article 17(2) of Directive 2004/38. It provides that requirement of the length of residence provided by Point 24 is inapplicable if a spouse of a European Union citizen is or has been a citizen of Latvia but has lost citizenship of Latvia due to the marriage with a European Union citizen.

Article 17(4) of Directive 2004/38 is implemented by Point 33 of Regulations No. 586. Point 33 of Regulations No. 586 ‘copy out’ provisions of Article 17(4) of Directive 2004/38.

It follows that the provisions of Article 17(1), (2) and (4) seems to be implemented fully and correctly.

However, there are problems with the correct implementation of the requirements of Article 17(3) of Directive 2004/38. Point 31 and 31.2 envisage that in case a European Union citizen obtains permanent residence right, his/her family member is also entitled to the permanent residence permit, which, however, has to be issued for the period of 10 years residence only.

Article 24(2)**Social assistance**

Social Services and Social Assistance Law⁹ regulates the system of social assistance and social services. Article 3(1) of the aforementioned law provides that foreigners who have obtained Latvian personal code, except those foreigners who have a residence permit are entitled to the right to social assistance. It follows that according to this provision only those foreigners have the right to social assistance who have a temporary permanent residence permit, as well as those who have obtained Latvian personal code. Another social assistance allowances are to be provided by municipalities according to their financial resources. The only social assistance allowance which must be provided by municipalities is a minimum income guarantee allowance.¹⁰ In order to get this allowance a person must register his/her place or residence in one of the municipalities and then claim this allowance from the respective municipality.

Actually, a European Union citizen could obtain Latvian personal code and declare place of residence only by acquisition of the official residence right. A person may declare his/her place of residence and obtain a personal code only if this person is registered in the Population register. Until this registration a person does not have any official ties with Latvia.

In this context, the provision of Point 39 of Regulations No. 586 seems strange. It requires municipalities to provide data on social assistance required by a European Union citizen or his/her family members to the OCMA within 10 days of application for social assistance.

Social benefits

Other social benefits falling outside the scope of Regulation 1408/71 but falling within the scope of Article 24(2) of Directive 2004/38 is provided by the Law on State Social Allowances.¹¹ Article 4(1) of the Law on State Social Allowances¹² provides that the law is applicable to the foreigners who have obtained a personal code and permanently reside in Latvia. Consequently, a European Union citizen and his/her family member have obtained a residence permit (registration card) in order to obtain a personal code so that to be included in the Population Register. The Ministry of Welfare¹³ considers that after obtaining of the residence permit (registration card), personal code and inclusion in the Population Register, a European Union citizen and his/her family member are qualified as beneficiaries under Article 4(1) of the Law on State Social Allowances. However, the situation is not so clear, because the aforementioned provision grammatically requires permanent residence and there is no guarantee that it will be interpreted according to the considerations expressed by the Ministry of Welfare.

9 *OG* No. 168, 19.11.2002.

10 Regulations of the Cabinet of Ministers No. 693 'Regulations on the Level of the Guaranteed Minimum Income and Amount of Allowance for the Provision of the Level of Guaranteed Minimum Income', *OG* No. 176, 12.12.2003, as amended until 2008 *OG* No. 198, 19.12.2008.

11 *OG* No. 168, 19.11.2001, as amended until 2007 *OG* No. 190, 19.11.2007

12 *OG* No. 168, 19.11.2001, as amended until 2007 *OG* No. 190, 19.11.2007

13 Letter of 09.03.2009, No. 09.2-07/753.

Education

Education Law¹⁴ is an umbrella law for the whole education system of Latvia and concerns pre-school education, primary education, secondary and professional education and higher education. Article 3 of the Education Law provides that any EU national who has a residence permit, as well as his/her children have equal right to education. Any person holding a permanent residence permit has the right to education. Article 3 of the Education Law does not correspond to the requirement of Article 24(2), because it does not cover other members of the family, for example, such as children of the spouse of EU citizen. Furthermore, the Education Law refers to the EU citizens only, leaving out citizens of EEA and Confederation of Switzerland.

On the other hand, Article 83 of the Law on Institutions of Higher Education¹⁵ specifies that persons without a permanent residence permit may be admitted to institutions of higher education. Article 83(1)(5) provides that European Union citizens and their family members who are studying in Latvia have equal rights with Latvian citizens as regards education fees. It follows again, that the right to higher education is granted on equal basis to the EU citizens and their children only, leaving out family members of EU citizens and citizens of EEA and Confederation of Switzerland who are workers and self-employed persons in Latvia.

Regulations No. 220 'Procedures for the Allocation, Repayment and Cancellation of a Study Loan and Student Loan from the Resources of Credit Institutions with the Government Guarantee'¹⁶ specify the right to receive study loans from commercial banks with the state as the guarantor. Point 3 of Regulations No. 220 prescribes that grants and loans are available to citizens and non-citizens of Latvia and European Union citizens having temporary or permanent residence permits. This provision again leaves out family members of working EU citizens and citizens of EEA and Confederation of Switzerland who are working in Latvia.

Moreover, there are Regulations No. 219 'Procedures for the Allocation, Repayment and Cancellation of a Study Loan from the State Budget'¹⁷. These regulations establish the right and procedure on reimbursement of study loans from the state budget. Point 3 of Regulations No. 219 explicitly provides that this loan is accessible to the Latvian citizens and non-citizens only.

Thereby, Article 24(2) of Directive 2004/38 with regard to education requirements is implemented only partially.

2. SITUATION OF JOBSEEKERS

According to the provision of Regulations No. 586, jobseekers who have not been employed in Latvia previously may claim a registration certificate if they meet the general conditions for European Union citizens who wish to reside in Latvia without the status of an employee or a self-employed person.

Furthermore, if a EU citizen during first 90 days of arrival, when he/she does not have an obligation to obtain registration certificate, wish to obtain a status of an unemployed per-

14 *OG* No. 343/344, 17.11.1998, as amended until 2008 *OG* 200, 23.12.2008.

15 *OG* No. 179 17.11.1995, as amended until 2008 *OG* No. 200, 23.12.2008.

16 Adopted on 03.07.2001, *OG* No. 303 10.07.2001, as amended until 2008 *OG* No. 34, 29.02.2008.

17 Adopted on 29.05.2001, *OG* No. 97, 22.06.2001, as amended until 2005 *OG* No. 157, 04.10.2005.

son¹⁸ or jobseeker, he/she formally has a right to obtain a status of an unemployed person or jobseeker without possession of the registration certificate, but in practice, the State Employment Agency awards the status of an unemployed person or jobseeker only if a EU citizen possesses a registration certificate.

The right to obtain the status of an unemployed person or jobseeker is regulated in detail by Regulations No. 891 of the Cabinet of Ministers 'Procedures for Granting the Status of Unemployed Person and the Status of a Person Seeking Employment and the Documents Necessary for the Granting of the Status'.¹⁹ Point 3 specifies the documents to be submitted for the award of the status of an unemployed person and jobseeker. They are as follows:

- 3.1 A personal identity document or a travel document;
- 3.2 A residence permit, if such document has to be at the disposal of the person in accordance with Latvian law;
- 3.3 Form E 303, according to Regulation No. 1408/71, if a person wants to export the unemployment allowance from another EU Member State.

In particular, the problem arises with regard to the Point 3.2 of the Regulation No. 891, because Regulations No. 586 explicitly specify that a European Union citizen and his/her family members may reside in Latvia without registration for up to 90 days. Consequently, in compliance with Latvian law a European Union citizen does not have to possess any document confirming residence. On the other hand, in practice the State Employment Agency claims for the registration certificate by which a European Union citizen obtain a status of an unemployed person or jobseeker.

After award of the status of an unemployed person or jobseeker, a person is entitled to any assistance provided by the local jobseekers and unemployed persons. However, a European Union citizen who attends any courses or consultations provided for the unemployed persons and jobseekers must know Latvian, because all courses and consultations are conducted in Latvian. There is a very strict and rigid legal regulation on the obligation to know and use the Latvian language in employment²⁰ in Latvia.

If a person seeking employment does not want to be registered officially as a jobseeker or unemployed person at the State Employment Agency, he/she could seek a job him/herself. The official status of an unemployed person is crucial only if a person seeking employment wants to be entitled to the unemployment allowance exportable from another Member State or wants to attend different educational and vocational courses for unemployed persons provided by the State Employment Agency. If a person seeks employment without obtaining official registration at the State Employment Agency due to the Schengen agreement travel regime, actually no one is able to supervise the exact date of arrival and residence in Latvia.

Latvian law does not prescribe any special social benefit for jobseekers, thereby, judgments of the ECJ in cases *Collins*²¹ and *Ioannidis*²² are not relevant for Latvian situation.

Job-seekers and unemployed persons are entitled to a study grant and compensation for travel expenses during attendance of vocational training provided by the State Employment

18 According to Support for Unemployed Persons and Persons Seeking Employment Law, *OG* No. 80, 29.05.2002, as amended until 2007 *OG* No. 107, 05.07.2007, an unemployed person is a person who is entitled to the unemployment allowance, but a person seeking employment is a person who does not have the right to the unemployment allowance.

19 Adopted on 18.12.2007, *OG* No. 205, 21.12.2007.

20 See Chapter II in detail regarding this problem.

21 C-224/98.

22 C-258/04.

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Agency for the purposes of retraining.²³ In order to become entitled to this grant a person must obtain official status of an unemployed person or jobseeker.

²³ Regulations No. 25 'Procedures by Which Grant and Transport Compensation for the Vocational Training, Retraining and Improvement of Professional Skills for Unemployed is Granted, and the Amount of Grant is Defined', adopted by the Cabinet of Ministers, *OG* No. 14, 28.01.2003.

Chapter II

Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT OUTSIDE THE PUBLIC SECTOR

Assistance for job-seekers is regulated by Support for Unemployed Persons and Persons Seeking Employment Law.²⁴ Article 2(2) of Support for Unemployed Persons and Persons Seeking Employment Law now specifies that EU and EEA citizens are entitled to any employment assistance and vocational training on equal basis without having a registration certificate. However, as has been noted already in Section 2 of Chapter I of this Report, in practice the State Employment Agency requires a registration certificate.

According to Article 3 of Support for Unemployed Persons and Persons Seeking Employment Law, job-seekers and unemployed persons have rights to vocational training, re-training and enhancement of their professional qualifications, involvement in temporary work and activities for special groups of persons, and support for taking up entrepreneurship or self-employed activities. In addition, job-seekers and unemployed persons are entitled to free employment services. This support is provided by the State Employment Agency. However, insufficient knowledge of the Latvian language may create obstacles, since all services and support is provided in Latvian only and it is almost impossible to get employment in Latvia without knowledge of the official language (see Section 2 of Chapter II).

Private employment agencies must obtain a state license to provide employment services. It is prescribed by Article 17 of Support for Unemployed Persons and Persons Seeking Employment Law. A detailed regulation on the rights and obligations of the private employment agencies are provided by Regulations No. 458 'Procedures for Licensing and Supervision of Merchants – Providers of Work Placement Services'. Among various obligations of the private employment service providers Point 24.2 of Regulations No. 458 requires observance of the principle of equal treatment and non-discrimination provided by Labour Law.²⁵

2. LANGUAGE REQUIREMENT

A general requirement concerning the obligation to use the official language is provided by the Official Language Law.²⁶ In compliance with Article 1, one of the goals of this law is to ensure that the Latvian language could be used freely in any sphere of life. In accordance with Article 3(1), an official language in Latvia is the Latvian language. The requirement

²⁴ *OG* No. 80, 29.05.2002 as amended until 2007 *OG* No. 107, 05.07.2007.

²⁵ *OG* No. 105, 06.07.2001. as amended until 2006 *OG* No. 162, 11.10.2006. In particular Article 29 of the Labour Law, which does not explicitly mention nationality among the non-discrimination grounds (such as race, ethnicity, gender, disability, age, religion or belief, sexual orientation, property status, social origin), however, the list of reasons for discrimination is not exhaustive and is open.

²⁶ *OG* No. 428/433, 21.12.1999.

regarding the language in relation to the private sector is regulated by Article 6. It specifies that:

- 1) employees of state and local government institutions, companies in which the greatest share of capital is owned by the State or a local government, shall be fluent in and use the official language to the extent necessary for the performance of their professional duties;
- 2) employees of private sector and self-employed persons shall use the official language if their activities affect the lawful interests of the public (public security, health, morality, health care, protection of consumer rights and employment rights, safety in the work place, supervision of public administration);
- 3) employees of private institutions and self-employed persons who perform specific public functions on the basis of laws or other regulatory enactments, shall be fluent in and use the official language to the extent necessary for performance of the relevant functions;
- 4) foreign experts and members of the foreign boards of undertakings (companies), who work in Latvia shall be fluent in and use the official language to the extent that is necessary for the performance of their functions, or shall themselves ensure translation into the official language.

Finally, Article 6(5) delegates the competence to adopt detailed regulations on the particular level of knowledge and use of the official language concerning the persons provided by Article 6(1), (2) and (3) to the Cabinet of Ministers. It also delegates the competence to the Cabinet of Ministers concerning the procedures for testing fluency of the Latvian language.

According to this, the Cabinet of Ministers has adopted Regulations No. 296 ‘Regulations Regarding the Extent of Official Language Knowledge Required for the Performance of Professional and Official Duties, and Procedures for Testing Fluency of the Language’.²⁷

The requirement of fluency of the official language has originally been very high.

There are three levels of the knowledge which are divided in two sublevels – A and B.

The first level means that a person has elementary knowledge, the second means that the person is able to deal with almost all aspects of everyday and professional life, and the third indicates that the person knows Latvian almost like a native speaker.

Regulations No. 296 has two appendixes. The appendixes provide a list of the exact requirements on the level of fluency of the official language for many professions. The requirements of Appendix I are applicable to the state and municipal institutions and enterprises which are wholly or predominantly owned by the state or municipality. The requirements of Appendix II are applicable to the private companies performing public functions in accordance with the regulatory enactments and private companies the activities of which concern lawful interests of the public. *In 2008, Appendix II was amended in relation to several hundreds of particular professions setting a definite level of the fluency and use of the Latvian language,*²⁸ *thus making the requirement regarding the knowledge stricter.* These amendments were widely discussed in public, because some of the requirements are indeed debatable. For example, a street sweeper must be fluent in the official language at level I B, baby sitter and governess at level II A, aircraft designer II B, general director of the company and director of a café or restaurant at level III A.

²⁷ OG No. 302, 29.08.2000 as amended by until Regulation No. 404 (OG No. 435/437, 01.12.2000) and Regulations No. 1023, 19.12.2006 (OG No. 204 22.12.2006).

²⁸ Amending Regulations No. 612, OG No. 127, 19.08.2008.

Regulations No. 296 do not explain the term ‘activities concerning lawful interests of the public’. However, it may be presumed that lawful interests of the public regard the field of the provision of goods and services, because Point 5 of Regulation No. 296 envisages that if Appendix II does not comprise any professions, the employer is under the obligation to ensure that consumers are provided with all the necessary information on the respective good or service, and lawful interests of the public are interpreted in the light of the ability of the employees of the private company to communicate with the official authorities. For example, a chief accountant should be able to efficiently communicate with the State Revenue Service.

In relation to other cases, namely, where the Regulations do not set requirements for a particular profession, an employer is responsible for setting and requiring an appropriate level of knowledge of the official language from his/her employees. The problem is that there is no a precise legal regulation on the criteria which a private employer must apply in order to estimate what level of fluency of the official language is necessary for performance of particular work.

Besides, there is problem in general. It is presumed in Latvia that requirements on level of knowledge of official language provided by Regulation No. 296 correspond to requirements of general principles of national law and international law. However, setting of requirement of knowledge of official language by normative act does not per se means that such requirement is proportionate. Thus in the light of ruling of the ECJ in *Groener*²⁹ such presumption is incorrect. Provisions of Regulation No. 296 could be contested from the perspective of the indirect discrimination and principle of proportionality.

In addition, Regulations No. 296 prescribe specially defined means for the proof of fluency of the official language. This could be done either by the diploma of primary or secondary educational establishment or a diploma issued by the official language fluency examination commission. It seems that such provisions might not be in conformity with the case law of the ECJ, in particular *Angonese*.³⁰

29 C-379/87, *Anita Groener v Minister for Education and the City of Dublin Vocational Educational Committee*, *European Court reports 1989*, p. 03967

30 C-281/98, *Roman Angonese v Cassa di Risparmio di Bolzano SpA*, *European Court reports 2000*, p. I-04139.

Chapter III

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS

The Labour Law³¹ which provides minimum standards of working conditions for employees does not contain any express direct or indirect discriminatory provisions. Article 29 of the Labour Law specifies the principle of non-discrimination, and it was introduced in order to implement non-discrimination directives ensuring equal treatment irrespective of sex, ethnic origin or race, age, disability, religion or belief and sexual orientation. Despite this fact, the list of the non-discrimination grounds provided by that provision is not exhaustive and it does not explicitly specify the prohibition of discrimination regarding nationality. Although this is prescribed by Regulation No. 1612/68, which is directly applicable, taking into account the lack of knowledge of EU normative acts in Latvia, particular amendments to the Labour Law would make application of the principle of non-discrimination regarding nationality more effective.

2. SOCIAL AND TAX ADVANTAGES

There is no obvious unequal treatment concerning social rights in the fields covered by Regulation 1408/71. However, there are problems with equal treatment in the areas of social law falling outside the aforementioned Regulation. In particular, the Law on State Social Allowances³² covers all flat-rate social allowances paid by the State budget and Social Services and Social Assistance Law³³ covers all the social assistance allowances and social services provided by the State and local governments. Both laws expressly specify that they entitle only those foreigners to social benefits who have a personal code and who permanently reside in Latvia. Although Article 39 of EC Treaty and Article 7(2) of Regulation 1612/68 disregard these national provisions and are directly applicable, nevertheless, there is doubt whether responsible institutions would apply them (see also Chapter IV).

Pursuant to the Law on Taxes and Fees,³⁴ a taxpayer is any natural or legal person who performs activities resulting in income to which taxes are applicable within the territory of Latvia. Employees are subject to the income tax. The income of natural persons is subject to some tax relief. For example, a tax relief is applied in respect to dependant persons of an employee. However, the Law on Personal Income Tax³⁵ does not specify whether an employee is subject to income tax relief if his/her dependants reside in another EU Member State (See also comments on *Renneberg* judgment in Chapter VII).

31 OG No. 105, 06.07.2001, as amended until 2006 OG No. 162, 11.10.2006.

32 OG No. 168, 19.11.2001, as amended until 2007 OG No. 190, 19.11.2007

33 OG No. 168, 19.11.2002.

34 OG No. 26, 18.02.1995, as amended until 2008 OG No. 27, 19.02.2008.

35 OG No. 32, 01.06.1993, as amended until 2007 OG No. 190, 27.11.2007.

3. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

There are no other obvious obstacles to the free movement of workers in the field of employment, social and tax law, however they may appear in different spheres of life which is not so easy to identify theoretically.

One practical example emerged in 2008. The Ombudsman Office received a complaint from a German national residing in Latvia from 2004, that his right to invite a friend from the Russian Federation to Latvia was rejected by OCMA. Such refusal by OCMA was based on Regulations of the Cabinet of Ministers No. 183 'Procedures for Approval of Invitations'³⁶, which envisaged the right to invite persons from other countries to visit persons permanently residing in Latvia. At that time the claimant – a German national did not have to present a permanent residence permit. After initiation of investigation by the Ombudsman on unequal treatment of a EU citizen and breach of Articles 12 and 18 of the EC Treaty and Directive 2004/38, the Ministry of the Interior agreed on immediate amendments to Regulations No. 183 in order to ensure equal rights to all EU citizens residing in Latvia.

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

4.1. *Frontier workers*

The existence of residence clauses is of particular interest here (for example, see the case law of C-212/05 *Hartmann*).

Although the Law on Social Security regulating the areas falling outside Regulation 1408/71 refers to the Article relating to residence, nevertheless, Article 39 of EC Treaty and Article 7(2) of Regulation 1612/68 disregard these national provisions. However, there is considerable doubt whether the respective authorities (State Social Insurance Agency and local governments) would apply the law correctly in conformity with the hierarchy of norms. For example, as replied by the State Social Insurance Agency concerning Hartman case, in their opinion only Regulation 1408/71 would be applicable here.

The same problem may occur in the field of tax legislation. Although according to Article 14(2)(2) of the Law on Taxes and Fees³⁷ a frontier worker would be considered as a resident tax payer³⁸ and consequently formally exercise the same rights to the negative tax income, it is unclear whether this right is applicable with regard to the services (education and medical) received abroad. The same problem concerns dependant family members of a frontier worker (for more details see comments on *Renneberg* in Chapter VII).

Article 3 of the Education Law³⁹ still applies only to those EU nationals who hold a residence permit and their children have an equal right to education.

36 OG No. 65, 30.04.2003, as amended until 2008, OG No. 69, 08.02.2008.

37 OG No. 26, 18.02.1995, as amended until 2008 OG No. 200, 23.12.2008.

38 Resident tax payer under Law on Taxes and Dues' is person who either permanently lives in Latvia or are present in Latvia for at least 183 days during any 12 month period

39 OG No. 343/344, 17.11.1998, as amended until 2006 OG 207, 29.12.2006.

4.2. Sportsmen/Sportswomen

Ice-Hockey

Ice-hockey is the most popular sport in Latvia consequently there is highest commercial interest.

The Latvian Ice-Hockey Federation (recognized federation) organizes ice-hockey activities in Latvia.

Rules on transfer of players Latvian Ice-Hockey Federation provides that in order transfer to another club agreement must be reached between old and new club. In other words clubs must agree on compensation. On the other hand Rules provides that if agreement with player does not contain clause on amount of compensation in case of change of club, old club is not allowed requiring compensation from new club.

Rules on transfer also provides for player's registration fees. Amount of fees differs considerably on the grounds of nationality. If Latvian player must pay for license from 5 LVL (7 EUR) to 15 LVL (21 EUR) then foreign player must pay from 200 LVL (284 EUR) to 400 LVL (569 EUR) for license.

According to Regulations on Latvian Ice-hockey League adopted by Latvian Ice-Hockey Federation there is restriction of number of foreign players in team for a game.

A very important role in Latvian sports has the ice-hockey team (club) 'Dimano Riga'. It is established as joint-stock company for the purposes of participation in Continental Ice-hockey league (Russian league established under law of Russian Federation). Regulations of Continental Ice-hockey league provide restriction for number of foreign players. The limit is 5 field players or one goalkeeper and 3 field players. This is the case where sport organisations of Russian Federation do not comply with requirements of Article 23(1) of the Agreement on partnership and cooperation between European Communities and their Member States and Russian Federation (see also case of ECJ C-265/03).

Football

The Latvian Football Federation has several documents containing detailed rules on transfer of players, registration and training compensation.

The Latvian Football Federation shall register a foreign player if he submits an international transfer certificate, agreement with club and residency permit. Besides, a player is allowed playing only if he has not breached conditions of agreement without serious reason, is not under sanction of FIFA, UEFA, Latvian Football Federation or other national football association.

Rules also contain detailed regulation on compensation in case players at age 12 to 18 which changing club. New club is under obligation paying compensation to club of origin for training and education.

Even in case an agreement between club and player has expired, transfer to the new club is possible after reaching agreement between old-and new club on compensation. Minimum amount of compensation is defined by Rules on status of players and transfers of Latvian Football Federation.

If player of Latvian National team transfers to foreign club respective Latvian club (which transfers Latvian player) must pay single payment un amount of 1800 LVL (2561 EUR) to Latvian Football Federation.

Rules of Latvian Men's Championship league (LMT – Prime League) do not limit number of foreigner players in team for game however allow only 5 foreigner players being on field at the same time. There are special participation fees for foreign players. Club is under obligation paying participation fees for each foreign player – for first five players – 300 LVL (426 EUR) for each, for sixth – 500LVL (711 EUR), for seventh – 800 LVL (1138 EUR), for each next player – 1000 LVL (1422 EUR). Collected participation fees shall be spent for bonus payments to leading football trainers.

Although such rules are less stringent than recent requirements on strict number of foreign players in each team, nevertheless present Rules constitute direct discrimination against foreign players.

Basketball

The Latvian Basketball Confederation has several documents containing detailed rules on transfer of players, registration and training compensation.

In order to change clubs after expiry of contract with previous club, a player must obtain a letter of manumission and old club and new club must reach mutual agreement on amount of compensation. In case both clubs could not reach agreement amount of compensation must be calculated according to the Regulations of Latvian Basketball Confederation on licensing and transfer. Licence fees differs considerably between Latvian and foreign players. If for Baltic and Latvian Basketball league registration fees for Latvian player is 22 to 25 LVL, then for first foreign player fee is 400 LVL (569 EUR), second 500 LVL (711 EUR), third – 600 LVL (853 EUR), fourth and following – 800 LVL (1138 EUR).

There is no overt restriction on number of foreigner players in teams participating in Latvian Basketball league. However if club wants register for a game more than five foreigner players it has pay high registration fees – for sixth foreign player – 5000 LVL (7114 EUR), seventh 10 000 LVL (14 228 EUR), eight – 15 000 LVL (21 343 EUR), for each next – 20 000 LVL (28 457 EUR). Such fees are too high taking into account size of Latvian Basketball league and sports business overturn. In practice such a high fees make impossible participation of more than 5 foreign players. Besides Rules of Latvian Basketball league provide that for the season 2009-2010 and 2010 - 2011 there will be restriction for number of foreign players which could participate in a game – only 4 foreign players.

There is also one international league - SEB Baltic Basketball league where all three Baltic states participates. Rules of SEB Baltic Basketball Elite Division explicitly provide that there is no restriction for registration of players on the grounds of nationality.

Volleyball

Not all of regulations of Volleyball Federation are accessible fully. However, for example, Latvian Women's and Men's Volleyball Championship Rules do not limit number of foreign players. Rules require existence of transfer card provided by previous foreign club according to the Regulations of International Volleyball Federation (FIVB). Most likely Latvian Volleyball Federation does not regulate transfer and quotas for foreign players, because due to the size and economic development of Latvia there is no considerable business interest in volleyball.

There is also one international Volleyball league – *Schenker* Volleyball league open for Estonian, Latvian and Lithuanian clubs. Rules of said league limit number of Latvian players

at Estonian and Lithuanian clubs. Allowed number is 3 Latvian players. There is no restriction for foreign players.

Transfer of players must be provided in accordance with FIVB. No rules on transfer or license fees are available.

In all considerable fields of sport activities of Latvia (Ice-Hockey, Basketball, Football and Volleyball) where business interests appear rules and regulations of sport federations contain discriminatory restrictions with regard to foreign players (quotas, higher licensing and transfer fees) and measures (compensations between transferring clubs) which impede free movement of players (workers) with regard to all players irrespective of nationality.

As justification for quotas, higher licensing and transfer fees is mentioned protection of local sport development, which practically means favouring to local sportsperson for giving them more opportunities. To the certain extent such considerations has sense for small countries. Requirement of compensation between clubs is to be considered as justified for input made by previous club to the training and development of sportsperson.

Latvia is a comparably small country with economic in transition. Neither Latvian state not private business persons invest much money into Latvian sport activities. Since overturn is low due to small size of population sport is not profitable business in Latvia.

4.3. The Maritime Sector

The focus should be put on how Member States apply Community rules and similar provisions in agreements with non-EU countries on equal treatment regarding employment and working conditions and, in particular, the pay to seafarers who are EU nationals or non-EU nationals covered by clauses in such agreements.

Article 272 of the Maritime Code⁴⁰ provides that any person may serve, captain or be a crew-member. There are several bilateral international agreements within the maritime sector concluded with Russia, China, Ukraine and Turkey. They do not regulate any matters relating to employment of persons on ships.

Other bilateral agreements with the non-EU Member States covering economic cooperation do not envisage any special and equal rights to the workers from those countries in Latvia.

4.4. Researchers/Artists

The important issue in this regard is whether foreign EU nationals are treated equally, i.e., are considered to have the same legal status as national researchers/artists.

There are no changes regarding the work of scientists in Latvia since 2007.

The right to work as a scientist in Latvia does not depend on the nationality. The right to work as a scientist is held by persons with doctoral degrees. This is provided by the Law on Scientific Activity.⁴¹ Article 3 of the law prohibits discrimination. Although nationality is not among the expressly provided non-discrimination grounds, nevertheless, Article 3 provides a non-exhaustive list of the grounds of non-discrimination and protecting against discrimination 'in other circumstances' too.

40 OG No. 91, 18.06.2003, as amended until 2007 OG No. 56, 04.04.2007

41 OG No. 70, 05.05.2005, as amended until 2008 OG No. 200, 23.12.2008.

A doctoral degree obtained abroad is subject to recognition. Article 10(1) of the Law on Scientific Activity provides that a foreign doctoral degree has to be recognized in accordance with international agreements. However, according to Article 11¹ of the Education Law,⁴² the institution providing expertise on recognition of academic education is the Academic Information Centre.⁴³ This centre provides expertise on whether academic education obtained abroad corresponds to the requirements of the Latvian education system. In practice, an expert assessment of a doctoral degree and making a decision on recognition takes two weeks.

Accordingly, if an EU citizen wishes to perform academic or scientific activities in Latvia, recognition of their diploma is necessary. There are no other requirements. For example, for permanent employment on an academic position at the University of Latvia only educational and professional requirements are applicable. Regulations on election for academic positions do not envisage any restriction regarding nationality.⁴⁴

There is no legislation in Latvia regulating the activities of artists.

4.5. Access to Study Grants

The focus should be put on whether the worker and his/her family members are equally treated with regard to accessing study grants in the host Member State, in particular, if there are any residence conditions.

See analysis of the national regulation with regard to access to study grants in Chapter I on implementation of Article 24(2) of Directive 2004/38.

42 OG No. 343/344, 17.11.1998, as amended until 2006 OG 207, 29.12.2006.

43 Home page of the Academic Information Centre, www.aic.lv.

44 Home page of the University of Latvia, www.lu.lv, <http://www.lu.lv/dokumenti/nolikums-akadamati.html>.

Chapter IV

Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68

The social security system of Latvia concerns three fields. The first field is social insurance which provides such social insurance allowances as old-age pensions, maternity and paternity allowances, parent (child-care) allowance, survivor's allowance, sick-pays, allowances for the accident at work and occupational disease, unemployment allowance and death grant. Social insurance allowances are paid from the social insurance budget. The second field includes the state flat-rate allowances provided by the state budget. Such allowances are a childcare allowance for the persons, who are not insured pursuant to the social insurance scheme, allowance for disabled child care, allowance for disabled persons care, family allowance, custody allowance etc. The third field is social assistance and social services. Social assistance is provided from local government resources. Local governments have the right to define themselves as providers of social assistance allowances. Only one kind of allowance must be provided mandatory according to the law – a minimum income guarantee allowance.⁴⁵ Social services are partially provided by the State budget and partially by financial resources of local governments.

Regulation 1408/71 applies to the first field – social insurance and partially the second field – certain kinds of the state flat-rate allowances. National legislation applies to the rest of the social security benefits in Latvia. The rest of the social benefits theoretically must be guaranteed to a European Union citizen and his/her family members under Article 39 of EC Treaty, Article 7(2) of Regulations 1612/68 and Article 24(2) of Directive 2004/38.

Latvian law is incomplete to this regard. Article 4(1) of the Law on State Social Allowances⁴⁶ provides that the law is applicable to the foreigners who have obtained a personal code and permanently reside in Latvia. Article 3(1) of Social Services and Social Assistance Law⁴⁷ envisages that those foreigners who have obtained a Latvian personal code, except those foreigners who have a temporary residence permit shall have the right to social assistance. Thereby, pursuant to this provision only those foreigners who have obtained a Latvian personal code and have a permanent residence permit shall also have the right to the state flat-rate allowance, as well as also social assistance apart Regulation 1408/71. It does not correspond to the requirements of Article 39 of EC Treaty, Article 7(2) of Regulations 1612/68 and Article 24(2) of Directive 2004/38, firstly, because the national legislation requires a fact of residence in the territory of Latvia on the contrary to the rights of frontier workers to reside in another Member State and not to hold a residence permit in the Member State of employment, secondly, national law requires a permanent residence permit.

However, the Ministry of Welfare⁴⁸ considers that the national law is not contrary to the requirements of Article 24(2) of Directive 2004/38 because each foreigner along with the residency permit (registration card) obtains a personal code of Latvia and registration in the Population Register which entitles him/her to all social benefits according to the Article 4(1)

45 Regulations of Cabinet of Ministers No. 693 'Regulations on the Level of the Guaranteed Minimum Income and Amount of Allowance for the Provision of the Level of Guaranteed Minimum Income', *OG* No. 176, 12.12.2003, as amended until 2008 *OG* No. 198, 19.12.2008.

46 *OG* No. 168, 19.11.2001, as amended until 2007 *OG* No. 190, 19.11.2007.

47 *OG* No. 168, 19.11.2002.

48 Letter of 09.03.2009. No. 09.2-07/753.

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of the Law on State Social Allowances and Article 3(1) of the Social Services and Social Assistance Law. Article 39 of EC Treaty and Article 7(2) of Regulations 1612/68 shall be also observed, because these norms are directly applicable.

Chapter V

Employment in the Public Sector

There have been no substantive changes regarding employment in the public sector since the report of 2007.

1. ACCESS TO THE PUBLIC SECTOR

1.1. Nationality Condition for Access to Positions in the Public Sector

The positions reserved exceptionally for Latvian citizens in accordance with the special laws are the same as on 2007 – civil servant,⁴⁹ judge,⁵⁰ court bailiff,⁵¹ notary,⁵² prosecutor,⁵³ policemen,⁵⁴ state security officer,⁵⁵ fireman,⁵⁶ boarder guard,⁵⁷ national guard,⁵⁸ civil employment in military service,⁵⁹ employees of the State Revenue Service,⁶⁰ and employee in the diplomatic and consular service.⁶¹

1.2. Language Requirement

A general requirement concerning the obligation to use the official language is provided by the Official Language Law.⁶² A detailed regulation on the level of knowledge and obligation to use the official language is provided by Regulation No. 296 ‘On the Level of Knowledge of the Official Language necessary for Performance of Professional Responsibilities and Official Duties and Procedure for Verification of the Official Language Proficiency’.⁶³

The requirement of knowledge of the official language has originally been very high.

There are three levels of knowledge which are divided in two sublevels – A and B.

The first level means that a person has elementary knowledge, the second means that a person is able to deal with almost all aspects of everyday and professional life, the third level indicates that a person knows Latvian almost like a native speaker.

49 State Civil Service Law, *OG* No. 331/333, 22.09.2000, as amended until 2008, *OG* No. 200, 23.12.2008.

50 Law on Judicial Power, *OG* No. 1, 14.01.1993, as amended until 2008 *OG* No. 200, 23.12.2008.

51 Law on Bailiffs, *OG* No. 165, 13.11.2002, as amended until 2007, *OG* No. 4, 09.01.2008.

52 Notariate Law, *OG* No. 48, 09.07.1993, as amended until 2008 *OG* No. 202, 30.12.2008.

53 Law on Prosecutor’s Office, *OG* No. 65, 02.06.1994 as amended until 2008, *OG* No. 202, 30.12.2008.

54 Law on Police, *OG* No. 31, 15.08.1991, as amended until 2008, *OG* No. 98, 27.06.2008.; Law on Service at the System of Interior Affairs and of Imprisonment Office of Persons having Special Service Ranks, *OG* No. 101, 30.03.2006, as amended until 2008 *OG* No. 200, 23.12.2008.

55 Law on State Security Institutions, *OG* No. 59, 19.05.1994, as amended until 2008, *OG* No. 200, 23.12.2008.

56 Law on Service at the System of Interior Affairs and of Imprisonment Office of Persons having Special Service Ranks, *OG* No. 101, 30.06.2006, as amended until 2008 *OG* No. 200, 23.12.2008.

57 Law on Service at the System of Interior Affairs and of Imprisonment Office of Persons having Special Service Ranks, *OG* No. 101, 30.06.2006, as amended until 2008 *OG* No. 200, 23.12.2008.

58 Law on the National Guard of the Republic of Latvia, *OG* No. 16, 29.04.1993, as amended until 2007, *OG* No. 203, 19.12.2007.

59 Law on Military Service, *OG* No. 91, 18.06.2002, as amended until 2008, *OG* No. 200, 23.12.2008.

60 Law on State Revenue Service, *OG* No. 105, 11.11.1993, as amended until 2008, *OG* No. 200, 23.12.2008.

61 Law on the Diplomatic and Consular Service, *OG* No. 155, 10.10.1995., as amended until 2008, *OG* No. 202, 30.12.2008.

62 *OG* No. 428/433, 21.12.1999.

63 *OG* No. 302, 29.08.2000, as amended by until 2008, by Regulations No. 495, *OG* No. 103, 08.07.2008.

Regulation No. 296 has two appendixes. The appendixes provide a list of exact requirements in relation to the level of knowledge of the official language for many professions. Appendix I is applicable to officials, servants and employees employed in the public sector. Appendix I lists almost all known professions including street sweeper, window cleaner, as well as worker of occasional works. They all must know and use the official language at a certain level if they wish to work in the public sector, although professional duties of workers in the public sector, as for example the aforementioned ones, do not actually differ from those performed within the private sector.

On 2008, Appendix I of Regulations No. 296 was amended.⁶⁴ The amendments require a higher level of knowledge of the official language, for example, the level of knowledge required for a fireman and fireman driver were risen from 2 A to 3 B.

It is very likely that requirements on level of knowledge of official language with regard to number of professions provided by Regulation No. 296 runs contrary prohibition of indirect discrimination and principle of proportionality.

1.3. Recognition of the Professional Experience for Access to the Public Sector

There are no special requirements on recruitment procedures specified by the law regarding positions outside the civil service and other professions non-requiring Latvian nationality.

2. WORKING CONDITIONS

Although there is no special legal regulation with regard to access to employment in the public sector, nevertheless, previous professional experience is important with regard to the amount of remuneration.

Regulation No. 995 ‘Regulations On the System of Work Remuneration and Qualification Levels of Civil Servants, Employees and Officials of Institutions of Direct Administration and Employees of the Central Electoral Commission and the Central Land Commission, as well as Allowances and Compensation for Civil Servants’⁶⁵ specifies the remuneration system in the public sector for all categories of workers – civil servants, officials and employees. The amount of remuneration is higher if professional experience is longer. Regulation No. 995 only recognises professional experience in the public sector, with two exceptions – if a person has at least three years professional experience in the private sector or the person has obtained professional experience in the municipal sector and it is vital for the performance of work in the public sector.⁶⁶ The meaning of the ‘professional experience acquired in the public sector’ is clear. Point 8.2. of the Regulation explicitly lists the respective institutions and these are only Latvian public institutions. In order to get recognition of professional experience under two exceptions, head of institution as in exceptional case may adopt decision of recognition of professional experience acquired outside public sector after the period of probation of the particular worker (servant, official). Such legal regulation constitutes indirect discrimination against nationals of other EU Member states.

⁶⁴ Regulations No. 495, *OG* No. 103, 08.07.2008.

⁶⁵ *OG* No. 210, 30.12.2005, as amended until 2008, *OG* No. 176, 12.11.2008., issued on the grounds of the State Civil Service Law, Labour Law and Law on Diplomatic and Consular Service.

⁶⁶ Points 11 and 11.1.

Chapter VI

Members of the Worker's Family and Treatment of Third Country Family Members

1. RESIDENCE RIGHTS – TRANSPOSITION OF DIRECTIVE 2004/38

The residence rights for family members is provided by Regulations No. 586 'Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members', adopted by the Cabinet of Ministers on July 18, 2006.⁶⁷ In general, the requirements of Directive 2004/38 with regard to the right of residence of a family member of a European Union citizen are implemented correctly. However, there are some non-implemented rights.

In particular it concerns definition of a family member.

In accordance with Point 3 of Regulations No. 586, a family member of a European Union citizen is:

- a spouse;
- a direct descendant of the European Union citizen or his/her spouse under the age of 21 or a dependant of the European Union Citizen of his/her spouse;
- dependant direct relatives in the ascending line of the European Union citizen of his/her spouse;
- a dependant of the European Union citizen of his/her spouse who has a common household with the European Union citizen in the country of previous residence.

Article 3(2)(b) of Directive 2004/38 provides that Member States shall facilitate entry and residence for the partner of an EU citizen with whom the EU citizen has duly approved durable relationship. Regulations No. 586 does not envisage such groups of family members of EU citizens. Point 3.4 requires two conditions for qualifying as a family member of an EU citizen:

- 1) dependency;
- 2) a common household in the country of previous residence.

Such conditions provide stricter provisions than required by Directive 2004/38. In addition, Regulations No. 586 do not envisage a situation where a person has serious health grounds strictly requiring personal care of the European Union citizen or his/her family member.

There are several more important issues. In the process of application for a registration certificate a family member may experience a requirement of additional data and provision of a legalised document testifying status of a family member, which is costly and time consuming. Point 30 of Regulations No. 586 specifies that in order to obtain a registration certificate, residence permit or permanent residence permit the family member must submit an official questionnaire and documents testifying marriage or a fact thereof. It shows that formally requirements of Latvian law correspond to the requirements of Directive 2004/38, but in reality it may turn out as a more complicated procedure.⁶⁸

⁶⁷ OG No. 114, 20.07.2006.

⁶⁸ See Chapter I concerning the data required by official questionnaire.

1.1. Situation of the Family Members of Job-seekers

Family members of job-seekers who are third country nationals may apply for a residence permit only along with or after a European Union citizen. While a European Union citizen is not employed, his/her family member must submit not only an official questionnaire and document testifying family relationship, but also health insurance and proof of sufficient financial resources to obtain a residence permit. OCMA usually provides a European Union citizen with the residence permit within two weeks after application and submission of all documents required but family members who are third country nationals within one month.

1.2. Application of Metock Judgment

Latvian law does not stipulate the condition of previous residence in another EU Member State with regard to a spouse who is a third country national of a European Union citizen who is not a citizen of Latvia.

With regard to spouses of Latvian citizens and non-citizens who are third country nationals Immigration law applies. Respective requirements applies irrespective on whether spouse of Latvian citizen or non-citizen immigrates in Latvia from third country of EU and irrespective on whether spouse immigrating from EU has had residency permit in another EU Member State.

1.3. How the Problems of Abuse of Rights (marriages of convenience) are tackled

In accordance with Points 47.4 and 48.4 of Regulations No. 586 the issue of residence permit may be rejected or a residence permit may be suspended if there is a reason to consider that a person has concluded a marriage of convenience in order to obtain the residence right in Latvia.

The fight against marriages of convenience falls within the competence of OCMA. According to the information received from OCMA there has been no case regarding marriage of convenience with a citizen of another Member State. However, there is significant increase of marriages of convenience of third country nationals with Latvian nationals after accession to the European Union. In suspected cases OCMA takes extensive interviews from both persons concerned in order to verify genuineness of the marriage. Frequently, there are situations that a Latvian national indeed has fallen in love but a foreigner has the only one intention – obtain the residency right in Latvia and EU. Sometimes OCMA together with the State Border Guard carries out visits at the place of residence of suspected persons in order to check whether they reside together in one household.

2. ACCESS TO WORK

Paragraph 4 of Regulations No. 586 explicitly specifies that for the purposes of employment or self-employment neither a European Union Citizen, nor his/her family members need work permits. However, it is questionable whether family member who is third country na-

tional may enjoy this right before getting residency permit, i.e. before proving to official authorities that he/she has a status of a family member of the European Union citizen.

An official status of a job-seeker's family member may be obtained only after having a residency permit which allows registration at the State Employment Agency.

3. THE SITUATION OF FAMILY MEMBERS OF JOBSEEKERS

As described in Chapter I and IV, without a registration card or residency permit a person is not entitled to any social security benefits and has no possibility to register in the official register as a job-seeker.

4. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

The Tax Law provides equal rights to all residents of Latvia. If a person resides in Latvia and has income there, the law applies equally to all persons. Unequal treatment may occur in relation to the family members of the border workers (see comments on *Renneberg* in Chapter VII). See Chapter IV with regard to the social advantages.

Chapter VII

Relevance/Influence/Follow-up of recent Court of Justice Judgments

C-287/05 Hendrix

Latvian national law does not provide the right to benefits for the disabled persons in order to cover a reduction in income.

However, according to Annex IIa of Regulation 1408/71 Latvia has declared one benefit for disabled to be inexportable. It is benefit for compensation of transportation for disabled. According to Article 12 of Law on State Social Benefits⁶⁹ every disabled person having moving difficulties and having adjudgement of Latvian State Commission on State of Health and Capacity for Work on moving difficulties has a right to benefit for compensation of transportation for disabled.

Looking on this legal regulation from the perspective of Article 39 and Article 7(2) of Regulation 1612/68 there could be situations especially with regard to frontier workers and members of their family where application of residence caluse with regard to right to transportation benefit for disabled could lead to ‘unacceptable degree of unfairness’.⁷⁰ This is because frontier worker with moving difficulties working in Latvia but residing in another EU Member State most likely experience the same or even higher (because of longer distance between place of residence and work) extra expenses for transportation. The same is true about members of frontier worker’s family, for example, in case disabled child with moving difficulties attends school in Latvia. Regarding practical application State Social Insurance Agency contends that it has not have respective claims from frontier workers so far.

C-527/06 Renneberg

There is no right to negative income deduction with regard to the expenses relating to the dwelling in Latvia.

However, there is the right to negative income deduction for expenses relating to education and health services.

In accordance with Article 14(2)(2) of the Law on Taxes and Fees,⁷¹ Renneberg would be considered as a resident tax payer⁷² in compliance with Latvian tax legislation. Consequently, each resident tax payer is entitled to the negative income deduction for expenses relating to education and health services in compliance with Article 10(1)(2) of the Law on Personal Income Tax.⁷³ Besides, a resident tax payer may include education and medical services relating to his/her dependant family members into the negative income deduction expenses.

69 *OG* No. 168, 19.11.2002.

70 Paragraph 57 of judgment in case C-287/05.

71 *OG* No. 26, 18.02.1995, as amended until 2008 *OG* No. 200, 23.12.2008.

72 In accordance with the Law on Taxes and Fees a resident tax payer is a person who either permanently lives in Latvia or is present in Latvia for at least 183 days during any period of 12 months.

73 *OG* No. 32, 01.06.1993, as amended until 2008 *OG*.No. 200, 23.12.2008.

A detailed regulation concerning the negative income deduction is provided by Regulations No. 336 of the Cabinet of Ministers 'Regulations on Justified Expenses for Education and Medical Services'.⁷⁴ Regulations No. 336 obviously do not envisage the situation of frontier workers. First, expenses for medical services include expenses for health insurance, but regard only to such health insurance which is provided by insurance companies operating in accordance with Latvian Law on Insurance Companies and Supervision Thereof, thus a negative income deduction does not apply to such medical insurance which is provided by an insurance company outside Latvia.

Second, although Regulations No. 336 do not explicitly refer to the medical services received in Latvia only, it is more likely that State Revenue Service would apply these Regulations regarding only the medical services bought in Latvia.

Both Points neglect the situation of a frontier worker and his/her family members, who having residence in another Member State are more likely to receive medical services and medical insurance provided by local service providers.

Third, only in 2008, the Regulations were amended concerning the provision considering expenses for education services received in other EU and EEA Member States as subject to the negative income deduction.⁷⁵

It follows that Latvian tax legislation with regard to the negative income deduction is contrary to Article 39 of EC Treaty and Article 7(2) of Regulation 1612/68.

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There is no doubt in Latvia that the obligation to observe the principle of non-discrimination applies to the entities established under the private law. With regard to the concept of a worker, although EC law provides its own definition of 'a worker' within the meaning of Article 39 of EC Treaty, Latvian definition of 'a worker' provided by Article 59 of the Labour Law⁷⁶ is almost the same, even more, Latvian definition of 'a worker' does not exclude the workers whose activity is marginal or ancillary.

74 OG No. 115, 03.08.2001 as amended until 2003 OG No. 38, 11.03.2003.

75 OG No. 168, 29.10.2008. Effective from 01.01.2009.

76 OG No. 105, 06.07.2001, as amended until 2006 OG No. 162, 11.10.2006.

Chapter VIII

Application of Transitional Measures

There are no practical problems with regard to the transitional measures, because Latvia does not have any transitional measures concerning other EU Member States.

Only Germany has retained restrictions to the free movement of Latvian workers until 2011.

Chapter IX

Miscellaneous

1. Policies

In 2008, there have been no changes in immigration policies. Immigration of workers from third-countries is regulated in detail by Regulations of the Cabinet of Ministers No. 44 'Regulations on Work Permits for Foreigners'.⁷⁷

OCMA is currently elaborating a new regulation regarding the procedure of immigration of workers from non-EU Member States. The purpose of the new regulation is simplification of the immigration procedure for workers by creation of a single contract point.

The official statistical data provided by OCMA show that in 2008, 5,376 workers from abroad have been officially registered. Only 895 of them were EU nationals. The rest were workers from non-EU countries, mostly from the former USSR republics such as Ukraine and Russia.

OCMA specifies that statistical data with regard to the EU citizens could be inaccurate. The main reason for that is the fact that a lot of EU citizens work in Latvia without a residence permit. Since only administrative penalty for the breach of the Immigration Law may be applied to EU citizens, OCMA do not spend additional administrative resources for identification and penalization of those EU nationals who reside in Latvia for longer than 90 days without a registration card. As of 2009, OCMA will not collect statistical data on the EU nationals working in Latvia.

2. Studies, Seminars, Reports, Legal Literature

There have been no considerable publications of legal literature, conferences of studies provided in 2008 on free movement of workers or immigration in Latvia.

3. References to the National Organisation, Bodies where Citizens may Submit Complaints on Violation of the Community Law on Free Movement for Workers

The institution entitled to launch complaints concerning breach of the Community Law on free movement for workers is Ombudsman of the Republic of Latvia. Such complaints may be reviewed by the Ombudsman Office only if they concern human rights. Since most of such complaints concern unequal treatment, most of them are most likely to fall within the competence of the Ombudsman. In 2008 and 2009, the Ombudsman Office received three complaints from EU nationals of other EU Member States residing in Latvia on unequal treatment within different fields.

⁷⁷ OG No. 12, 23.01.2004, as amended until 2008, OG No. 90, 11.06.2008.

Comments on the Report on the Free Movement of Workers in Latvia in 2008

Report on the Free Movement of Workers in Latvia in 2008	Comments made by Latvia institutions
<p><u>Introduction</u> (page 3)</p> <p>Unemployment is still growing quickly. Statistical data testify that economical crisis has negatively affected free movement of workers. If at the end of 2007 there was 2625 registered EU workers, then on 2008 - only 895</p>	<p>Comments of the Ministry of Interior</p> <p>According to the data of the Office of Citizenship and Migration Affairs this information is not correct. The correct number of registered EU workers in 2008 is 3462.</p>
<p><u>Chapter I: Entry, residence, departure</u> (page 6)</p> <p>Official questionnaire requires showing sufficient financial means. It is first, in breach of Article 7(1)(a). Second, in practice OCMA considers as ‘sufficient resources’ minimum wage as defined in Latvia by normative acts. On 2008 minimum wage was 160 LVL¹, while threshold below which Latvian citizens are entitled to social assistance was 27 LVL². Such practice runs contrary to the Article 8(4) of Directive 2004/38.</p>	<p>Comments of the Ministry of Interior</p> <p>There is not a requirement to prove the sufficient amount of financial resources. It is enough just to state that the financial means are sufficient. It is also not required to attach to the questionnaire any documents proving the existence of financial means. This requirement, however, is not applied to the EU citizens - it is enough for them to verify the half of the minimal wage.</p>
<p><u>Chapter I: Entry, residence, departure</u> (page 6)</p> <p>However it is not all. Point 38 of Regulations No.586 provides that Office of Citizenship and Migration Affairs (further - OCMA) has the right to require and receive from Union citizen and his/her family</p>	<p>Comments of the Ministry of Interior</p> <p>Such requirements do not violate the provisions of the Directive 2004/38.</p>

¹ Regulations No.592 „Regulations on minimum monthly salary and minimum hourly tariff” adopted by Cabinet of Ministers on 28.08.2007.

² Regulations of Cabinet of Ministers No.693 „Regulations on level of guaranteed minimum income and amount of allowance for the provision of the level of guaranteed minimum income”, OG No.176, 12.12.2003., as amended until 2006 OG No.204, 22.12.2006.

<p>member who wants to obtain residence rights in Latvia, from executive institutions of Latvia and from the courts information on the purpose of the residence of the Union citizen and his/her family member in question. Besides OCMA has the right to request information on previous violations of law of the Union citizen and/or his/her family member from the state of their previous residence within the three month after application for residence right.</p>	
<p><u>Chapter I: Entry, residence, departure</u> (page 6)</p> <p>OCMA issues registration certificate for indefinite terms. However, there is one more practical problem which Union citizen may experience after obtaining of registration certificate. Registration certificate provides address of place or residence. Consequently, in case Union citizen changes his/her place of residence, he/she must change registration certificate too. It is more likely that migrant worker would change his/her place of residence in Latvia, because usually they are tenants rather than owners of the immovable where they reside.</p>	<p>Comments of the Ministry of Interior</p> <p>Registration certificate provides address of place of the residence according to the requirements of the Directive 2004/38 and thus it is mandatory.</p>
<p><u>Chapter I: Entry, residence, departure</u> (page 7) Article 17</p> <p>However there are problems with the correct implementation of requirements of Article 17(3) of Directive 2004/38. Point 31 and 31.2 envisages that in case Union citizen obtains permanent residence right his/her family member is also entitled to the permanent residence permit, which however has to be issued for the period of 10 years residence only.</p>	<p>Comments of the Ministry of Interior</p> <p>Such provisions are prescribed in the Article 20 (1) of the Directive 2004/38.</p>
<p><u>Chapter I: Entry, residence, departure</u></p>	<p>Comments of the Ministry of Interior</p>

<p>(page 8) Article 24(2) <i>Social assistance</i></p> <p>In this context seems strange provision of Point 39 of Regulations No.586. It requires municipalities to provide data on social assistance required by Union citizen or his/her family members to the OCMA within 10 days of application for social assistance.</p>	<p>This provision (point 39 of Regulations No.586) concerns only to those cases, when the EU citizen has already received a registration certificate.</p>
<p><u>Chapter I: Entry, residence, departure</u> 1. Transposition of provisions specific for workers: Article 24(2) <i>Education</i> (page 9)</p> <p>The Education Law is an umbrella law for whole education system of Latvia and concerns pre-school education, primary education, secondary and professional education and higher education Article 3 of the Education Law provides that any EU national who has a residence permit and his/her children have an equal right to education. Right to education has any person holding permanent residence permit. Article 3 of the Education Law does not correspond to requirement of Article 24(2), because it does not cover other members of the family, such as for example, children of the spouse of EU citizen. Further, Education Law refers to EU citizens only, leaving out citizens of EEA and Confederation of Switzerland.</p> <p>On the other hand Article 83 of the Law on Institutions of Higher Education provides that persons without permanent residence permit may be admitted to institutions of higher education. Article 83(1)(5) provides that Union Citizens and their family members who are studying in Latvia enjoy equal rights with Latvian citizens regard to</p>	<p>Comments of the Ministry of Education and Science</p> <p>The Education Law concerns pre-school education, primary education, secondary education, vocational education, informal education, higher education, adult learning and lifelong learning.</p> <p>It would be incorrect to state that the Education Law refers to EU citizens only. It refers to anyone, who has the right to education in Latvia. Article 3 of the Education Law regulates the right to education not only for Latvian nationals, persons with the right to Latvian “non-citizen” passports, EU nationals, who have a residence permission and their children, but also for any person, who has permanent residence permission (not necessary an EU citizen).</p> <p>It should also be mentioned that Article 27 of European Council Directive 2004/83/EK (29th April, 2004) determines that member states guarantee access to education (general education, further training or re-training) for all under-age due to their refugee status or alternative protection matter in accordance with the same conditions as nationals, as well as adults with refugee status and nationals of “third countries” that legally permanently reside in the member state. In conformity to this Directive, the Cabinet of Ministers of the Republic of Latvia adapted Regulation No.586 “Procedure of providing education to children of under-age asylum seekers or under-age asylum seekers”.</p> <p>On October 16, 2008 the Parliament of the Republic of Latvia adopted in</p>

<p>education fees. It follows again, that the right to higher education is granted on equal footing to the EU citizens and their children only, leaving out family members of EU citizens and citizens of EEA and Confederation of Switzerland who are workers and self-employed in Latvia.</p>	<p>the first reading the draft Law on Higher Education, which will replace the Law on Higher Education Institutions. Section 1 of the Article 5 states that each citizen of the Republic of Latvia, person who have been issued a “non-citizen” passport of the Republic of Latvia, as well as a foreigner has a right to study in higher education institutions.</p> <p>Section 2 of the Article 5 states that the right to study and to receive services of higher education institutions in the Republic of Latvia are equal to Latvian and EU citizens, their family members, persons to whom the status of permanent resident of European Communities has been granted and their family members, as well as the citizens of those states to whom equal rights with EU citizens are established according to the international agreements ratified by the Parliament of the Republic of Latvia. With the adoption of this Law the Directive 2004/38 will be completely implemented in the field of higher education in Latvia.</p>
<p><u>Chapter III: Equality of treatment on the basis of nationality - Obstacles to free movement</u> 4. Specific issues: frontier workers 4.1. Frontier workers: Of particular interest here is the existence of residence clauses (see for instance the case law of C-212/05 Hartmann) (page 14)</p> <p>Although social security law regulating areas falling outside Regulation 1408/71 refers to the residency clauses, nevertheless Article 39 of EC Treaty and Article 7(2) of Regulation 1612/68 override those national provisions. However there is considerable doubt whether respective authorities (State Social Insurance Agency and municipalities) would apply law correctly in conformity with the hierarchy of norms. For example, as replied by State Social Insurance Agency on Hartman case, on their opinion only Regulation 1408/71 would be applicable here.</p> <p>The same problem may occur in the field of tax law. Although according to Article 14(2)(2) of Law on Taxes and Dues³ frontier</p>	<p>Comments of the Ministry of Welfare</p> <p>The Ministry of Welfare of the Republic of Latvia would like to stress that the State Social Insurance Agency acts accordingly to national legislation of the Republic of Latvia, as well as legislative acts of European Union, including the case law of the ECJ. There are no verifiable arguments given by the author in this Report, which would prove the opposite.</p>

³ OG No.26, 18.02.1995. as amended until 2008 OG No.200, 23.12.2008.

<p>worker would be considered as resident tax payer⁴ and consequently formally enjoy the same rights to negative tax income, it is unclear whether this right is applicable with regard to the services (educational and medical) received abroad. The same problem concerns dependant family members of a frontier worker (for more details see comments on <i>Renneberg</i> judgement at Chapter VII).</p>	
<p><u>Chapter III. Equality of treatment on the basis of nationality – Obstacles to free movement</u></p> <p>4.4. Researchers/artists: (page 15)</p>	<p>Comments of the Ministry of Education and Science</p> <p>In July 2008 the Cabinet of Ministers of the Republic of Latvia adapted Regulation No.568 “Regulations on procedure how research institutions sign and terminate contract with researcher from abroad”, which also concerns researchers, who are not EU citizens.</p> <p>The last amendments to the Law on Scientific Activity added a new regulation on researchers’ salaries, paid from the state budget.</p>
<p><u>Chapter IX. Miscellaneous</u></p> <p>1.Policies (page 22) Official statistical data provided by OCMA shows on 2008 there has been officially registered 5376 workers from abroad. Only 895 of them were EU nationals. The rest was workers from non-EU countries, mostly from former USSR republics such as Ukraine and Russia.</p>	<p>Comments of the Ministry of Interior</p> <p>According to the data of the Office of Citizenship and Migration Affairs, this information is not correct. The correct number of registered EU workers in 2008 is 3462.</p>

⁴ Resident tax payer under Law on Taxes and Dues” is person who either permanently lives in Latvia

or are present in Latvia for at least 183 days during any 12 month period

