REPORT
on the Free Movement of Workers in Latvia in 2007

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Introduction

1. GDP growth in 2006 was 11.9%. Due to the risk of an economic crisis, the government and Parliament took several measures to slow down economic growth. For example, several amendments were made to laws regulating access to credit. This led to a slump in the real estate market. A lot of construction work stopped. However, the overall situation in the labour market didn't worsen. In December 2006 the unemployment rate was 6.2%, while in December 2007 it was only 5.2%.[1] In 2007, construction was the sector with the most migrant workers (1,865 work permits were issued).

2. The issue of whether Latvia should make its labour market more open to workers from third countries is still being debated. Employers claim that due to a shortage of workers this is necessary. The government is still analysing statistics and the effects of liberalisation on the labour market with regard to third countries. The situation is not going to improve even into the distant future because of the negative birth rate.[2]

3. As described in the 2006 report, there was considerable workforce emigration to Ireland. However, the overall number of Latvians going to work in Ireland is decreasing.[3]

Due to the lack of workers, several initiatives were taken by the government in order to attract Latvians working in Ireland back to Latvia.[4] However, one considerable obstacle that has emerged is that income tax in Latvia is 25%, while in Ireland it is just 20%. This means that Latvians who have official residence in Latvia but work in Ireland must pay the 5% difference in income tax on their return. Latvian workers in Ireland are indignant. They do not see this as an internal tax matter but as disloyalty by the Latvian state towards their people. This issue seems to be a considerable impediment for Latvians in Ireland to return to Latvia from both financial and loyalty perspectives.

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1 State Employment Agency, Nodarbinātības valsts aģentūra, www.nvo.gov.lv.

2 Conception on migration in the context of the labour market, Koncenpcija par migrācijas politiku nodarbinātības kontekstā, www.pmlp.gov.lv.

3 Ambassador: Fewer job seekers from Latvia to Ireland, Vēstnieks: no Latvijas uz Īriju dodas arvien mazāk darba meklētāju, www.delfi.lv/archive/index.php?id+20526462.

4 For example, research was carried out by the Strategic Committee of Analysis of the President of Latvia in order to explore reasons why working and living in Ireland is more attractive; see the website www.president.lv. The Ministry of Integration has a range of programmes centred around Latvians working in Ireland aimed at maintaining ties with them, their families and especially their children.

Chapter I
Entry, Residence, Departure

With regard to normative regulations on entry, residency and departure, nothing has changed since 2006.

Entry, residency and departure are generally regulated by the Immigration Law.[5] 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.

Matters relating to entry, residency and departure are regulated in detail by the Regulation No. 586 "On the Procedure according to which EU citizens, EEA citizens and citizens of Swiss Confederation and their family members enter and reside in the Republic of Latvia" (further – Regulation No. 586) adopted by the Cabinet of Ministers on 18 July 2006. The Regulation implements Directives 96/71/EC and 2004/38.

A. ENTRY

Regulation No. 586 provides that an EU citizen or a citizen of the EEA countries and the Swiss Confederation (further - Union Citizen) and his/her family members has the right to enter in Latvia if he/she has valid travel documents and does not pose a danger to public security, public policy or public health. In case entry is denied due to the reasons mentioned, the person must be provided with a written statement providing particular reasons, except in cases where the reason is public security. If a Union Citizen and/or his/her family members do not have valid travel documents which may be obtained in Latvia, the Head of the State Boarder Guard must adopt decision on whether entrance must be allowed.

A family member of a Union Citizen has the right of entry and residence for up to 90 days if he/she has a valid residence permit for another Union Member State or his/her documents correspond to the requirements of Regulation No. 539/2001.

B. RESIDENCE

Regulation No. 586 envisages that a Union Citizen may reside in Latvia without notifying the authorities for up to 90 days counting from the first day of entry.

If a Union Citizen wishes to stay longer, he/she must register at the Office of Citizenship and Migration Affairs (OCMA). The OCMA issues a registration certificate, which is an official document stipulating the right of residence. Point 20 of Regulation No. 586 provides that a Union Citizen has the right to obtain a registration certificate if he/she:

- is employed in Latvia as an employee;
- is self-employed in Latvia;
- is a service provider or a worker posted by an undertaking established in the Union;

[5] *Official Gazette* (further *OG*) No. 169, 20.11.2002. 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.

- is enrolled or obtains education in an accredited educational institution of Latvia and has sufficient resources in order not to become a burden on the social security system, has a European sickness insurance card, notification of EU Member State or EEA that she/he has the right to receive medical treatment within the limits guaranteed by state or health insurance. Sufficient resources constitute monthly income exceeding 50% of the minimum salary as defined by Latvian law within the relevant period;
- has sufficient resources in order not to become a burden on the social security system, has a European sickness insurance card, notification of EU Member State or EEA that she/he has a right to receive medical treatment within the limits guaranteed by state or health insurance.

A Union Citizen retains the status of an employee or self-employed if he/she:
- is unable to work due to an illness or accident;
- is registered as unemployed or as a jobseeker and has previously been employed for longer than one year and unemployment has occurred due to circumstances not dependant upon him/her;
- is registered as unemployed or as a jobseeker in the first 12 months after engagement in employment. In this case, employment status must be retained for up to 6 month;
- has started to obtain a profession education connected with previous professional activities in an educational establishment registered by the Register of Educational Establishments.

A 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 one year period for the reason of employment;
- is employed in Latvia but resides in another country of the Union where he/she returns weekly.

Accordingly, job seekers who have not been employed in Latvia previously may claim a registration certificate if they meet the general conditions for Union Citizens who wish to reside in Latvia without the status of an employee or self-employed.
According to Point 21 of Regulation No. 586, in order to obtain a registration certificate the Union Citizen shall produce a document valid for travelling and submit:
- an official questionnaire;
- confirmation that his/her status corresponds to Point 20 of Regulation No. 586.

Permanent residence

According to Points 23 and 24 of Regulation No. 586, a Union Citizen has a right to a permanent residence permit if he/she:
- has been residing in Latvia for five years continuously according to the requirements of Point 20 of Regulation No. 586;
- before becoming a Union Citizen has been a citizen of Latvia or non-citizen of Latvia;
- has reached 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;

- has resided in Latvia for more than two years and has stopped working as a result of permanent incapacity for work;
- has after three years of continuous employment and residence in Latvia, working in the capacity of an employee or self-employed 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.

According to Point 27 of Regulation No. 586, in order to obtain a permanent residence permit a Union Citizen shall produce a document valid for travelling and submit:
- an official questionnaire;
- confirmation that his/her status corresponds to Points 23 and 24 of Regulation No. 586.

However, formally these are not the only conditions for obtaining a permanent residence permit. Article 24 of the Immigration Law stipulates that every foreigner willing to obtain a permanent residence permit must pass an official language test. According to the definitions provided by Article 1 of the said law, a Union Citizen is also foreigner. It follows that in the present situation where the residence rights of Union Citizens are provided by regulations of the Cabinet of Ministers, while the obligation to past an official language test is provided by the Immigration Law, the requirements of the law prevail according to the hierarchy of normative acts. According to the information provided by OCMA, in practice no requirement for an official language test is applied in respect to Union Citizens and their family members. However, formally the problem remains. This is further evidence of the necessity to provide residency rights for Union Citizens by normative acts at the level of law, not regulations, in order to avoid conflicts with the Immigration Law which in substance applies to third country nationals.

On 13 February 2007 the Cabinet of Ministers adopted Regulation No. 108 "On state duty for revision of documents and provision of services regarding request for visa, residence permit or status of permanent resident of European Community. According to the Points 10.5 and 10.6 of Regulation No. 108, a Union Citizen or family members are discharged from the obligation to pay duties, except for verification of invitation or in case of loss of residence permit.

C. DEPARTURE

According to Point 47 of Regulation No. 586, a Union Citizen's and his/her family members' registration certificates or permanent residence may be rejected if:
- the Union Citizen and/or his/her family cannot submit the documents required by Regulation No. 586;
- false information has been provided while acquiring a registration certificate or residence or permanent residence permit;
- there are grounds to consider that the person has engaged in a fictitious marriage in order to obtain residency right in Latvia;
- a competent state institution has supplied information that the person present a threat to public security, public policy or public health. This provision is not applicable if health problems have arisen three months after entry to Latvia;
- the Union Citizen and/or his/her family member who requires a permanent residence permit has been outside Latvia for period longer than six month except for the reason of

compulsory military service or by one absence of a maximum of twelve consecutive months for important reasons, for example, pregnancy, childbirth, illness, study or posting in another country;
- a residence permit is claimed by a Union Citizen who has been a Latvian citizen or non-citizen and there have been grounds for depriving him/her of the status of Latvian citizen or non-citizen;

According to Point 48 of Regulation No. 586, a Union Citizen's and/or his/her family member's residence rights and registration certificate, residence or permanent residence permit shall be annulled if:
- he/she constitutes an excessive burden on the social security system. This condition does not apply to a Union Citizen and family members where the Union Citizen resides in Latvia for reasons of employment. In order to assess the burden on the social security system, the following circumstances must be taken into account: term of the residence, amount of allowances, regularity and reasons of request of allowances.
- the grounds provided by Regulation No. 586 for residence no longer exist;
- false information has been provided while acquiring a registration certificate, residence or permanent residence permit;
- there are grounds to consider that the person has engaged in a fictitious marriage in order to obtain residence rights in Latvia;
- a family member who is not a Union Citizen has been outside Latvia for longer than six months, except for the reason of compulsory military service or by one absence of a maximum of twelve consecutive months for important reasons, for example pregnancy, childbirth, illness, study or posting in another country;
- he/she has obtained permanent residence rights and has been outside Latvia for more than two consecutive years, except in cases where the person may prove by documents that he/she had justifying reasons;
- a competent state institutions has supplied information that the person presents a threat to public security, public policy or public health. This provision is not applicable if the health problems have arisen three month after entry in Latvia.

Expulsion

According to Point 49 of Regulation No. 586, the fact that a Union Citizen and/or his/her family member has not carried out administrative formalities concerning legality of residence, or the validity of their travel documents has expired, may not constitute valid ground for their expulsion.

Regulation No. 310 "Procedure under which persons cross the border of the Republic of Latvia" adopted by the Cabinet of Ministers on 10 July 2001[6] stipulates the procedure of crossing the border. They provide in general that in order to cross the border of Latvia a person must possess a valid travel document, which is a passport or other document which is recognized in Latvia. No conditions are provided with regard to the validity of the passport.[7]

Point 50 of Regulation No. 586 provides that in case the Union Citizen and/or his/her family member presents a threat to public policy, public security or public health, the Minis-

[6] *OG* No. 108, 13.07.2001, as amended until 2006, *OG* No. 109, 12.07.2006.

[7] Article 4(4) of the Directive 2004/38 requires that the period of validity of any passport issued or renewed shall be not more than five years.

ter of Interior may adopt an expulsion decision requiring the departure of the person within one month and with prohibition to enter Republic of Latvia for up to three years. However, Point 51 explains that the expulsion decision may be adopted only if the personal conduct of the person represents a genuine, present and sufficiently serious threat to policy or public security. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. Point 52 also provides that before making an expulsion decision, considerations such as how long the person concerned has resided in Latvia, his/her age, state of health, family and economic situation, social and cultural integration and the extent of his/her links with the country of origin must be assessed.

Point 54 provides that a Union Citizen and/or his/her family member may not be expelled if he/she has resided in Latvia for at least ten years or she/he is a minor, except in cases where expulsion of the minor is in his/her interests or where the threat to public security is very serious.

Point 55 envisages the right of the Minister of Interior to adopt forced expulsion decisions if the Union Citizen and/or his/her family member constitute a very serious threat to public policy or public security. If necessary, the decision may provide for a ban on re-entering Latvia for up to three years after the expulsion. The criteria for the ban on re-entering Latvia or inclusion of the person on a "black list" are provided by Article 61 of the Immigration Law.

Execution of the forced expulsion decision is performed by the State Border Guards under the procedure provided by Section VI of the Immigration Law. A more detailed procedure is provided by Regulation No. 212 "*On the procedure of forced expulsion of foreigners, from on departure document and procedure of its issue*".[8]

According to Regulation No. 586, in case execution of the expulsion decision takes place two years after its adoption, the respective officials are under the obligation to reassess the factual situation on whether the Union Citizen or his/her family member constitutes a threat to public policy or public security.

D. REMEDIES

According to Point 57 of Regulation No. 586, a decision on expulsion or forced expulsion adopted by the Minister of Interior may be contested before the Department of Administrative Cases of the Supreme Court of Latvia. The Court shall review the expulsion decision under the procedure provided by the Immigration Law. A challenge of the expulsion decision before the court suspends the expulsion decision if the person concerned submits a reasoned plea on the suspension of the expulsion decision, except in cases of forced expulsion decisions.

In this regard, the Immigration Law ONLY provides a detailed procedure on how a person may contest his/her inclusion on a black list. Under Section VIII[1] of the Immigration Law, the Supreme Court of Latvia has to take a decision within two months after submission of an appeal. Proceedings before the court must be oral and if the facts of the case contain classified information on state security matters, the court proceedings must be closed. The claimant has a right to submit evidence providing essential aspects of the case, while the respondent must prove the legality of the decisions on the ban on re-entering. If the facts of the case contain classified information, the court must provide the claimant with an attorney who

[8] *OG* No. 65, 30.04.2003, as amended until 2007, *OG* No. 141, 07.03.2007.

has a right of access to the classified information. The decision of the Department of Administrative Cases of the Supreme Court of Latvia is final and is not open to any further appeal.

With regard to other cases where a person wishes to contest an expulsion decision, it is more likely that the Immigration law is not applicable because it concerns all foreigners. With regard to the third-country nationals, an expulsion decision is usually taken by an official of the OCMA, while an expulsion decision with regard to a Union Citizen and/or his/her family members may be taken by the Minister of Interior. Therefore, the appeal procedure provided by Section V of the Immigration Law provides that an expulsion decision must first be contested before the head of the OCMA. However, if an expulsion decision is taken by the Minister of Interior, it cannot be contested before the head of the OCMA because he/she is of lower rank. It follows that the Union Citizen and/or his/her family member must submit an appeal of the decision before the court. Since there is no special procedural regulation provided by the Immigration Law, except in cases of inclusion on a black list, the proceedings are conducted according to the Administrative Procedure Law.[9]

Point 65 of Regulation No. 586 provides that a person may appeal before the court against a decision banning entry to Latvia for a period up to three years. However submission of such an appeal does not suspend the decision on the ban of entry.

Implementation of Directive 2004/38 and effects

Previously entry, residency and departure of EU citizens and their family members was regulated by Regulation No. 914 "On the Procedure according to which EU citizens, and EEA citizens and their family members enter and reside in the Republic of Latvia" adopted by the Cabinet of Ministers on 12 November 2004. The new Regulation No. 586 provides for more favourable rights with regard to entry and residency, however it does not provide for transitional rules regarding treatment of those EU, EEA citizens and their family members who have entered and resided according to the old Regulation No. 914.

For example, according to Regulation No. 586 residency permits are issued for an indefinite period, while according to Regulation No. 914 residence permits are issued only for a term no longer than five years, subject to conditions such as employment or service agreements or for no longer than one year for students.

Retrogressive effect of implementation of directive 2004/38

Regulation No. 586 does not provide for transitional provisions. This leads to situations where persons who have obtained residence permits according to Regulation No. 914 do not obtain new, more favourable rights automatically. For example, after the expiry of their residency permit, students who have obtained residence permits according to Regulation No. 914 have to apply again, and this is the same in regard to workers and self-employed persons.

Regulation No. 586 provides for several new concepts. For example, according to Regulation No. 914 a student wishing to obtain a residency permit must prove that he/she has sufficient resources, but the new Regulation No. 586 provides that sufficient means for the student constitutes 50% of the minimum wage. Article 8(4) of Directive 2004/38 provides that the Member States may not lay down a fixed amount which they regard as "sufficient resources" and in all cases this amount shall not be higher than the threshold below which na-

[9] *OG* No. 164, 14.11.2001. as amended until 2006, *OG* No. 183, 15.11.2006.

tionals of the Member States become eligible for social assistance. According to Regulation No. 693 "On guaranteed minimum income level and amount of allowance to guarantee minimum income level" adopted by the Cabinet of Ministers on 9 December 2003, persons become eligible for social assistance if their level of income does not exceed 27 LVL per month. Since 1 January 2008 the minimum wage is 160 LVL[10] gross or 121.70 LVL net. This means that for an EU student, sufficient resources constitute more than 60 LVL while for local people the figure is only 27 LVL.

Some problems may also arise with regard to permanent residency rights in the future. A person has a right to permanent residency if he/she has resided in Latvia in accordance with the conditions set forth by Point 20 of Regulation No. 586. Point 20 does not correspond to all the residency conditions provided by Regulation No. 914, especially what constitutes appropriate financial means for students, thus, if the person has obtained a residence permit in accordance with Regulation No. 914, this may lead to a breach of the requirements of Point 20 of Regulation No. 586, and consequently the person may be denied a permanent residency permit.

Draft legislation, circulars, etc.

No further steps have been taken to adopt the law on free movement of EU citizens, EEA citizens and citizens of the Swiss Confederation, but it remains on the agenda. The draft law is not intended to change anything in substance as this is now regulated by Regulation No. 586. The purpose of adopting the draft law is to place regulation of free movement within the EU at the normative hierarchy of law rather than regulation, which is of lower status.

Judicial practice

Right to exit (Regulations of Cabinet of Ministers providing that passports for children until age five can normally be issued for a term of validity of one year; non-implementation of the requirements of Article 2(3) of Directive 68/360, Article 2(2) of Directive 73/148 and Article 4(4) of Directive 2004/38)

On 12 September, 2007, the Administrative District Court delivered a decision in the case *K.D. and her children A.D.N. and D.P.N. v. OCMA*.[11]

Cabinet of Ministers Regulation No. 378 "Regulations on citizen identification cards, non-citizen identification cards, citizen passports, non-citizen passports and travel documents of stateless persons"[12] provides that passports for children under age of five may be issued with validity of one year or a longer period if a trip lasts longer than one year.

Article 2(3) of Directive 68/360, Article 2(2) of Directive 73/148 and Article 4(4) of Directive 2004/38 provides that in order to travel between Member States, a Union Citizen shall have a passport. The period of validity of any passport on being issued or renewed shall be not less than five years. K.D. had changed the passports of each of her children twice – on 7 July 2005 for A.D.N. and on 10 January 2005 for D.P.N. in order to change previous passports whose validity term of one year had expired. She claims that her and her children's

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[10] Regulations No. 592 "On minimum monthly wage and minimum hour rate" adopted by Cabinet of Ministers on 28 August 2007, *OG* No. 142, 04.09.2007.

[11] Administratīvās rajona tiesas 2007.gada 12.septembra spriedums lietā Nr.A 42 3476 06; Nr. A 1515-07/8, available at the home page of Latvian courts: www.tiesas.lv; http://www.tiesas.lv/files/AL/09_2007/12_09_2007/AL_1209_raj_A-1515-07_8.pdf

[12] *OG* No. 66, 28.04.2004

rights have been infringed, because the requirements of Regulation No. 378 do not correspond to the requirements of Directives. Regulation No. 378 does not implement the requirements of EU law correctly. As a result, K.D. had to change the passports of her children unnecessarily. This has impeded her rights and the rights of her children to free movement as guaranteed by the EC Treaty. K.D. claimed financial loss due to the change of passports.

OCMA contended that the rights of K.D. and her children have not been infringed because Regulation No. 378 does not preclude parents from requesting passports for children for longer periods than one year. OCMA considered that it was the fault of K.D. for not requesting passports for her children with longer validity terms.

The Administrative District Court found that there is no breach of the rights of free movement of K.D. and her children as provided by EC Treaty and Directives 68/360 and 73/148 because she has not proved that she has been a worker or service provider within the meaning of freedom of movement of workers. The requirements of Directive 2004/38 are not applicable to her and her children because her children's passports were issued before the date when Directive 2004/38 had to be implemented. The Court decided that Regulation No. 378 corresponds to EU requirements because it does not preclude parents from obtaining passports for their children with validity terms longer than one year.

At present K.D. has appealed the decision of the Administrative District Court before the Administrative Regional Court on the grounds that the provisions of Regulation No. 378 with regard to validity terms of passports for children do not ensure rights provided for EU citizens by EU law, in particular by Article 4(4) of Directive 2004/38. Additionally, such national provisions constitute an obstacle to the free movement right granted to each Latvian citizen as Union Citizens under the EC Treaty, and Member States must ensure attainment of the aims provided by directives by the term of implementation. Directive 2004/38 had to be implemented by May 2006. Since K.D. had to change the passport of her child issued in July 2005 in July 2006, she and her children were not ensured attainment of the objective set by this directive right at the expiry of the term of implementation.

On 13 November 2007 the new Regulation No. 775 "Regulations on passports"[13] was adopted by the Cabinet of Ministers, replacing Regulation No. 378. However, the requirements of Article 4(4) of the Directive are not implemented. Point 45.1 provides that passports for persons until age five may be issued with validity terms for one year or for longer periods if a trip is for a longer period, but no longer than five years.

[13] *OG* No. 185, 16.11.2007.

Chapter II
Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

Assistance for jobseekers is regulated by the *Law on the Support to Unemployed and Jobseekers*. On 21 June 2007 amendments were adopted. Mainly, they strike out requirements of permanent residency permit condition for the EU and EEA citizens and their family members in order to enjoy employment assistance in Latvia on equal grounds with others. In particular, Article 2 of the *Law on the Support to Unemployed and Jobseekers* now provides that EU and EEA citizens are entitled to any employment assistance and vocational training on equal grounds without having a residency permit.

According to Article 3 of the *Law on the Support to Unemployed and Jobseekers,* jobseekers and unemployed persons have rights to vocational training, retraining and enhancement of their professional qualifications, involvement in temporary work and in activities for special groups of persons, and support for taking up entrepreneurship or self-employed activities. In addition, jobseekers and unemployed persons are entitled to free employment services. This support is provided by the State Employment Agency.

2. LANGUAGE REQUIREMENT

Language requirements are provided by Regulation No. 296 "On the level of knowledge of the state language necessary for performance of professional duties and duties of position and procedure for verification of state language proficiency".[14] Neither the State Language Law nor Regulation No. 296 has been amended since 2006.

Requirements of knowledge of the official language still remain 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, third indicates that the person knows Latvian almost like native speaker.

Regulation No. 296 has two appendixes. The appendixes provide a list of the exact requirements on the level of knowledge of the official language for many professions. The requirements of Appendix I are applicable to state and municipal institutions and enterprises which are wholly or predominantly owned by the state. The requirements of Appendix II are applicable to private enterprises which according to normative acts perform public functions and private enterprises whose activities concern legitimate interests of society. Regulation No. 296 does not explain the term "activities concerning legitimate interests of society". However it may be presumed that legitimate interests of the society are in the field of the provision of goods and services, because Point 5 of Regulation No. 296 provides that if Appendix II does not contain some professions, the employer is under the obligation to ensure that consumers are provided with all necessary information on the respective good or service, and legitimate interests of society is interpreted in the light of the ability of the employ-

[14] *OG* No. 302, 29.08.2000 as amended by Regulation No. 404 (*OG* No. 435/437, 01.12.2000) and Regulations No. 1023, 19.12.2006 (*OG* No. 204 22.12.2006).

ees of the private company to communicate with the official authorities. For example, a chief accountant should be able to communicate with the State Revenue Office efficiently.

In the rest of the cases, namely where the Regulation does not set requirements for a particular profession, the 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 precise legal regulation on the criteria which a private employer must apply in order to estimate what level of state language knowledge is necessary for performance of particular work.

In addition, Regulation No. 296 provides for specifically defined means of proof of knowledge of the state language. This could be done either with a diploma of primary or secondary educational establishment or a diploma issued by the state language proficiency examination commission. It seems that such provisions might not be in conformity with the case law of the ECJ, in particular *Angonese.*[15]

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

Directive 2005/36 has not been transposed yet. The Ministry of Education is at the stage of drafting implementing legislation.

Text(s) in force

Presently, general guidelines for recognition of diplomas and qualifications are provided by the *Law on Regulated Professions and Recognition of Professional Qualifications.*[16] It implements Directives 77/249, 77/452, 77/453, 78/686, 78/687, 78/1026, 78/1027, 80/154, 80/155, 85/384, 85/432, 85/433, 89/48, 89/595, 89/594, 91/439, 91/670, 92/51, 89/48, 93/16, 96/26, 98/5, 98/76, 1999/42, 2001/19, 2001/25, 2002/84, 2003/103, 2004/83.

The Law regulates recognition of certain professions obtained outside Latvia. It relates not only to recognition of the professional qualifications of Union Citizens, but also to other persons willing to pursue their respective professional activities in Latvia. The Law was amended on 13 December 2007.[17] The amendments provide that the Law is applicable to refugees and to persons with alternative status, and that detectives and security service providers are subject to the regulated professions.

The Law provides a list of the regulated professions, and according to Article 6 of the Law the Cabinet of Ministers issues regulations listing sub-professions of the regulated professions.[18]

According to the Law, the Cabinet of Ministers is delegated legislative power to issue regulations providing recognition procedures and related matters.

On the basis of this mandate, several regulations were adopted by the Cabinet of Ministers regulating certain professions such as architects, doctors, nurses, veterinarians, lawyers

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

16 *OG* No. 105 06.07.2001.

17 *OG* No. 208, 29.12.2007

18 Full list of the regulated professions and sub-professions is available in English on http://www.aic.lv/rec/Eng/prof_en/public/

etc. On 6 March 2007 new regulations[19] were adopted regulating the acquiring, renewal and issuing of driver licences, implementing Directive 91/439.

In addition, procedures on how recognition of diplomas should be carried out are envisaged by a number of other regulations of the Cabinet of Ministers:

1) Regulation No. 525 *"On the procedure for recognition of professional qualifications for permanent activities in the Republic of Latvia"*[20] stipulates which documents must be submitted to the institution for recognition of professional qualifications, the procedure under which the institution reviews the application for recognition and the procedure under which the institution adopts a decision;
2) Regulation No. 886 *"Regulations on institutions which issue certificates of recognition of regulated professional qualifications obtained abroad"*[21] provides for particular institutions which have competence to recognize regulated professional qualifications obtained abroad;
3) Regulation No. 300 *"Regulations on information institutions relevant to the regulated professions"*[22] provides a list of institutions providing information services for those regulated professions which may be performed in Latvia without higher education.
4) Regulation No 397 *on additional requirements for recognition of professional qualifications obtained in a foreign country in Latvia in regulated professions and on the procedure to be followed in order to apply checks on compatibility of qualifications requirement or adaptation period*[23] transposing Directives 89/48/EEC, 92/51/EEC, 94/38/EC, 95/43/EC, 97/38/EC, 1992/42/EC, 2000/5/EC, 2001/19/EC which aim at setting up procedures for recognition of diplomas and qualifications in EEA Member States in cases where additional requirements of recognition of qualifications is insufficient. The Regulations also set the conditions for recognition of qualifications in case if those have been acquired outside the EEA and are recognized by the EEA State (Section 3) i.e. three years for experience in case of higher education and two years in case of professional secondary education. According to Point 18, the compatibility test and adaptation period shall be set taking into account the professional experience of the applicant, participation in continued education and professional education. Point 19 provides that the maximum duration of adaptation is three years in case of posts for which higher education is required and two years in case of secondary education as a requirement.[24]
5) Regulation No. 350 *on recognition of professional qualifications on the basis of length of professional experience and its kind in respective spheres of economic activity*[25] transposing Directives 1999/42/EC, 74/556/EEC and 74/557/EEC. The Regulation sets requirements on the length and pattern of professional experience in certain regulated professions for the recognition of respective professional qualifications.[26]
6) Regulations No. 128 *"On institutions which issue necessary documents for residents of the Republic of Latvia in order to recognize their professional qualification abroad and*

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19 *OG* No. 50, 23.03.2007.
20 *OG* No. 115, 22.07.2005.
21 *OG* No. 176, 03.11.2006.
22 *OG* No. 107, 19.07.2002.
23 07.06.2005, *OG* No. 92 10.06.2005
24 As reported by Kristīne Krūma, National Report of 2006
25 24.05.2005, *OG* No. 84 27.05.2005
26 As reported by Kristīne Krūma, National Report of 2006

the procedure for issuing such documents"[27] transposing Directives 89/48/EC, 92/51/EEC, 99/42/EC, 77/249/EEC, 78/686/EEC, 78/1026/EEC, 80/154/EEC, 85/384/EEC, 85/433/EEC, 93/16.EEC. The regulation describes the competence of the Information Centre of the Ministry of Interior, the Enterprise Register as well as the Academic Information Centre to issue documents acknowledging that the applicant has acquired the necessary education in order to practice in certain profession in Latvia. In addition they also issue documents attesting the right of a person to practice in regulated profession on the basis of professional qualifications, professional experience in Latvia and documents attesting that the person is allowed to practice in the regulated profession and is not limited or denied this right due to offences or crimes. The regulation also provides for qualification aptitude tests and adaptation periods.[28]

7) Regulation No. 219 *"On additional requirements for recognition of professional qualifications for foreigners, where education obtained abroad partially corresponds to the requirements of Latvia"*[29] provides for additional requirements for foreigners, including EU citizens, who have obtained education abroad, but where the education obtained abroad only partially corresponds to the requirements of Latvian education system.
8) Regulation No. 188 *"Regulations on documents relevant to the recognition of professional qualification"*[30] provides for particular forms of certificates recognizing professional qualifications, notices on compatibility of education and professional qualifications to the requirements of the Republic of Latvia, application for recognition of professional qualifications;
9) Regulation No. 298 *"Procedure on how an applicant covers expenses connected with the recognition of professional qualifications"*[31] provides that the applicant must pay a fee for recognition of regulated professional qualifications of 40 LVL (approximately 56 EUR).

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[27] 14.02.2006, *OG* No. 29 17.02.2006.
[28] As reported by Kristīne Krūma, National Report of 2006
[29] *OG* No. 66, 06.05.2003.
[30] *OG*. No. 63, 25.04.2003.
[31] *OG* No. 89, 13.06.2003.

Chapter III
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES

Working conditions

The Labour Law[32] which provides for minimum standards of working condition for workers does not contain any express direct or indirect discriminatory provisions. Article 29 of the Labour Law provides for 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, the list of discrimination grounds provided by that provision is not exhaustive and it does not explicitly name the prohibition of discrimination on the grounds of nationality. Although this is provided by Regulation No. 1612/68, which is directly applicable, taking into account the lack of knowledge about EU normative acts in Latvia, particular amendments to the Labour Law would make application of the principle of non-discrimination on the grounds of nationality more effective.

Social advantages

The Law on Social Security[33] is an umbrella law covering state and municipal social services and allowances and the statutory social security system. Article 2 provides that a basic principle of the social security system is prohibition of differential treatment. Article 2^1(1) specifies non-discrimination grounds. Among these grounds nationality is not mentioned expressly, however the list of non-discrimination grounds is not exhaustive, thus the words "and other circumstances" may also be interpreted as covering prohibition of discrimination on grounds of nationality.

The Law on Social Security[34] is an umbrella law covering state and municipal allowances (non-contributory), social services and the statutory social security system (contributory). Article 3 of the said law stipulates that it is applicable to all persons residing in Latvia.

However, there are special laws which regulate state allowances (non-contributory), social services and municipal allowances (non-contributory) and the statutory social security system (contributory). State allowances are regulated by the Law on State Social Allowances,[35] social services and municipal allowances by the Law on Social Services and Social Assistance,[36] and statutory social security system by the Law on State Social Insurance.[37] Interestingly, unlike the umbrella law – the Law on Social Security - special laws restrict the personal scope of beneficiaries. Namely, Article 4 of the Law on State Social Allowances and Article 3 of the Law on Social Services and Social Assistance provide that state social allowances, social services and social assistance may be claimed only by persons residing in

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32 *OG* No. 105, 06.07.2001. as amended until 2006 *OG* No. 162, 11.10.2006.
33 *OG* No. 144, 21.09.1995. as amended until 2008 *OG* No. 47, 26.03.2008.
34 *OG* No. 144, 21.09.1995. as amended until 2008 *OG* No. 47, 26.03.2008.
35 *OG* No. 168, 19.11.2002. as amended until 2007, *OG* No. 190, 27.11.2007.
36 *OG* No. 168, 19.11.2002 as amended until 2007, *OG* No. 208, 29.12.2007.
37 *OG* No. 274/276, 21.10.1997. as amended until 2007, *OG* No. 190, 27.11.2007.

Latvia permanently. Persons having temporary residence permit are explicitly excluded from the scope of the laws in question. It follows that Latvia provides on equal basis only those social allowances and assistance which falls within the scope of Regulation 1408/71, leaving aside the provisions of Article 7(2) of Regulation 1612/68.

Although Article 17(1) of the Medical Treatment Law[38] provides that the right to medical treatment paid by state budget is held by every Union Citizen who resides in Latvia for reasons of employment or self-employment and their family members on equal grounds with Latvian citizens and non-citizens, Article 17(3) specifies that pregnancy, natal and maternity care is provided only to the spouses of Latvian citizens and non-citizens of Latvia who have residence permits. It follows that this kind of social advantages is not provided on an equal basis to Union Citizens and their family members.

Tax advantages

According to the Law on Duties and Taxes,[39] a taxpayer is any natural or legal person who in the territory of Latvia performs activities resulting in income to which taxes are applicable. Employees are subject to income tax. The income of natural persons is subject to some tax relief. For example, tax relief is applied in respect to dependant persons of an employee. However, the Law on Income Tax[40] does not specify whether an employee is subject to income tax relief if his/her dependants are residing in another EU Member State.

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

A. Frontier workers

There is no special legislation differentiating between workers and frontier workers. However, the residence clause may constitute less favourable treatment. For example, the Law on Social Services and Social Assistance applies only to persons having permanent residence permits. Additionally, it is not clear how the same provisions of the Law on State Social Allowances will apply. As described above, although the Law on Social Allowances refers to Regulation 1408/71, it is not clear whether condition of permanent residence would be applied.

As regards other national norms relating to employment rights, these do not contain express conditions of residence. For example, the Latvian Labour Law does not contain a residency clause, thus working conditions may not be dependant upon place of residence.

Article 3 of the Education Law[41] provides that any EU national who has a residence permit and his/her children have an equal right to education. It follows that frontier workers and their children are not guaranteed equal rights to education.

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38 *OG* No. 167/168, 01.07.1997., as amended until 2007 *OG* 190, 27.11.2007.
39 *OG* No. 26, 18.02.1995. as amended until 2008 *OG* No. 27, 19.02.2008.
40 *OG* No. 32, 01.06.1993 as amended until 2007 *OG* No. 190, 27.11.2007.
41 *OG* No. 343/344, 17.11.1998., as amended until 2006 *OG* 207, 29.12.2006.

B. Sportsmen / sportswomen

The sport sector in general is regulated by the Law on Sports.[42] This law has not been amended since 2006. It stipulates that all persons have equal rights to pursue sports. As regards employment in sports, the Labour Law is applicable.

The organization of the sport sector has not changed since 2006. The overall responsibility for state sports policies is held by the National Sports Council. The Council holds a pivotal position between the government and non-governmental organizations. The activities of sport federations are coordinated by the Council of Sport Federations of Latvia. Only those Sports Federations that comply with the criteria of the Cabinet of Ministers[43] can be recognised and can represent themselves internationally. For a federation to be recognised in Latvia, it has to comply with all the acts of the legislation of Latvia and conform not only with the rules of international sports federations but also to international law.[44]

The practice of the biggest sports federations has not changed significantly since 2006.

Ice hockey

The Latvia Ice Hockey Federation has adopted the Regulations of the Samsung Supreme League for season 2007/2008,[45] which provide that each club can register five foreign players and an unlimited number of foreign players who are EU citizens. Each player must have a licence. Foreign players can obtain a licence if they have a transfer card. In addition, each club must pay licence fees for foreign players: fees for adult players are 350 lats (approximately 500 EUR), while fees for players aged 17-18 are 250 lats (approximately 360 EUR). The fact that clubs have higher expenses in case of employing foreign players due to licence fees may be considered as an obstacle to the free movement of ice-hockey players. However, the Latvian Ice Hockey Federation insists that the national Regulation is based on the Transitional Regulations of the International Ice-Hockey Federation and that this leading organization has been informed about the national Regulations and has made no objections with regard to licence fees for foreign players.

Football

Foreign players can play in the Latvian football league if they have international transfer certificates. The Latvian Football Championship Regulations provide that each club can register an unlimited number of foreign players but only five foreign players can be on the field at the same time.[46] Foreign players in this context are those who hold passports of another state. In addition Latvian football clubs must pay fees for each foreign player of 300 LVL (approximately 430 EUR). As in the Latvian Ice Hockey League, this may create an obstacle for free movement. However, as stressed by the Latvian Ice Hockey and Football federa-

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42 *OG* 165 13.11.2002, as amended until *OG* No. 180, 09.11.2006.

43 Regulations of Cabinet of Ministers No. 505 "Procedure of recognition of sports federation", adopted on 09.09.2003., *OG* 125 12.09.2008.

44 As reported by Kristīne Krūma, National Report of 2006

45 Homepage of Latvia Ice-Hockey Federation www.lhf.lv, http://www.lhf.lv/public/?id=142&ln=lv&std_id=686.

46 http://www.lff.lv/lv/virsliga/reglaments/virs-reg/.

tions, fees paid by clubs for foreign players are intended to support Latvian youth trainers because employment of foreign players diminishes demand for Latvian players.[47]

Basketball

Nothing has changed since 2006. The Latvian Basketball League Regular Championship regulations provide that for the team to be registered a maximum 20 players can be included.[48] Amongst these 20 the number of foreign players is not limited. Foreign players in this context mean foreigners who have no passport of a Latvian citizen or non-citizen. The number of players registered for each game shall be a minimum of eight and a maximum of 12. There are no limits for registering Estonian and Lithuanian citizens for the game. However, the number of other foreign players is limited to four. The composition of teams is important also in the context of the SEB Baltic Basketball League because only teams registered for the Latvian Championship in the order described above can participate in the Baltic League.[49]

Volleyball

In order to play volleyball in the national leagues in Latvia, foreign players must have transfer cards issued by the International Volleyball Federation. In turn, the International Volleyball Federation issues transfer card only after the purchase of a licence. Usually a licence is purchased by the club which wants to employ the respective player, not by the player.

In 2007 there were no restrictions with regard to the number of foreign volleyball players at national clubs or games of the national league.[50] However, the Latvian Volleyball Federation considers that it has rights to restrict the number of foreign players by regulations which are adopted annually. Presently there is no restriction due to the small number of foreign volleyball players in Latvia.

C. Maritime sector

Article 272 of the Maritime Code[51] provides that any person may serve or captain or be a crew-member. There are two bilateral international agreements in the maritime sector concluded with France[52] and Turkey.[53] These do not regulate any matters relating to employment of persons on ships.

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47 Home page of Latvian Football federation, www.lff.lv.

48 http://www.basket.lv/lbl/faili/lbl_int.pdf.

49 As reported by Kristīne Krūma, National Report of 2006; Home page of Latvian Basketball Confederation, www.basket.lv; http://www.basket.lv/lbl/faili/lbl_nolikums.pdf (11.04.2008.)

50 Home page of Latvia Voleyball Federation, www.volejbols.lv http://www.volejbols.lv/images/stories/Dokumenti/lk.reglaments07.doc.

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

52 Agreement between Republic of Latvia and France in Maritime sector, *OG* No. 79/80, 25.03.1998.

53 Agreement between the Government of the Republic of Latvia and the Government of the Republic of Turkey, *OG* No. 236/241, 23.09.1997.

D. Researchers / artists

The right to work as a scientist in Latvia is not conditional on nationality. The right to work as a scientist is held by persons with doctoral degrees. This is provided by the Law on Scientific Activities.[54] 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 non-discrimination grounds and protects against discrimination "in other circumstances" too.

A doctoral degree obtained abroad is subject to recognition. Article 10(1) of the Law on Scientific Activities provides that a foreign doctoral degree has to be recognized in accordance with international agreements. However, according to Article 11^1 of the Education Law,[55] the institution providing expertise on recognition of academic education is the Academic Information Centre.[56] 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 in an academic post by the University of Latvia only educational and professional requirements are applicable. Regulations on election for academic posts do not provide for any restriction regarding nationality.[57]

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

4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68

Text(s) in force

Social allowances (non-contributory)

Matters relating to non-contributory social allowances are regulated by the Law on State Social Allowances.[58] Almost all non-contributory state social allowances in Latvia are family allowances, namely, child-care allowance, disabled child–care allowance, allowance for guardians of minors, and allowance for care of an adoptive child.

Article 4 of the said law provides that the right to non-contributory state social allowances are held by persons who reside in Latvia permanently and have acquired a Latvian identity number. The State Social Insurance Agency[59] explains that a person who does not have a permanent residence permit but only a temporary residence permit has a right to non-contributory state social allowances only if this is provided by Regulation No. 1408/71.[60] It

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54 *OG* No. 70, 05.05.2005. as amended until 2007 *OG* No. 107, 05.07.2007.

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

56 Home page of Academic Information Centre, www.aic.lv.

57 Home page of University of Latvia, www.lu.lv, http://www.lu.lv/dokumenti/nolikums-akad-amati.html.

58 *OG* No. 168, 19.11.2002. as amended until 2007, *OG* No. 190, 27.11.2007.

59 The institution in charge of the all social allowances in Latvia.

60 Article 17(6) of the Law on Social Allowances entrusts the Cabinet of Ministers with adopting regulations on procedure of application of Regulation 1408/71. On 15 March 2005 the Cabinet of Ministers adopted Regulation No. 180 *"On procedure under which Ministry of Children and Family Affairs provides State social secu-*

follows that with regard to non-contributory social allowances the competent institutions of Latvia only take into account the provisions of Regulation 1408/71, leaving aside Article 7(2) of Regulation 1612/68 and Article 39 of the EC Treaty.

Social insurance allowances (contributory)

States social insurance is regulated by the Law on State Social Insurance.[61] According to Article 1(4)(b) of the law, Articles 13 to 17 of the law applies in respect to persons who are subject to the Regulation 1408/71. Article 13 provides for persons who are subject to state social insurance – employees, self-employed and persons who voluntary join states social insurance. Article 14 defines the objects of insurance, which includes income from employment and self-employed activities.

With regard to the aspect of less favourable treatment of guest workers, the following provisions in the field of contributory social insurance must be mentioned. Article 14(7) of the Law on State Social Insurance provides for objects which are exempted from state social insurance. These include life insurance (with accrual of funds) and health and accident insurance (with no accrual of funds). However, the aforementioned exemptions are not subject to state social insurance only if the life insurance contract term is not shorter than five years and the life, health and accidents insurance contract term is not shorter than one year. Such a regulation may create less favourable treatment with regard to state social insurance for persons working in Latvia for less than one to five years.

Rights to old age pensions are regulated by the Law on State Pensions. Article 26^1 provides that in order to calculate a pension in a situation where a person has worked in other EU or EEA states, the theoretical amount of contributions must be established. According to the Latvian law, the theoretical amount of contributions is the average amount of state social contributions in Latvia in the previous year in question. In case of change of permanent residence outside Latvia the retention of rights to state pension is regulated by Cabinet of Ministers Regulation No 542 *"Payment of state pensions acquired in Latvia after departure of Latvia"*.[62] Point 13 of Regulation No. 542 provides that the Regulation is applicable insofar as it complies with the requirements of Regulation 1408/71.

rity agency with information in order to comply with Regulation 1408/71 and on procedure under which Ministry of Children and Family affairs cooperates with Ministry of Welfare in order to deal with cross-boarder situations in application of Regulation 1408/71."

61 *OG* No. 274/276, 21.10.1997. as amended until 2007, *OG* No. 190, 27.11.2007.

62 *OG* No. 102., 30.06.2006.

Chapter IV
Employment in the Public Sector

1. ACCESS TO THE PUBLIC SECTOR

1.1. Nationality condition for access to positions in the public sector

Posts reserved exceptionally for Latvian citizens according to the special laws are civil servant,[63] judge,[64] court bailiff,[65] notary,[66] prosecutor,[67] policemen,[68] state security officer,[69] fireman,[70] boarder guard,[71] national guard,[72] civil employment in military service,[73] employees of the State Revenue Office,[74] and employee in the diplomatic and consular service.[75]

According to the Maritime Code,[76] a captain of a ship is not considered as a public sector post. As reported in 2006, there is no nationality requirement for captains of ships.

1.2. Language requirement

Language requirements for access to the public sector are provided by Regulation No. 296 "On the level of knowledge of the state language necessary for performance of professional duties and duties of position and procedure for verification of state language proficiency".[77] Neither the State Language Law nor Regulation No. 296 has been amended since 2006.

Requirements of knowledge of the official language still remain 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, while the third level indicates that the person knows Latvian almost like native speaker.

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63 Law on Civil Service, *OG* No. 331/333, 22.09.2000. as amended until 2007, *OG* No. 93, 12.06.2007.

64 Law on Judicial Power, *OG* No. 1, 14.01.1993. as amended until 2007 *OG* No. 188, 22.11.2007.

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

66 Law on Notariate, *OG* No. 48., 09.07.1993. as amended until 2007 *OG* No. 4, 09.01.2008.

67 Law on Prosecutor's Office, *OG* No. 65, 02.06.1994 as amended until 2007, *OG* No. 67, 25.04.2007.

68 Law on Police, *OG* No. 31, 15.08.1991. as amended until 2006, *OG* No. 157, 03.10.2006.; Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks, *OG* No. 101, 30.06.2006.

69 Law on State Security Institutions, *OG* No. 59, 19.05.1994. as amended until 2007, *OG* No. 117, 20.07.2007.

70 Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks, *OG* No. 101, 30.06.2006.

71 Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks, *OG* No. 101, 30.06.2006.

72 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.

73 Law on Military Service, *OG* No. 91, 18.06.2002. as amended until 2007, *OG* No. 62, 17.04.2007.

74 Law on State Revenue Office, *OG* No. 105. 11.11.1993. as amended until 2006, *OG* No. 171, 26.10.2006.

75 Law on Diplomatic and Consular Service, *OG* No. 155, 10.10.1995., as amended until 2006, *OG* No. 207, 29.12.2006.

76 *OG* No. 91 18.06.2003 as amended until 2007 *OG* No. 2 03.01.2006.; *OG* No. 56 04.04.2007

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

Regulation No. 296 has two appendixes. The appendixes provide a list of exact requirements on the level of knowledge of the official language for many professions. The requirements of Appendix I are applicable to state and municipal institutions and enterprises which are wholly or predominantly owned by the state. For example, third level A sub-level of knowledge is required for the higher management of institutions, organizations or enterprises, highly qualified experts, medical and social care workers, academic workers, teachers; third level A sub-level is required for the management of state institutions, civil servants and workers performing duties connected with the documentation and office-work.

1.3. Recruitment procedures

There are no special requirements on recruitment procedures provided by law regarding posts outside the civil service and other professions not requiring Latvian nationality.

1.4. Recognition of diplomas

Article 2(7) of the Law on Regulated Professions and Recognition of Professional Qualifications[78] provides that this Law is not applicable to cases where the activities of the regulated professions take place in the public sector or is connected to the performance of the functions of the courts.

However, for the purposes of employment in the public sector academic recognition is sufficient. Procedures for the recognition of academic diplomas are provided by the Education Law[79] and the Law on Institutions of Higher Education.[80] The institution providing expertise on recognition of academic education is the Academic Information Centre.[81] This centre provides expertise on whether academic education obtained abroad corresponds to the requirements of the Latvian education system.

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

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

Regulation No. 995 "On remuneration and qualification grades for workers, servants and officials in direct administration institutions and Central election commission as well as benefits and compensations for servants" provides for the remuneration system in the public sector. 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 and is vital for the performance of work in the public sector or the person has obtained professional experience in the municipal sector. 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.

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78 *OG* No. 105 06.07.2001

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

80 *OG* No. 179, 17.11.1995. as amended until 2007 *OG* No. 72, 05.05.2007.

81 Home page of Academic Information Centre, www.aic.lv.

2. EQUALITY OF TREATMENT

2.1 Recognition of professional experience for the purpose of determining the professional advantages (e.g. salary; grade)

As described above, according to Regulation No. 995, previous professional experience is one of the criteria taken into account when defining the amount of remuneration in the public sector. Since only professional experience acquired in the Latvian public sector is taken into account, there may be problems with regard to the equal treatment among employees in the public sector on the grounds of nationality.

Judicial practice

On 10 May 2007 the Constitutional Court of Latvia delivered its decision in case No. 2006-29-0103, where it held that the requirement of higher education in order to become a civil servant corresponds to the Constitution of Latvia.[82]

[82] See the decision on the web page of the Constitutional Court of Latvia, http://www.satv.tiesa.gov.lv/upload/2006-29-0103-zivjizglitiba.pdf.

Chapter V
Members of the Family

Residency rights for family members is provided by Regulation No. 586 "On the Procedure according to which EU citizens, EEA citizens and citizens of the Swiss Confederation and their family members enter and reside in the Republic of Latvia" adopted by the Cabinet of Ministers on 18 July 2006.[83]

Definition of a family member

According to Point 3 of Regulation No. 586, a family member of a Union Citizen is:
- A spouse;
- A direct descendants of the Union Citizen or his/her spouse under the age of 21 or a dependant of the Union Citizen of his/her spouse;
- Dependant direct relatives in the ascending line of the Union Citizen of his/her spouse;
- A dependant of the Union Citizen of his/her spouse who has a common household with the 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 to the partner of an EU citizen with whom the EU citizen has a durable relationship duly approved. Regulation 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 for more stringent conditions than required by Directive 2004/38. In addition, Regulation No. 586 do not provide for a situation where a person has serious health grounds strictly requiring personal care of the Union Citizen or his/her family member.

Residence rights

A family member of a Union Citizen residing in Latvia according to the requirements of Point 20 of Regulation No. 586, has the right to obtain:
1) A registration certificate or permanent residence permit if he/she is a Union Citizen;
2) A residence permit or permanent residence permit if he/she is not a citizen of the Union.

Point 30 provides that in order to obtain a registration certificate, residence permit or permanent residence permit the family member must submit:
- An official questionnaire;
- Documents testifying marriage or fact thereof;
- Confirmation that he/she has a European sickness insurance card, notification from an EU Member State or EEA that she/he has a right to receive medical treatment within the limits guaranteed by state or health insurance if registration certificate to the Union citi-

[83] *OG* No. 114, 20.07.2006.

zen with whom the family member resides together in Latvia for purposes other than employment or service provision;
- A document testifying to a common household or the fact of dependency of a family member.

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 Union Citizen who is not a citizen of Latvia.

Concerning *Akrich* with regard to the spouses of Latvian citizens who are third county nationals, firstly Regulation No. 586 does not explicitly provide that they are not applicable to Latvian citizens, and secondly on 20 December 2007 amendments to the Immigration Law were adopted providing that a foreigner has a right to entry and residency in Latvia if he/she has a valid visa, residence permit, residence permit in Latvia with the status of resident of the European Community or a residence permit as a family member of a Union Citizen, and that the spouse of a Latvian citizen does not have to provide an invitation in order to request a visa for entry to Latvia.[84]

Points 32 and 33 of Regulation No. 586 provide for cases where a family member may retain residence rights.

Point 32 provides that a family member of a Union Citizen retains residence rights in the event of death, departure, divorce or annulment of a marriage and before he/she has satisfied the conditions set forth by Point 20 of Regulations No. 586 if:
- prior to divorce or annulment with the Union Citizen, the marriage has lasted for at least three years, including one year in Latvia;
- by agreement between the spouses or by court order, the spouse who is not a national of the Union has custody over the Union citizen's children;
- by agreement between the spouses or by court order, the spouse who is not a national of the Union has the right of access to the minor child in the territory of Latvia;
- this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence during the marriage;
- a Union Citizen has died and a family member has resided with him/her at least one year in Latvia;
- a family member is a child of a Union Citizen who obtains education in Latvia. In this case the child has a right to reside in Latvian until the end of the studies. The same right is held by an adult who has custody over that child.

Point 32 provides that a family member of a Union Citizen has a right to permanent residence in cases where a Union Citizen who is employed or self-employed dies before acquiring permanent residence rights in Latvia if:
- the Union Citizen – employed of self-employed –has resided in Latvia continuously for two years until the day of death;
- the cause of the death of the Union Citizen is an accident at work or a professional disease;
- the spouse of the dead Union Citizen has lost citizenship of the Republic of Latvia due to the marriage.

[84] *OG* No. 4 09.01.2008.

Children

Residence

Points 21.3 and 27.3 of Regulation No. 586 provide that in order to obtain a registration certificate or permanent residence permit for the child of a Union Citizen, a document of assent of both parents must be submitted or if guardianship is awarded to one of the parent the respective decision of authority or court. Directive 2004/38 does not explicitly stipulate whether such conditions may be applied by national law, nevertheless it is obvious that such a requirement may impede the right of free movement and has no obvious rational explanation. According to Point 30.5 the same requirements apply to a child of a family member of the Union Citizen.

Exit

Regulation No. 310 "Procedure under which persons cross the border of the Republic of Latvia" stipulates some conditions which may impede the free movement of Union Citizens and at the same time discriminates against all foreigners, even Union Citizens. Point 48 of Regulation No. 310 provides that if one of the parents is a foreigner, the child can exit Latvia only with a document of assent of the parent who is a citizen of Latvia. Point 50 of the said regulation provides that a parent who is a foreigner may leave Latvia with his/her child only with the authority of the other parent who is a citizen of Latvia. Although this measure was most likely adopted in order to avoid international child abduction, nevertheless it could hardly be considered be proportionate in relation to discrimination on the grounds of nationality and the right to the free movement of the Union Citizens and their family members.

In addition, as described above, there are some problems with regard to the validity of the passports of children who are citizens of Latvia and less than five years old. Regulation No. 378 "Regulations on citizen identification cards, non-citizen identification cards, citizen passports, non-citizen passports and travel documents of stateless persons"[85] provide that passports for children under the age of five may be issued with a validity term of one year or longer if a trip lasts longer than one year. In contrast Article 2(3) of Directive 68/360, Article 2(2) of Directive 73/148 and Article 4(4) of Directive 2004/38 provide that in order to travel between Member States, a Union Citizen shall have a passport and any passport shall be valid for not less than five years.

2. ACCESS TO WORK

On 21 June 2007 amendments were adopted to the *Law on the Support to Unemployed and Jobseekers*. Article 2 of the said law now provides that a family member of a Union citizen is entitled to all employment assistance and vocational training if he/she has a residence permit.

Point 4 of Regulations No. 586 explicitly provides that for the purposes of employment or self-employment neither a Union Citizen nor his/her family members require work permits.

[85] *OG* No. 66, 28.04.2004

3. ACCESS TO EDUCATION AND STUDY GRANTS

Article 3 of the Education Law[86] provides that any EU national who has a residence permit and his/her children have an equal right to education. It follows that other family members of EU nationals who are third country nationals and their children are granted equal rights to education.

Article 83 of the Law on Institutions of Higher Education[87] 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 the same rights with regard to education fees.

Article 3 of the Regulations No. 220 "Procedures for granting, returning and discharging study credits and student loans from a credit authority with State guarantees"[88] provides that loans are available to the Latvian citizens and non-citizens and Unions Citizens having temporary or permanent residence permits.

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

Tax advantages are equally applicable irrespective of nationality or term of residency. The *Law on Duties and Taxes*[89] provides that a taxpayer is any natural or legal person who performs activities in the territory of Latvia resulting in income to which taxes are applicable.

With regard to the right to social allowances and services, according to present Latvian law, family members are entitled to these only to the extent provided by Regulation 1408/71. Although the umbrella law, the *Law on Social Security,*[90] covering all social system of Latvia, provides that it is applicable to all persons residing in Latvia, special laws including the Law on State Social Allowances[91] and Law on Social Services and Social Assistance[92] provide that beneficiaries may be persons residing in Latvia permanently. Persons with temporary residence permits are explicitly excluded.

It follows that, according to the present law, family members are entitled to all social advantages only if they have the status of permanent resident.

Article 17(1) of the Medical Treatment Law[93] provides that the right to medical treatment paid by the state budget is enjoyed by every Union Citizen residing in Latvia for reasons of employment or self-employment and their family members on equal grounds with Latvian citizens and non-citizens, nevertheless Article 17(3) specifies that pregnancy, natal and maternity care is provided to the spouses of Latvian citizens and non-citizens of Latvia who have residence permits. It follows that this kind of service is not provided on the same conditions to the family members of Unions Citizens.

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

87 *OG* No. 179 17.11.1995. as amended until 2007 *OG* No. 72 05.05.2007.

88 Adopted on 03.07.2001. *OG* No. 303 10.07.2001. as amended until 2006 *OG* No. 888, 03.11.2006.

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

90 *OG* No. 144, 21.09.1995. as amended until 2008 *OG* No. 47, 26.03.2008.

91 *OG* No. 168, 19.11.2002. as amended until 2007, *OG* No. 190, 27.11.2007.

92 *OG* No. 168, 19.11.2002 as amended until 2007, *OG* No. 208, 29.12.2007.

93 *OG* No. 167/168, 01.07.1997., as amended until 2007 *OG* 190, 27.11.2007.

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

C-212/05 Hartmann

Article 4 of the Law on State Social Allowances provides that the right to the social allowances is enjoyed by persons residing in Latvia permanently. Union Citizens and their family member who have not obtained the status of permanent residents are entitled to the child-raising allowance only if this follows from Regulation 1408/71.

In Latvia in 2007 childcare allowance was a non- contributory benefit paid by the state budget. However, for employed persons the amount of child-raising benefit was dependant upon the amount of contributions to the state social insurance budget. Unemployed persons had the right to a flat-rate child-care allowance. Child-care allowance is provided on an individual basis and employed persons have this right irrespective of whether they actually stop active employment for the purposes of child-rising.

As explained by the State Social Insurance Agency,[94] if the child-raising allowance is claimed by a frontier worker employed in Latvia but living with his/her family in another EU Member State, Latvia will provide child-raising allowance to the frontier worker as an individual right. If, however, his/her spouse living in another EU Member State is also employed there, then the state responsible for the provision of child-care allowance is the Member State where the child lives. In addition, both Member States are under the obligation to compare the amount of child-care allowances, and in case the amount of allowances differs they must compensate the difference. It follows that the Social Insurance Agency takes into account Regulation 1408/71 only.

It is clear that under Latvian law the unemployed wife of a frontier worker residing outside of Latvia would be denied the right to Latvian child-care allowance, because the right to child-care allowance in Latvia is an individual right. However taking into account the *Hartmann* decision, especially paragraphs 25-26, where in substance the ECJ gave the interpretation of the scope of an individual right to social advantages for a frontier worker by extending it to the spouse as an indirect beneficiary, the understanding of an individual right to child-care allowance under Latvian law in the light of Article 7(2) of the Regulation 1612/68 also has to be extended.

C-213/05 Geven

As mentioned above, in Latvia child-care allowance in 2007 was a non-contributory benefit for all persons, however the amount of the benefit for employed persons was dependant upon the amount of contributions to statutory social insurance.

The right to child-care allowance is not restricted with regard to part-time or minor employment. Consequently, if Ms Geven had been employed in minor employment in Latvia while permanently residing in another Member State, as a frontier worker she would be entitled to child-care allowance proportionately to the contributions paid to statutory social in-

[94] Letter of 29.07.2008. No. 03-2/21/4715

surance during her employment. If her contributions where for a small amount, she would be entitled to the child-rising allowance minimum amount as provided for unemployed persons.

C-287/05 Hendrix

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

C-291/05 Eind

There are separate regulations on the right to residency permits for family members of Latvian nationals and family members of EU nationals. According to the wording of Article 23 of the *Immigration law*[95] adult children of a Latvian citizen or Latvian non-citizen do not have the right to residency permits. According to Regulation No. 586 *"On the Procedure according to which EU citizens, EEA citizens and citizens of Swiss Confederation and their family members enter and reside in the Republic of Latvia",*[96] adult children of EU citizens who have obtained residency permits in other EU Member states have the right to entry, but no right to claim residence permits in Latvia as family members, unless they are dependant on an EU citizen.

C-208/05 ITC

Latvian national law does not provide an obligation for an employer found by a recruitment agency to provide compulsory social security contributions in Latvia.

C-1/05 Jia

Point 3.3. of Regulation No. 586 provides that parents who are dependant are family members of EU or EEA citizens. There is no administrative or judicial practice on application of the provisions of Latvian law in situations like the *Jia* case. Point 3.3. of Regulation No. 586 may be interpreted in a way that requires actual dependency on an EU or EEA citizen when he/she moves to reside in Latvia.

In addition, Article 30 of the *Immigration Law*[97] provides the right to a residency permit for parents of Latvian citizens or non-citizens who have reached retirement age as defined by Latvian legislation. It follows that according to the principle of non-discrimination on the grounds of nationality, parents of EU nationals and their spouses must be granted the same rights.

C-97/05 Gattoussi

According to Article 23(1)(6) of the Immigration Law,[98] residency permits for third country nationals may be issued for the term of employment, but no longer than five years. The right to claim a permanent residency permit exists for persons who have resided in Latvia for five

[95] *OG* No. 169, 20.11.2002. as amended until 2007, *OG*.No. 4, 09.01.2008.
[96] *OG* No. 114, 20.07.2006.
[97] *OG* No. 169, 20.11.2002. as amended until 2007, *OG*.No. 4, 09.01.2008.
[98] *OG* No. 169, 20.11.2002. as amended until 2007, *OG*.No. 4, 09.01.2008.

years. In order to obtain a permanent residency permit, a person must pass an official language exam. From Article 23(1)(6) it follows that the right to reside is dependant on the terms of employment. However, in case of employment a third country national has the right to claim a residency permit, but under normative acts is not granted the right to obtain a residency permit.

There were no legislative amendments made during 2007 in order to implement case-law of the ECJ.

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

The Ministry of the Interior has elaborated and proposed an Immigration Conception[99] with regard to employment. It provides for two possible policies. Firstly, the existing policy remains in force, or secondly certain liberalization of immigration conditions for third country nationals comes into force. The conception was not adopted in 2007. Since Latvia has an economic crisis, there is not such a great labour shortage. Therefore, immigration policy with regard to third country nationals is not on the political agenda presently.

[99] Home page of Office of Citizenship and Migration Affairs, www.pmlp.gov.lv; http://www.pmlp.gov.lv/?_p=70&news__id=1111&news__pos=0&menu__id=70.

Chapter VIII
EU Enlargement

1. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2004

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

According to amendments to the *Immigration law* adopted on 5 July 2007, Article 70 provides that according to the Protocol on free movement of workers of the Accession agreement and taking into account the Accession agreement, in case the Latvian labour market is considerably endangered or any measures on restriction of free movement of workers are taken against Latvia, Latvia can take adequate measures.

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

At present Austria, Denmark, France, Germany, Belgium and the EEA countries (Switzerland and Norway) have maintained restrictions on the free movement of workers with regard to Latvia.

2. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2007

Latvia has no restrictions on the free movement of workers from Bulgaria and Romania.

Chapter IX
Statistics

	State	employees					
		on 01.01.2007.			on 01.01.2008.		
		male	female	total	male	female	total
1	Austria	0	1	1	18	1	19
2	Belgium	15	3	18	20	2	22
3	Bulgaria	1	2	3	282	10	292
4	Czech Republic	13	6	19	60	9	69
5	Denmark	117	18	135	134	25	159
6	France	36	14	50	50	20	70
7	Greece	6	0	6	7	0	7
8	Estonia	133	39	172	166	47	213
9	Iceland	7	1	8	9	1	10
10	Italy	39	3	42	51	4	55
11	Ireland	10	1	11	14	2	16
12	Cyprus	0	0	0	0	0	0
13	Great Britain	80	18	98	103	24	127
14	Lichtenstein	0	0	0	0	0	0
15	Lithuania	382	151	533	491	189	680
16	Luxemburg	1	0	1	1	0	1
17	Malta	1	0	1	1	0	1
18	The Netherlands	24	7	31	40	12	52
19	Norway	36	3	39	41	6	47
20	Poland	43	35	78	91	44	135
21	Portugal	7	4	11	10	6	16
22	Romania	1	0	1	57	2	59
23	Slovakia	4	1	5	9	1	10
24	Slovenia	0	1	1	1	1	2
25	Finland	79	44	123	80	42	122
26	Spain	17	4	21	23	6	29
27	Switzerland	5	1	6	7	1	8
28	Hungary	4	1	5	4	1	5
29	Germany	175	45	220	201	64	265
30	Sweden	88	28	116	102	32	134
Total		**1324**	**431**	**1755**	**2073**	**552**	**2625**
	Including family members						
	EU citizens	23	33	56	20	35	53
	third country nationals	4	9	13	5	13	18

The number of EU citizens from other EU Member States working in Latvia has increased by more than one third. The number of males working in Latvia has increased by 36% while the number of female has increased by 21%. There are no data on the sectors and qualifications of these workers.

Chapter X
Miscellaneous

Articles

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