

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

Rapporteur: Dr. Lyra Jakuleviciene
Mykolas Romeris University

October 2009

Contents

Chapter I	Entry, residence and departure
Chapter II	Access to employment
Chapter III	Equality of treatment on the basis of nationality
Chapter IV	Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68
Chapter V	Employment in the public sector
Chapter VI	Members of the worker's family and treatment of third country family members
Chapter VII	Relevance/Influence/Follow-up of recent Court of Justice judgments
Chapter VIII	Application of transitional measures
Chapter IX	Miscellaneous

Abbreviations

Certificate	document confirming the right of EU national to permanent residence in Lithuania
EC	European Commission
ECJ	European Court of Justice
EU Residence Certificate	document issued to EU national or his/her family member
EEA	European Economic Area
EU	European Union
EU Residence Permit	document issued to a third country national, who is EU national's family member
EU Permanent Residence Permit	document confirming permanent residence right and issued to a third country national, who is EU national's family member
FIFA	Federation of International Football Associations
LBF	Lithuanian Basketball Federation
LFF	Lithuanian Football Federation
LVF	Lithuanian Volleyball Federation
MOI	Ministry of Interior
MS	Member State
Member States	Member States
MSSL	Ministry of Social Security and Labour
SODRA	Social Insurance Fund
UK	the United Kingdom

Introduction

Among the three most important developments that could be observed for the year 2008 were: (1) regulation of issuing the EU residence certificates, as well as issuing the EU residence permit by the Order of the Minister of Interior approved on 25 July 2008; (2) legislative developments with regard to clarification of status of family members of EU citizens who are third country nationals; (3) tax reform that introduced additional taxes, which will also affect EU workers. These developments are outlined in more details below.

1) Regulation of EU residence certificates

On 25 July 2008 the Minister of Interior of Lithuania approved the Order, which establishes the rules on issuing EU residence certificates (Migration Department started issuing such certificates in May 2008).

2) Status of family members of EU citizens who are third country nationals

Among the other important developments in Lithuania during the year, was regulation of issuing the residence permit to family members of EU nationals who are third country nationals by two legal acts: (a) the Order on issuance of residence permits for family members of EU citizens, who are third country nationals, adopted on 25 July 2008; (b) amendments to the Aliens' Law concerning entry and stay in Lithuania of family members who are third country nationals, adopted in February 2008. The Order clarified the status of family members of EU citizens who are third country nationals and outlined the procedure and documents required from family members of EU nationals who are third country nationals in order to obtain EU residence permit.

3) Tax reform

In December 2008 the Parliament of Lithuania adopted over 60 amendments to the legislation in order to implement the tax reform. This reform aims to balance the budget deficit with a view of addressing financial crisis. While this tax reform was not directly targeting EU/EEA nationals, new taxes introduced will indirectly affect them as well. According to the tax reform (enforced as of 1 January 2009), the list of persons who shall be insured for social security and pension was expanded (to also include persons obtaining income from sport activity or artistic performance activity, persons receiving income as authors, farmers and their partners). For self-employed persons (except those working with patents, advocates and their assistants, notaries and bailiffs) this will mean that they have to be compulsorily insured for pension, illness and maternity. Furthermore, all previously reduced rates of VAT were abolished for authors, artists and sportsman. This additional taxation and abolishment of reduced VAT rates may reduce Lithuania's attractiveness for mobility of EU/EEA nationals. Amendments to tax legislation will significantly affect sailors, because their income will

LITHUANIA

now be taxed in Lithuania: some of them will continue not be subject to income tax (sailors working in Lithuanian ships), while others will have to pay income tax in the amount of 15% (sailors working in ships of third countries). They will also be subject to compulsory health insurance.

In addition, during the year, the Aliens' Law was amended in order to align national legislation with requirements for entering into the Schengen area. Control of persons at airports was abolished as of 30 May 2008. The European Commission has warned Lithuania and a few other Member States for failure to timely adopt the measures for recognition of professional qualifications. Hereafter, the Law on Recognition of Regulated Professional Qualifications (implementing Directive 2005/36/EC) was adopted by the Parliament on 3 April 2008. The Law aims to ensure that EU nationals who are workers or self-employed persons could engage in the same regulated profession in Lithuania with the same rights as Lithuanian nationals. In addition, over 20 new legal acts or their amendments were adopted during 2008 in this field. These legal acts will regulate operational aspects of recognition as well as address recognition of various relevant professional qualifications.

Despite mentioned positive developments, there are also remaining concerns that pose or may create specific problems for EU nationals exercising their freedom of movement in the Republic of Lithuania. In particular: (a) situation of job-seekers is not clear; as well as status of EU nationals following the termination of employment relations or other lawful activities; (b) regulation of access to Lithuanian public service remains unclear for persons performing technical and other functions, which fall outside the strict definition of public service; (c) language proficiency requirement continues to be applied in certain spheres of the private sector, including maritime sector; (d) a number of restrictions exist in the sports' sector; (e) problematic could also be the calculation of periods of pension insurance acquired abroad while assigning pension in Lithuania. Lastly, even though the requirements in maritime sector for composition of crew were relaxed in 2008, new language requirements were introduced during the same time.

During the year, 1264 certificates confirming the residence right of EU/EEA citizens were issued. Furthermore, 247 new requests to issue permanent residence certificates were received by the authorities during 2008 (a slightly higher number of 288 applications was in 2007). 238 decisions were adopted, among those - 1 to issue EU residence permit to a family member of EU national. Worthwhile noting that the number of requests for work permits for third country nationals was further increasing if compared with 2006-2007 (7819 permits were issued in 2008; while 5686 were issued and 235 extended in 2007, as well as 2,944 issued and 38 extended during 2006).

Lithuania does not apply transitional arrangements vis-à-vis the old or new Member States. It does not apply restrictions on the access of EU nationals to its labour market. Generally, the labour migration to Lithuania for a number of years has been rather low and the annual quota established for labour permits has been hardly filled. Still large number of Lithuanian workers have been seeking employment abroad and the labour force within Lithuania was lacking in the first half of 2008. Therefore it is unlikely that Lithuania would introduce any restrictions whatsoever as concerns access to the labour market.

Chapter I

Entry, Residence, Departure

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Text(s) in force

The main provisions on conditions of entry, residence and departure of EU nationals are contained in the *Aliens' Law of 2004* as amended on 28 November 2006 and 1 February 2008. On 1 February 2008 the Parliament approved amendments to the Aliens Law, mostly related to introduction of provisions on Schengen regime. As amended, the Aliens Law now provides that the rules concerning the refusal of entry of foreigners to Lithuania will be determined according to Schengen Border Code.

According to the Aliens Law (Article 97(1)) EU national may be admitted to Lithuania and stay therein for a period of three months without any formalities counting from the first day of entry into the country. Given that EU nationals, entering or exiting Lithuania do not require any specific entry or exit authorisation and are not registered by the authorities while in the territory of Lithuania (unless they apply for a residence certificate or declare their place of residence, or declare about their departure from the country), there is no data as to how many of them entered/exited Lithuania in 2008. They appear in the official statistics only if they stay for a longer period than 3 months. Refusal of entry of EU national to Lithuania is possible only on two grounds, which are related to lack of valid travel document (the Law does not specify which travel document, but it is understood to cover either ID card or passport) and threat to public security, public policy or public health (Art. 98 of the Aliens Law).

After the expiration of three months of residence without formalities within half a year, EU nationals have to declare a place of residence and submit documents for residence certificate, if complies with at least one of the grounds for residence. The grounds of residence mentioned in Article 101 of the Aliens' Law reflect *Art. 7(1) of the Directive 2004/38* and include:

- workers or self-employed persons;
- persons who have sufficient resources for themselves and their family members and sickness insurance;
- students, school pupils, interns or participants of vocational training or qualification raising courses and have for themselves and their family members sufficient resources and sickness insurance;
- family members of EU nationals.

Article 7 (3 a-d) of the Directive 2004/38 is not transposed in Lithuania, because there is no possibility for EU nationals and their family members to stay in Lithuania following the termination of employment relations or other lawful activities in the country. This is not in line with the obligation to provide for a possibility to remain following active employment in certain circumstances as required by the Directive. On the other hand, the author of this Report does not see clear violation of the Directive because even if concrete grounds are not provided, these persons are likely to fall under paragraph 2 of Article 101(1) of the Aliens'

LITHUANIA

Law, which provides that persons can stay in the country when they have sufficient resources for themselves and health insurance. This opinion is also confirmed by the authorities (Migration Department).

Right of residence is confirmed by the certificate issued in accordance with the *Order approved by the Minister of Interior on 25 July 2008 on Issuance of Certificate confirming EU national's right of residence in the Republic of Lithuania and Order on Issuance, extension and withdrawal of EU residence permit to a family member of EU national* (Order on Residence Certificate and EU residence permit). The Order provides that Certificate is valid for a period of 5 years or other period of EU national's residence if shorter than 5 years. Decision on application for residence certificate shall be adopted within 5 days (may be extended to 10 days in case of objective reasons).

With regard to implementation of *Article 8(3) of Directive 2004/38*, Lithuanian legislation complies with requirements for presentation of documents along with request for issuance of certificate and does not require any additional documents that could serve as obstacles or unnecessary barriers to request the certificate. However, all documents presented need to be certified (or confirmed by Apostille) and officially translated into Lithuanian language, which may be a practical barrier. In addition, Lithuania applies since 2007 a requirement in case of workers – to submit a certificate issued by competent EU member state institution confirming that the foreigner is insured with social insurance. Furthermore, it may be difficult for a job-seeker to confirm the legal activity in Lithuania by a certain document.

After 5 years EU nationals become eligible for *permanent residence*, confirmed by a certificate (introduced in Lithuania since 2006). According to Article 104 of the Aliens' Law

‘An EU national, who has been lawfully resident in the Republic of Lithuania for the last 5 years or, who retains the right to Lithuanian citizenship or, who is a person of Lithuanian origin, or arrived to the Republic of Lithuania as a family member of a Lithuanian citizen, is entitled to reside permanently in the Republic of Lithuania.’

According to the Law, in exceptional cases to be determined by the Minister of Interior residence right may be granted earlier than after 5 years of residence (Art. 104(3) of the Law).

Issuance of the certificate confirming permanent residence and the issuance of EU permanent residence permit to a family member of EU national is regulated by the Order of the Minister of Interior of 25 October 2007 (hereafter - Order on Permanent Residence Certificate). Paragraph 3 of this Order transposes *Article 17 of the Directive 2004/38*. It provides for a possibility to obtain residence permit for EU nationals residing in Lithuania for less than 5 years in situations mentioned by Art. 17 (paragraphs 3-5 of the Order). Furthermore, the periods of employment are calculated in the period of residence, as well as periods of unemployment that occurred without the will of the person (paragraph 7 of the Order). Request for permanent residence certificate is submitted to the Migration Department through a local migration institution where EU national has declared or is intending to declare his/her place of residence. All supporting documents need to be translated to Lithuanian and officially confirmed. EU national needs to fill in the Foreigner's Data form, which should be filled in Lithuanian language (it is not clear how the foreigner can fill it in if he/she does not know Lithuanian). All requests submitted by EU nationals are registered in a special register. Decision on the basis of the request should be taken within one month from the date of receipt of application by the migration service. Decision on permanent residence granted is notified along with the certificate being sent to the EU national within 3 working days from

LITHUANIA

its' issuance. With regard to *Article 24(2) of the Directive 2004/38*, EU nationals who enjoy permanent residence enjoy the same treatment as nationals of Lithuania.

Decision to grant permanent residence to EU national may be withdrawn if the circumstances leading to recognition of such a right have changed. In this case decision on withdrawal of the right shall be adopted within 10 days from receipt of materials by the Migration Department. Worthwhile mentioning that, if EU national is away from Lithuania for a period exceeding 6 months within one year, this may be a ground for refusing the permanent residence right (except when absence from Lithuania is related to serious reasons (including those required by the Directive 2004/38). Also, the Aliens' Law indicates that acquired right to permanent residence is lost in case of absence from the country for 2 consecutive years (Art. 104(7)).

Residence rights may be terminated to EU nationals and their family members in case of threat to state security or public order (Art. 106(1) of the Law). Criteria for adoption of the conclusion on threat to public order are regulated by the Order of the Commissar General of the Police of 29 May 2006 on verification of data and making conclusions on the foreigner who requests a residence permit in Lithuania, EC family member residence permit or granting of asylum as concerns his/her threat to public order of Lithuania or conclusion of marriage of convenience. Threat to state security and public order includes the following situations, when a foreigner:

- a) was sentenced for serious and particularly serious crime;
- b) was sentenced for a crime punishable with more than one year imprisonment;
- c) received official warning or court obligations in accordance with the Law on Organised Crime prevention;
- d) is reasonably suspected in commission of serious or particularly serious crime and there are evidences that he/she is intending to commit such crimes;
- e) is subject to compulsory medical measures envisaged in the Penal Code of Lithuania;
- f) is wanted by the foreign country for commission of a crime for which Lithuanian Penal Code provides a punishment of more than one year imprisonment;

The officer of the Police Information Board preparing the conclusion on the threat of the foreigner to Lithuania's public order may take into account additional criteria, like: behaviour of the person, administrative offences committed during the recent 2 years and other.

After losing the right to residence EU national and (or) his family member must depart from Lithuania or will be subject to expulsion. No significant developments have taken place in the area of departure of EU nationals during the year. There continues to be no special provisions in the aliens' legislation regulating departure of EU nationals (except different time lines applied). Under the Aliens' Law (Art. 125), departure of the foreigner (including EU national) may be ordered when temporary residence permit or permanent residence permit was revoked. This is in line with *Article 14(4) of the Directive 2004/38*. However, even though generally workers and self-employed persons cannot be expelled, unless their residence right is revoked or they do not obtain residence authorisation when needed, potentially they can also be expelled in case of national security and public order grounds and on the ground of illegal stay in the country (e.g. entered into the Republic of Lithuania lawfully, but is staying without possessing a temporary or a permanent residence permit where he is obliged to possess one). Aliens' Law separately states grounds for expulsion (Art. 126), i.e. a foreigner can be expelled when:

LITHUANIA

- 1) he failed to comply with the requirement obliging him to depart from the Republic of Lithuania within a set time period;
- 2) he entered into or is staying in the Republic of Lithuania unlawfully;
- 3) his stay in the Republic of Lithuania constitutes a threat to public security or public policy.

Decision on expulsion shall be executed immediately, unless the reasons for suspending expulsion exist. Lack of specific rules regulating departure and expulsion of EU nationals makes them vulnerable to expulsion under broader grounds than provided in the Directive 2004/38, which allows expulsion of EU nationals and their family members who have a right to permanent residence only on account of serious grounds of public policy or public security.

While taking a decision on expulsion of the foreigner, certain circumstances should be taken into account, including (Art. 128 of the Aliens' Law): the period of lawful stay in Lithuania; his family relationship with persons resident in Lithuania; social, economic and other connections with Lithuania; type and extent of dangerousness of the committed violation of law. The Order of the Minister of Interior No. IV-429 on Adoption of Decisions concerning Ordering Departure, Expulsion, Return or Transit through the Territory of Lithuania of a Foreigner and the Rules of Implementation of Such Decisions (hereafter – Order on Expulsion of Foreigners) of 24 December 2004, regulates expulsion of foreigners in detail and is also applied to EU nationals on the same conditions as to all other foreigners to be expelled from the country. In case of expulsion, a mark is inserted on a travel document with or without a ban to enter (paragraph 52.2). If this would be applied in practice to the EU nationals, it would be in variance with the Directive 2004/38, which prohibits imposing bans on entry in the context of expulsion decisions. The time limits for EU national's departure from the country are in line with the Directive 2004/38 (one month from receipt of decision in respect of order of departure for EU national or his family member, Art. 127(1) of the Aliens' Law).

Problematic could be the issue of detention of EU nationals, as no specific rules are established and they would be detained under the same grounds/conditions as all other foreigners in the country. Article 113 of the Aliens' Law mentions the following grounds for detention of foreigners (without any exceptions to EU nationals):

- 1) in order to prevent the alien from entering into the Republic of Lithuania without authorisation;
- 2) if the alien has illegally entered into or stays in the Republic of Lithuania (except when applied for asylum);
- 3) when it is attempted to return the alien to the country from where he has come if the alien has been refused entry into the Republic of Lithuania;
- 4) when the alien is suspected of using forged documents;
- 5) if a decision on expulsion of the alien from the Republic of Lithuania has been taken;
- 6) in order to stop the spread of dangerous and especially dangerous communicable diseases;
- 7) when the alien's stay in the Republic of Lithuania constitutes a threat to public security, public policy or public health.

Draft legislation, circulars, etc.

Art. 101 is proposed to be supplemented by a new paragraph 3. This paragraph would provide that family members of EU citizens who are third country nationals shall be entitled to residence permit when they arrive to reside in Lithuania with EU national for more than 3 months within half a year [...], or to join him/her.

Miscellaneous (administrative practices, etc.)

The table below illustrates the general proportion of foreigners residing with residence permits in the population statistics of Lithuania for the period of 2003-2008 as of beginning of 2009 (in thousands).

	2003	2004	2005	2006	2007	2008	2009
Foreigners, ¹ including those with residence permits	30,5	30,2	32,6	35,3	33,1	33,4	32,9
Number of population ²	3.462,6	3.445,9	3.425,5	3.403,2	3.384,9	3.366,2	3.350,1
Proportion of foreigners in the number of population, %	0,88	0,88	0,95	1,04	0,98	0,99	0,98

According to the data of the Migration Department, during the period of 9 May – 31 December 2008, 1264 EU residence certificates were issued to EU nationals. 247 requests for EU permanent residence certificate were received and 238 certificates were issued during the year.

Migration Department had no data on any EU nationals detained for more than 48 hours for illegal stay in the country during 2008.

2. SITUATION OF JOB-SEEKERS

Job-seekers are not mentioned in the Lithuanian legislation and job seeking is not included among the grounds of residence. However, it can be interpreted from the Aliens' Law that job-seekers are covered only insofar as they can stay without a residence permit in the country for a period of up to 3 months and then they would likely need to register. There are no more favourable conditions provided in the legislation, thus recital 9 of the Directive is not taken into account in any legal acts of Lithuania. According to the information of Lithuanian Labour Exchange Office (of 9 March 2009), 69 EU nationals were registered as job-seekers in Lithuania during 2008. The breakdown according to nationality is the following:

Country	Number of persons
---------	-------------------

1 Source: data of the Identification Documents Issuance Centre at the Ministry of Interior.

2 Data of the Department of Statistics at the Government of the Republic of Lithuania.

LITHUANIA

	registered
Ireland	1
Bulgaria	3
Czech Republic	2
Estonia	2
Spain	3
Italy	1
United Kingdom	3
Latvia	28
Poland	20
France	1
Germany	4
Total	69

Given that situation of job-seekers is not regulated, they may have difficulties accessing social security benefits. In particular, there might be some obstacles to obtain certain benefits if the job-seeker has not been contributing to social security or is not permanent resident in Lithuania. For instance, amendments introduced to Lithuanian legislation on maternity benefits at the end of 2008 deprive job-seekers of this benefit, because there is a requirement introduced of previous 3 months employment (within last 12 month period) or 6 months (within the last 24 months period) before a benefit can be granted. There is a transition period in the Law on Sickness and Maternity Social Insurance for increasing the required pre-benefit contribution period. It establishes a period of 9 months (within the last 24 months) from 1 July 2009 and a period of 12 months (within the last 24 months) from 1 October 2009. Eligibility to sickness benefits requires at least three months of previous employment and contributions to social security fund. Employment support (counselling, employment mediation, active employment measures, etc.) is provided to nationals and legally resident foreigners only (since job-seeker would likely be considered as not yet residing foreigner, s/he would be excluded from this definition). Job-seekers would have access to basic health services.

Chapter II Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

Text(s) in force

No significant legislative developments have taken place in this field during the year. The Labour Code of the Republic of Lithuania (hereafter – Labour Code) of 22 June 2004 contains a general principle of non-discrimination in paragraph 1(4) of Article 2: ‘equality of subjects of labour law irrespective of their gender, sexual orientation, race, national origin, language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, political party or public organisation membership, factors unrelated to the employee’s professional qualities’. Furthermore, paragraph 1(1) of Article 96 contains a prohibition of refusing employment to a person on the grounds specified in Article 2, mentioned above. However, Article 13 of the Labour Code provides for legal capacity to engage in employment only to citizens and permanent residents of Lithuania:

‘All citizens of the Republic of Lithuania shall have equal legal ability to exercise labour rights and undertake labour obligations (legal capacity in labour relations). Foreign nationals and stateless persons, who are permanently residing in the Republic of Lithuania, shall have the same legal capacity in labour relations in the Republic of Lithuania as citizens. Laws may establish cases of exception from the above provision.’

Though there are no specific provisions in the Labour Code concerning EU nationals the EC Regulations (e.g. Regulation 1408/71/EEC and Regulation 1612/68/EEC) are directly applicable in Lithuanian legal system and the labour laws of the Republic of Lithuania are thus applied only in as much as they do not conflict with the Regulations. This allows ensuring the equal treatment of EU nationals with regard to concluding labour contracts and conditions of work.

EU nationals and their family members are exempted from the labour permit in accordance with Article 103 of the Aliens Law, thus they can engage in employment without restrictions. However family members who are third country nationals are exempted from work permits limited cases only (e.g. arrived to Lithuania on the basis of family unity, or as intern or for vocational training for a period not exceeding 3 months within a year).

There were quite many developments during 2008 with regard to recognition of professional qualifications. The Law on Recognition of Regulated Professional Qualifications implementing Directive 2005/36/EC was adopted by the Parliament on 3 April 2008. The Law is being implemented in accordance with the Resolution of the Government of Lithuania No. 637 of 18 June 2008 on ‘implementation of the law on recognition of regulated professional qualifications’. In addition, over 20 new legal acts or their amendments were adopted during 2008 in this field with a view of regulating operational aspects of recognition as well as recognition of relevant professional qualifications.

The author of this Report did not observe any particular obstacles to accessing employment by the EU nationals. One possible obstacle concerning the language requirement is dealt with in the following section below.

Miscellaneous (administrative practices, etc.)

Concerning assistance by employment agencies, the EURES network operates since 2003 in ten regions of the country (Vilnius, Kaunas, Klaipeda, Siauliai, Panevezys, Alytus, Utena and Taurage cities, Pasvalys and Lazdijai border regions) with the purpose of facilitating the implementation of free movement of persons in Lithuania and outside it. EURES specialists are also placed at all 46 territorial labour offices throughout the country. They provide information and consultations to interested persons on the free movement of workers, conditions of employment, residence and studies within the EU, as well as to Lithuanian employers searching for workers in other EU Member States. During 2008 the consultants of EURES have helped 36 Lithuanian nationals to enter into employment in UK (17 persons), Netherlands (5), Sweden (4), Norway (3), Denmark (3), Cyprus (2) and Italy (2). Most of these assisted persons were employed in service sector (22), agricultural sector (12) and manufacturing (2). There were also private employment agencies that provided employment assistance to Lithuanian nationals in other EU member states. EURES advisors provide counselling to EU nationals arriving to Lithuania as well. Employment support (counselling, employment mediation, active employment measures, etc.) is provided to nationals and legally resident foreigners, thus except job-seekers, other EU nationals who reside in Lithuania, would be eligible for Lithuanian Labour Exchange services (state body). Overall, 43 private employment agencies having the licences of the Ministry of Labour to engage in mediation of employment abroad were operating. These employment agencies found employment to 1327 Lithuanian residents during 2008 (the table below provides the breakdown according to countries of employment). In comparison with 2007, reduction in the statistics of employment abroad can be noticed (1892 persons were assisted with employment in 2007), therefore the number of persons departing for employment abroad reduced in 2008 by some 30%.

Countries in which 1327 Lithuanian residents were employed during 2008:

United Kingdom	911
Norway	156
Finland	87
Greece	61
Netherlands	60
Ireland	21
Cyprus	20
Sweden	7
Estonia	4

2. LANGUAGE REQUIREMENT*Text(s) in force*

The Law on State Language of the Republic of Lithuania No. I-779 of 31 January 1995 (last amended on 13 June 2002) establishes that apart from public officials, persons in the field of communications, transport, health care and other institutions providing services to the residents must be proficient in state language in accordance with the categories of state language

proficiency, established by the Government (Art. 6). Furthermore, heads of commercial services must ensure that services to the residents are provided in state language (Art. 7).

Language proficiency requirement is further regulated by the Government Resolution No. 1688 on Approval and Implementation of State Language Proficiency Categories (further – Language Proficiency Resolution) of 24 December 2003. This Resolution establishes three categories of language proficiency and the list of positions to which each category applies:

- 1) First category (e.g. proficiency to fill in standard document forms, communication in short sentences, preparation of short non-official texts, etc.) is applied to persons employed in service provision, production, commercial and transport services, if they have to communicate with persons while executing their functions and/or fill in simple document forms (e.g. drivers, cloakroom attendants, sellers, waiters and other commercial employees or employees performing economy or technical functions);
- 2) Second category (characterised by for instance, ability to communicate and prepare documents on topics of daily life and work, describe events, experience and reasons, etc.) is applied to persons employed in education, culture, health care and other sectors, public, if they constantly communicate with persons and/or fill in the forms of documents while performing their functions (e.g. employees of educational and cultural establishments, teachers and others);
- 3) Third category (e.g. ability to formulate long and complex sentences and understand concrete and abstract texts, prepare official documents, explain positions, fluently communicate on various topics, etc.) is applied to the heads of companies and organisations, lecturers, aviation specialists and specialists controlling flight security, specialists of maritime and internal waters' transport responsible for transportation of cargo and passengers (captain of the ship, port captain) and others. The list is not exhaustive, thus it is likely to be applied also in some other cases on discretionary basis, which may be of concern.

The lists provided above and other provisions of the Language Proficiency Resolution indicate that state language proficiency requirement is applied not only to persons employed in the public service, but also in certain spheres of the private sector. Also, Lithuanian language proficiency requirement is applied in the maritime sector (see below for details). This may pose additional obstacles for employment of other EU nationals, who may not be proficient enough in Lithuanian language. No amendments were made to the abovementioned resolution during 2008. There have been specific exceptions made in the past for certain professions. For instance, as concerns advocates, a new version of the Law of the Bar of 18 March 2004 provided that advocates who are EU nationals are exempted from language proficiency requirement (Art. 64(8)). For doctors, the Law on Medical Practice of 18 December 2003 includes a special article concerning doctors – EU, EEA and Swiss nationals. Article 5 of the Law establishes that doctors who are EU, EEA and Swiss nationals may provide temporary services in Lithuania even if they do not have a licence. Thus language requirement is not, at least explicitly, provided. It would be worthwhile though to include a special exemption concerning language proficiency requirement for doctors who are EU, EEA and Swiss nationals in the Order of the Minister of Health Care No. V-396 on Approval of Rules on Licensing of Medical Practice of 27 May 2004, as amended on 15 March 2005. This Order in its' paragraph 18.1 states that the State Service for Accreditation of Health Care Supervision at the Ministry of Health Care (responsible institution for issuing the licences) may request

LITHUANIA

the applicant for a licence to provide documents, attesting Lithuanian language proficiency in accordance with the order established by the legal acts. If doctors, who are EU nationals, will indeed apply for a licence, they may also fall under this requirement.

Chapter III

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS

Text(s) in force

Working conditions for EU nationals and their family members are the same as for Lithuanian workers. Concerning the payment for work, the legislative guarantee is Article 186(3) of the Labour Code stating that ‘the wage of an employee shall depend upon the amount and quality of work, the results of the activities by the enterprise, agency or organisation as well as the labour demand and supply on the labour market. Men and women shall get an equal pay for equal or equivalent work’.

The Labour Code provides for a right to information and consultation for the employees of EU enterprises or groups of enterprises. According to Article 47 (6) they can receive information and consultations through the European Labour Councils.

In compliance with the Regulation 1612/68/EEC, EU nationals have equal access to trade unions with Lithuanian nationals according to the Law on Trade Unions No. I-2018 of 21 November 1991, as amended on 3 November 2003, to enable ‘all persons, legally working in the territory of the Republic of Lithuania under labour contract and on other grounds established by the laws to freely join trade unions and participate in their activities. Notwithstanding, the Civil Code of the Republic of Lithuania of 18 July 2000 (as amended in 2004), retains a provision that founders of a trade union may be Lithuanian citizens or permanent residents of Lithuania only (Art. 2.38(3) of the Code). EU nationals can also join the labour councils (bodies, representing employees and defending their professional, labour, economic and social rights, as well as representing their interest), as the Law on Labour Councils No. IX-2500 of 26 October 2004 does not place any restrictions on that. However, there is no statistics on how many EU nationals or other foreigners, if any, are members of trade unions or labour councils. The trade unions’ organisations have not been gathering such information so far.

2. Social and tax advantages

Text(s) in force

EU nationals may enter into labour relations on the same conditions as Lithuanian nationals and would be entitled to the same unemployment benefits, provided they comply with requirements for receiving such benefits. There might be some obstacles to obtain certain benefits if the EU worker has not been contributing to social security or is not permanent resident in Lithuania.

As concerns taxation, EU nationals working under labour contract are paying the same social insurance taxes, as Lithuanian citizens. The most significant legislative developments that occurred in this field during 2008 were related to general tax reform in the country, which substantially changed the system of taxation of social security and other taxes. This

LITHUANIA

resulted in the following changes (enforceable as of 1 January 2009) if compared with 2007 (these amendments did not specifically relate to taxation of EU nationals, but they are equally applicable to them):

- a) The list of persons who shall be insured with social insurance and pension social insurance was expanded to also include persons obtaining income from sport activity or artistic performance activity, persons receiving income as authors, farmers and their partners (this additional taxation in the opinion of the author of this Report significantly reduces Lithuania's attractiveness for mobility of EU nationals).
- b) A new order is introduced from 1 January 2009 as concerns social insurance conditions for self-employed persons: they will have to be compulsorily insured for pension social insurance, as well as social insurance of illness and maternity (except those working with patents, advocates and their assistants, notaries and bailiffs). They will need to pay social insurance taxes even in case they are at the same time working for another employer and thus are already contributing to the Social Insurance Fund.
- c) All reduced rates of VAT were abolished for authors, artists and sportsman. Until 31 December 2008, services of writers, composers and performers, who receive honorarium for their services, were subject to reduced VAT tariff of 5% (in comparison with others who were subject to 18% VAT).
- d) There is a transitional period determined for reduced tariff of social security tax (for the year 2009) in the case of: sportsman, artists or persons working under authorship agreements, tariff of 7% social security tax and 3% of health insurance tariff, while the person insured would pay 1% pension social insurance tariff and 6% tariff for health insurance. Also, in 2009-2010 there will be limitations of the amounts of income of these persons from which taxes would be charged.

Besides the new reform, non-permanent residents have the obligation to pay income tax if the source of funds received is in Lithuania, thus e.g. this tax would have to be paid from income from employment relations, from sport activity (would affect foreign sportsmen playing in Lithuania), as well as from authors'/artistic activity. Differences as regards obligations to register as VAT payer for foreign citizens and Lithuanian nationals still remain. Lithuanian nationals register as VAT payers only when their income reach 100 000 Litass (approx. 29 000 euro) limit within 12 consecutive months. Foreign nationals (legislation does not make any exception to EU nationals) are required to register as VAT payers immediately after commencement of economic activities in Lithuania. This may place self-employed EU nationals at fiscal disadvantage if compared with nationals and could discourage self-employment in Lithuania.

Worthwhile noting, that the tax reform has been continuing in 2009 and there are suggestions to further increase VAT rate and employee's part of contribution to Social Security Fund. These suggestions will be examined by the Parliament in autumn 2009.

3. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS

\Some practical constraints exist in the field of taxation for foreigners (EU nationals are not excluded) with regard to possibilities to exempt them from taxes of incomes received abroad if they reside in Lithuania. Tax inspection requires that while declaring income received abroad, permanent residents of Lithuania present documents confirming that foreign em-

ployer has deducted taxes to foreign state budget. Foreigners frequently face problems in obtaining proper documents, because usually documents issued in other countries (e.g. pay slips) are not being stamped or signed by the employer. Thus such documents are not always accepted by the Lithuanian Tax Inspection. If failed to provide for proper documentation, permanently residing in Lithuania foreign worker may be required to pay income tax in Lithuania, thus double taxation would not be avoided.

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

4.1 Frontier workers

Text(s) in force

Lithuanian legislation provides a definition of frontier worker and explicitly regulates the payment of family benefits and benefits in case of death to these workers (regulated by the Order of the Minister of Social Security and Labour of 27 December 2004 concerning the Order on Implementation of Council Regulation No. 1408/71/EEC and Regulation No. 574/72/EEC provisions relating to family benefits and benefits in case of death). Frontier workers are defined as persons employed under labour contracts or self-employed persons, who work in one state and live in another state, whereto they usually return every day or at least once per week (paragraph 4). Since the frontier worker is not intending to stay in Lithuania for more than 3 months (as s/he is not residing in Lithuania), according to the migration authorities, there is no obligation for them to register.

A frontier worker, who is sent to the same or another state by a company where he usually works or provides services in the territory of the same or another state, retains the status of a frontier worker, but no longer than for 4 months even if during that period he is unable to return home every day or at least once per week. Benefits are payable (paragraph 5) to:

- Persons who are insured with compulsory social insurance, as well as persons who engage in activity that is considered employment;
- Unemployed who receive the benefit of unemployed;
- Persons receiving state social insurance pensions;
- Students.

Persons who do not reside in Lithuania, but perform their main activity in Lithuania, are insured with social insurance in Lithuania. Concerning income tax, according to the State Tax Inspection, non-permanent residents who receive income from employment in Lithuania, have to pay income tax in Lithuania irrespective of whether they return daily to the country of residence or not. According to the opinion of the author of this Report, income tax for income received in Lithuania could be paid in the country of residence only when there is an agreement between the two countries on avoidance of double taxation.

Miscellaneous (administrative practices, etc.)

In view of issues analysed by ECJ in the *Hartmann* case there should be no similar problems in Lithuania; because the family benefit may be paid to the person on the basis of work place and not residence (competent country is a country of work even if one of the parents is un-

employed). According to the Ministry of Social Security and Labour, the frontier worker would be paid family benefits even for family members residing in another state. If the allowance is bigger in the country of residence, then the later pays the difference. However, if parents work in different countries and the child is living with one of the parents, then the competent state would be the state of child's residence. Another rule is applied when parents are working in different states but the child does not live in any of them. Then, the competent country will be the one that provides for largest allowance. The other state has to compensate the paying state half of the amount of the allowance (but not more than the amount of allowance in this state). However, the approach of social authorities towards this judgment is worth noting. According to the Ministry of Social Security and Labour, this judgment has been analysed in the meeting of EC Migrant workers social security administrative Commission on 11-12 December 2007, where the delegations of states and the Commission have decided that the conclusions of this judgment are unclear and are subject to various interpretations. Therefore, according to the Ministry, the Commission suggested not to do quick conclusions concerning this case and wait for other court decisions on similar payment of benefits when the beneficiary leaves for residence to another Member State.

Frontier workers are usually coming from border regions in Poland with which Lithuania has a common internal border and where a number of Lithuanian minorities is living in the border regions. There is no available statistics of how many of such persons are working across both sides of the border, as they are not registered and frequently the only possible trace of these persons is through the labour contract concluded in Lithuania. Such persons do not generally face any problems in crossing the internal border, they are not required to re-register their vehicles, they are included in the social system through employment contract and payment of compulsory social taxes.

4.2 Sportsmen/sportswomen

Text(s) in force

In the area of sports, the impact of the *Bosman*, *Kolpak* and *Simutenkov* rulings is limited in Lithuania. Restrictions on foreign players and transfer fees have not been abolished in 2008. In *football*, the new Regulations for 2008 Competitions were approved by the Executive Committee of the Federation on 11 January 2008. They have not eliminated important restrictions concerning foreigners, including limitations on foreign players, financial differences in registration, as well as transfer certificates/fees. Paragraph 41 of the Regulations states that 'the number of foreigners in the applications by teams is not limited, but not more than 6 foreign citizens can play at the same time within the composition of one team during the match'. Regulations for 2009 Competitions (approved by the Lithuanian Football Federation on 27 March 2009) also mention this limitation, the only difference being 5 foreigners instead of 6'. Further restriction is financial, stating that when a player who is a foreign citizen is being registered for competition, a registration fee of 6,000-10,000 Litas depending on the league (approx. 1,800-2,900 EUR) shall be paid (paragraph 130-131 of Regulations). Fee collected according to the Regulations shall be used for development of youth football in Lithuania. Even though the purpose of using the funds is reasonable, such financial obligation limits the possibility of engaging foreign players and is discriminatory if compared with registration of Lithuanian players. Previous restrictions on youth players of foreign nationality have not been eliminated in the new Regulations (restrictions provide that player below

LITHUANIA

18 years of age from a foreign country may be registered only if his arrival to Lithuania was related to family reasons, not connected with football playing and upon the agreement by the Lithuanian Football Federation (paragraph 154 of the Regulations). Also, players below 18 years of age registered in Lithuania cannot transfer to a club of another country and be registered in a national football association of that country without the consent of the Lithuanian Football Federation (unless the player leaves Lithuania for family reasons unrelated to playing football). This provision is valid for professional as well as for amateur football players (paragraph 155 of the Regulations). Transfer certificates, thus also fees, continue to apply also under 2008 Regulations (paragraph 150): players who played in foreign club can be registered only having obtained the transfer registration certificate (ITC). Compensations to national clubs for training of players between 12-23 years of age continue to be applied. According to the information of the Lithuanian Football Federation (of 24 March 2009), 14 foreign players from EU/EEA countries were playing in Lithuanian teams in 2008.

As concerns *basketball*, several restrictions on registration of foreign players remained in 2008. New national rules on registration of players were adopted in 2008. While the rules of Lithuanian basketball championships do not provide for restrictions on foreign players, rules of several leagues provide for restrictions on foreigners during the match:

- a) The Regulations on Grand Cup competitions provide that in each Lithuanian Basketball Federation Cup competition not more than 5 players of non-Lithuanian citizenship can be registered for one match.
- b) The Regulations for Small Cup competitions (also approved in 2008) provide for similar rule, but additionally state that as an exception this limit may be withdrawn for LCC International University basketball team provided that not more than 4 foreign players and at least one Lithuanian are playing at the same time.
- c) National Basketball league – not more than 2 foreign players in one match;
- d) Lithuanian women basketball league – not more than 3 foreign players in one match.

Existing restrictions applied in basketball and football competitions concerning foreign players may not be fully compatible with the Community law and the above mentioned judgments of the European Court of Justice (*Bosman*, *Simutenkov*). Usually, these restrictions are motivated by the rules of FIBA Europe, which allow national federations to apply such restrictions for foreigners, including the EU nationals, in the national championships.

Also, possible constraints to the freedom of movement in the sports' sector as concerns particularly basketball, can occur due to the requirement that the player must obtain a so called Letter of Clearance in order to move from one club to another. This rule continues to be embodied in the newly adopted Rules Regulating the Transfer of Players and Compensations for Training of Players of 4 June 2008 (approved by the Conference of Lithuanian Basketball Federation). According to the rules, if the player wants to move from one club to another he should obtain a Letter of Clearance from his club. Before this Letter is obtained the player is not entitled to play in the other team by the end of the current season. The only reason for refusing the issuance of such a Letter is a valid contract between the club and the player. The Letter provides the confirmation that the player has fully repaid the organisation and has no valid contract. The scope of these payments is not clear because the author of this Report does not have access to the contracts concluded between the clubs and the players. However, it may constitute a hindrance to the free movement of players. Furthermore, when the player moves from sports' school/club to the basketball club, the club has an obligation to compensate the school for the preparation of the player. This rule remains valid for up to

four years from the graduation from sports' school. Even though this may be considered to represent an obstacle to the free movement of sportsman in the EU, the mentioned rules derive from the provisions of FIBA rules, thus unlikely to be changed in Lithuania. No particular changes have taken place in 2008.

No specific explicit restrictions follow from the Regulations for the *volleyball* competitions, but according to the information of Lithuanian Volleyball Federation foreign citizens willing to participate in the official competitions organised by the LVF must have Transfer Certificate of the International Volleyball Federation (this certificate involves fixed transfer fee to be paid by the foreign club).

Ice-hockey is not widely practiced in Lithuania; the regulations do not provide for any particular limitations on the number of players allowed to register or play in one match. Concerning the transfer fees, they are non-existent when transfer is from one Lithuanian club to another, however applied for international transfers. These transfers are applied in accordance with the rules of the International Ice-Hockey Federation (for foreign players arriving to Lithuania the transfer fee to the International Federation is 300 Swiss francs, plus 500 francs for national federation of the country where the player goes to).

Concerning *cycling*, the Rules on Transfer of Lithuanian sportsman from one sport organisation to another of 10 January 2007 provide that a sportsman willing to transfer to another sport organisation must implement all contractual obligations to previous sport organisation and obtain from it a Letter of Clearance (paragraph 5). These rules continued to be effective in 2008. The rules on competitions (of 2009) do not provide any restrictions on foreign cyclists.

No information about restrictions in *rugby* or *handball* competitions was available to the author of this Report.

4.3. The Maritime sector

Text(s) in force

The Law on Trade Navigation of 12 September 1996 (new version of the law of 2005) was amended on 19 June 2008 (No. X-1628) as concerns composition of a ship crew. As concerns the language requirement in the maritime field, new restriction related to Lithuanian language requirement was also introduced in this Law. Furthermore, the Law on Safety of Navigation No. X-116 of 15 February 2005 (new version of the law) requires that pilots of ships sailing by regular passage to ports of Lithuania shall know the Lithuanian language, if the captains have permission to sail without a locman. But this requirement would not be applied if the ship is lead by a locman (Art. 12(2)).

At the same time restrictions were relaxed in a sense that the crew can be also composed of EEA nationals, not only EU or Lithuanian citizens. Article 11(2), which was amended in 2008 now provides that 'crew of the ship (including the master of the ship and chief assistant to the master) shall be composed of not less than 2/3 of EEA or Swiss nationals or permanent residents of Lithuania. Post of the master of the ship and the chief assistant to the master shall be held by citizens of EEA or Swiss Confederation only. Captain of the ship or at least one of his assistants shall know the Lithuanian language'.

There were substantive changes in 2008 related to taxation of sailor's income. All Lithuanian sailors during the period from 2004 until 31 December 2008 were not subject to income tax in Lithuania (irrespective the ship under flag of which country he was sailing).

Due to tax reform at the end of 2008, changes in the Income Tax Law will have the implications that some of them will continue not to be subject to income tax (sailors working in Lithuanian ships), while others will have to pay income tax in the amount of 15% (those sailors that work in ships of third countries). As concerns Lithuanian sailors working in ships of EEA countries, they are not subject to income tax in Lithuania, but some are subject to taxation in other countries. Also, all sailors have to be compulsory insured by health insurance. These legislative amendments may create a basis for discrimination of persons of the same profession.

4.4 Researchers / artists

Text(s) in force

The Aliens' Law provides in Article 40(13) that a foreigner is entitled to temporary residence permit if he intends to engage in research and(or) pilot development works as a researcher under labour contract with the research institution registered in Lithuania (this paragraph was introduced through supplement to the Aliens Law in February 2008). There are no specific regulations concerning the treatment of researchers from other EU countries.

Miscellaneous (administrative practices, etc.)

According to the Lithuanian Centre for Mobility of Researches, there are several problems that affect the mobility of EU researchers. First of all, differences in employment conditions in various countries that result in situation whereby Lithuania is sending more researches than receiving them. Outside the EU, USA, Japan and China are mentioned as countries that are very attractive with regard to working environment, remuneration, social guarantees and other conditions. Within the EU, researchers are also heading towards more economically stable Member States, which at the same time have accumulated larger experience of science development. Lithuania continues to be less attractive country, thus it can be considered as a sending rather than receiving state. Secondly, Lithuanian institutions are not well prepared to receive foreign researchers to work on the same conditions as nationals, thus the number of individually arriving researchers (i.e. those who find a working place in educational establishment on their own) is very low. There are also language barriers, cultural differences, unnecessary fears and inflexibility of the system. While foreign researchers are not satisfied with limited funding that is available for financing scientific works, as well as with all other mentioned conditions. Worthwhile noting that some researchers are arriving to Lithuania having received grants or scholarships. In such cases previous cooperation with the receiving institution is already noticeable (e.g. the institution assists the researcher to formalise the documents related to temporary employment, registration, reception of the researcher and his family members, etc.). While individually arriving researchers are facing more problems.

Text(s) in force

Foreign artists in Lithuania can either enter into authorship agreement with an institution in Lithuania or provide services as self-employed artists submitting invoices for fees. Despite significant changes in Lithuanian tax system at the end of 2008, authorship honorariums have remained at the same level, but additional taxes were introduced and VAT rate was raised to 19%. Persons who provide services under the authorship agreements and exceed the annual turnover of 100,000 Litas (approx. 29,000 EUR), must register as VAT payers and

pay the VAT (this is a general rule applied, however EU nationals differently from Lithuanians, have to register immediately without waiting for mentioned amount of income to be reached). Social insurance for persons entering into authorship agreements is not deducted within those 19%. But as of 2009 they have to pay social insurance on top of income tax. The author of this Report could not obtain any information on the existence or non-existence of ‘withholding fees’ for foreign artists in Lithuania.

If a Lithuanian artist provided services in another country, in Lithuania he would have to pay himself the income tax in the amount of 15% from earned income. If authorship agreement is concluded in Lithuania for foreign national (similarly as for Lithuanian national), the 15% income tax will have to be automatically deducted by the body entering into agreement with the artist. According to Article 37 of the Law on Income Tax of Residents, the paid taxes abroad are being taken into account while calculating taxes for income received abroad. This is done with a view of avoiding double taxation of income. Lithuania also entered into a number of bilateral agreements on avoidance of double taxation.

Since 2006 applicable VAT rate for live performance was 5% (compared to 18% before 2006), thus helping Lithuanian venues to receive performing artists from abroad without excessive tax liability. For instance, if a company, which is VAT payer in Lithuania, invites German artists for the organised event and these artists are not registered in Lithuania for VAT, the Lithuanian company will have to pay VAT for services provided by the foreign artist. However, the VAT rate was raised to 19% due to tax reform in 2008, which makes Lithuania not attractive for foreign artists. Many concerns have been raised by the artists’ organisations concerning excessive taxation.

Concerning the possibility of deductions before calculating the taxes, Lithuanian legislation provides that such deductions (factual expenses) are possible also for non-residents of Lithuania, thus foreigners seem not to be discriminated. However, expenses deriving from individual activity, sports or performance activity are not taken into account and cannot be deducted while calculating taxable income. This may be of concern with regard to situation of artists.

4.5 Access to study grants

Text(s) in force

According to the Law on Higher Education of 21 March 2000, the Ministry of Education and Science may establish higher education establishment enrolment quotas and procedure for foreign citizens and persons without citizenship whose studies are fully or partly compensated from the State budget. In addition, upon the recommendation of the Ministry, the Government shall approve the minimum cost of studies for foreign nationals and persons without citizenship at Lithuanian State higher education establishments (Art. 59(3)).

According to the Order No. 52 of the Ministry of Education and Science on Admission of persons who acquired education abroad to fully or partially funded by the Lithuanian budget studies in higher establishments of Lithuania of 15 January 2007, persons entering Lithuanian establishments of high education shall have a document confirming the recognition of their education obtained abroad (paragraph 2). Persons who acquired education abroad may be enrolled though competition to studies fully or partially paid by the state budget if they belong to one of the mentioned groups:

LITHUANIA

- EU/EEA nationals;
- Nationals of foreign countries (non EU/EEA nationals) and stateless persons who have a permanent residence permit in Lithuania;
- Persons of Lithuanian origin who present a certificate on Lithuanian origin from a community in a country where he/she used to reside.

All other foreigners are enrolled through competition and have to pay for their own studies. According to the Order (paragraph 16), all persons may be enrolled through a competition to fully or partially funded reserve places. Reserved places are distributed on the basis of points acquired during the competition for each study programme. The calculation of competition points according to Paragraph 17 of the Order is the same for persons who acquired education in Lithuania and for those who acquired education abroad. Data for calculation of points is obtained from certificate issued by the Studies' Quality Evaluation Centre.

The mentioned Order does not address the study grants issue for EU nationals family members who are third country nationals. Overall, according to the Ministry of Education, the notion of study grants is not known or used in Lithuanian legislation, there are only government loans for students. Students may on the other hand obtain scholarships according to Art. 62(2) of the Law on Higher Education. These scholarships may be available to students of state higher educational establishments and they are allocated from state funds provided to higher educational establishments. State educational establishments are managing a Foundation for Studies, which is being administered in accordance with Government Resolution No. 473 of 31 March 1995 (as amended on 14 October 2008), while concrete educational establishments are assigning scholarships according to Regulations approved by these establishments. The author of this Report reviewed several selected regulations Orders of universities and found no discriminating provisions against foreign nationals. However, there will be problems to access one type of scholarships for EU students who are not permanent residents in Lithuania. So-called social scholarships (allocated for students from families having no sufficient living resources or single persons eligible to such scholarship according to the Law on Financial Social Support to families and single persons having no sufficient resources of 2003, as amended in 2006), would not be available to all EU/EEA students because the law poses a permanent residence requirement in order to be eligible for this type of state support. Moreover, there might be obstacles for their studies until they obtain residence permit in the country (e.g. within first 3 months of their stay), because only persons who already have residence permits are admitted for studies according to the Resolution. Or, this may imply that EU citizens may need to obtain the residence permit before the expiration of three months period after arrival.

Worthwhile mentioning, that the conditions of studies in Lithuanian educational establishments will change significantly (paid education is to be introduced) from autumn 2009 due to substantive educational reform (the Law on Higher Education of 21 March 2000 is repealed since 12 May 2009 and replaced by a totally new Law on Science and Studies of 30 April 2009. Study grants in the form of loans from banks were introduced in Lithuania and loan granting is regulated by the Order of the Director of the Lithuanian State Science and Study Fund on Approval of the Regulation on Granting Loans to Students (No. V1-29 of 24 August 2009). However, it is yet too early to evaluate potential impacts for EU nationals, as the reform has not been completed yet.

When EU nationals are enrolled into educational establishment, they should obtain a residence permit (either EC residence permit or permanent residence permit). It is also pro-

LITHUANIA

vided by the Order that if the student is planning to study some subjects that are organised in Lithuanian language only, he/she may be required to pass a Lithuanian language credit. There are some privileges for ethnic Lithuanians concerning the enrolment fee – they may be exempted from enrolment fee (varying from 23-50 EUR) or it can be reduced if they can prove difficult financial situation (paragraph 33).

Miscellaneous (administrative practices, etc.)

On 18 June 2008 the Ministry of Education established a quota of 150 persons (who acquired education abroad) for 2008 to be accepted into state funded places. It is clear that the number of places for Lithuanian students is bigger than for those who acquired education abroad. There were no other significant developments in this field during 2008, thus restrictions to study scholarships may still affect family members of EU citizens, while residence requirement is not applied to EU/EEA citizens (but rather to their family members who are third country nationals).

According to the information of the Department of Statistics, 1131 EU/EEA students were studying in Lithuanian universities as of 1 October 2008 (out of a total number of 3844 foreign students studying in Lithuania in 2008). The table below provides a breakdown according to the Member States:³

Country	Number
Ireland	2
Austria	33
Belgium	10
Bulgaria	4
Czech Republic	27
Denmark	8
Estonia	10
Greece	10
Iceland	1
Spain	86
Italy	60
United Kingdom	16
Latvia	55
Poland	288
Luxembourg	1
Netherlands	25
Norway	6
Portugal	60
France	100
Romania	5
Slovakia	17
Slovenia	14
Finland	13
Sweden	8
Switzerland	7
Hungary	11
Germany	154

Overall, the tendency is that the number of foreign students in Lithuania has been constantly increasing for the past two years, as illustrated below:

3 Information of the Ministry of Education of March 2009.

LITHUANIA

2004-2006
1198

2006-2007
1872

2007-2008
2955

2008-2009
3844

Chapter IV

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

Text(s) in force

Apart from a few exceptions, social security system in Lithuania remains largely based on permanent residence requirement and enables temporary staying foreigners to access certain benefits largely in accordance with bilateral agreements only. Therefore, in most of the cases, only persons, who live in Lithuania permanently are entitled to social security benefits in accordance with national legislation. Lithuanian legislation regulates all types of social security benefits, which are provided in the Regulations 1408/71/EEC, 574/72/EEC, 3096/95/EC and others. Regulations are applied directly in Lithuanian legal system, thus national legal acts providing for different rules are applied to EU nationals only in as much as they do not conflict with the EC Regulations.

The State Patient Fund under the Ministry of Health of Lithuania is competent institution responsible for benefits in kind of sickness and maternity. Compulsory health insurance in Lithuania is implemented by State Patient Fund and 5 local Territorial Patient Funds. EU nationals travelling to Lithuania shall hold with them one of these documents confirming the entitlement to reimbursement of health care services: European Health Insurance Card (EHIC); Provisional Replacement Certificate (PRC); Certificate E 106 and E 109.

Family members of EU nationals have to hold their EHIC or the certificate E 106 or E 109. If EU nationals have EHIC, they are entitled to necessary medical care services which are free of charge in the health care institutions belonging to the Lithuanian National Health System. They do not need to register at territorial patient fund office if they or their family members hold EHIC. In case of holding E106 the foreigner must register at territorial patient fund office as soon as possible after arrival to Lithuania. Then he will be issued the Lithuanian health insurance certificate. The holders of such certificate can get free of charge all kind of medical care (not only the necessary medical care) at health care institutions belonging to Lithuanian National Health System. Those EU nationals that seek medical care at the institutions that do not belong to the Lithuanian National Health System, have to cover all the expenses of medical services and these expenses are not reimbursed. Lithuania issues EHIC for a period of not less than 3 months and not longer than 6 months. It is issued by the State Patient Fund. Lithuanian nationals who hold special compensatory medicine books may be prescribed compensatory medicine, however such books are not issued for foreigners. Such compensatory medicine may be still prescribed on the basis of certain exceptional form of prescription, but such forms can only be used for treatment duration of maximum 7 days. While purchasing such medicine, EU nationals have to submit personal identification document, European Health Insurance Card or E-form certificate. Thus, according to information of the State Patient's Fund, even if EU/EEA nationals are entitled to compensatory medicine, issued on the basis of prescription, the books of compensatory medicine are not being issued to them.

With a view of implementing the Regulation 1408/71 the Minister of Social Security and Labour and the Minister of Health Care approved an Order No. A1-152/V-443 on Issuance of E104 LT form certificate for persons insured with social insurance and/or compulsory

LITHUANIA

health insurance in the Republic of Lithuania on 4 June 2007. These rules were adopted due to the fact that social insurance and health insurance systems are separated in Lithuania and two institutions are responsible for approving insurance periods for the Form E104, as well as there was a need to ensure the interests of the insured persons and facilitate the issuance of such forms. The certificate is issued on the basis of request of a person or institution of a foreign country within 10 days from receipt of all necessary documents. No new legislative developments have taken place during 2008 in this field.

On 1 July 2008 Lithuania ratified the agreement with the Government of Estonia concerning calculation of the insurance periods acquired in the territory of former Soviet Union (signed on 24 August 2007 in Tallinn). The purpose of this agreement is to avoid duplication of insurance periods, acquired in the territory of former Soviet Union, whereby this period could have been calculated both in Lithuania and also in Estonia. According to the agreement the period of insurance, acquired in the territory of former Soviet Union until 1 January 1991 is calculated only in the state in which the period of insurance is of a longer duration. If the duration of the period acquired in the territory of Lithuania and in the territory of Estonia is equal, the period is calculated by the state which laws were applied lately to the person. While re-calculating the assigned pension, also while assigning pension anew or of a new form, or if the person has transferred his/her residence from one state to another, the competent state responsible for calculation of period acquired in another state, belonging formerly to the Soviet Union, does not change. Similar agreement with Latvia was planned for signature during 2008, however the process has not been completed yet.

One specific problem in Lithuania in the field of social security similarly as in the other EU Member States is the definition of 'residence' for the purpose of issuing family benefits or the benefits in the case of death. According to the Regulation 1408/71 and in coordination of social security systems, the 'residence' is defined as a place of usual stay. However, Lithuanian legislation relates it to the place of declared place of residence. In practice problems occur, because frequently persons departing from Lithuania do not declare departure.

Secondly, the concern could be the calculation of insurance periods for pension. According to the Law on State Social Security Pensions, the period of insurance is a period when the insurance payments are made. The same law defines in Article 54 the periods that are being equalled to the state social insurance pension periods. However, it seems that the periods of insurance in other EU Member States are not being calculated. However, if the person has not yet acquired the minimum period for pension (15 years) while working in Lithuania, the periods acquired in other Member States should be calculated. But this again is done only to determine the right to the benefit, but pension for these periods is not assigned. Therefore, the pension would be assigned proportionally to the acquired Lithuanian insurance period. Similarly, there could be concerns with regard to payment of social security benefits to persons who have been working for less than 12 months. Insurance is provided for at least one year and should the period of contribution is less than this period, no social security benefit will be paid. There were no major legislative developments in this area during 2008, except changes in taxation, as already reflected in previous chapters above.

Miscellaneous (administrative practice, etc.)

Specific practical issue continued to exist during the year concerning migrant workers from third countries. Posted workers from third countries do not need to be compulsory insured in

LITHUANIA

Lithuania if a labour contract is concluded with them in the foreign country from which they are posted to Lithuania. EU nationals, on the other hand should be compulsory insured with Lithuanian social security insurance if they are working on Lithuanian territory. This could be viewed as less favourable treatment of EU nationals vis-à-vis third country nationals. From the statistical perspective, there were 60 EU nationals registered as unemployed in Lithuania in 2008 (increase if compared with 46 registered in 2007).⁴ The table below presents a breakdown according to nationality:

Country	Number of persons registered as unemployed
Bulgaria	3
Estonia	2
Spain	3
Italy	1
United Kingdom	3
Latvia	25
Poland	18
Germany	5
Total	60

⁴ Information of the Lithuanian Labour Exchange Office, 9 March 2009.

Chapter V

Employment in the Public Sector

Generally, there have been no reforms of the national rules in 2008 in the field of employment of EU/EEA citizens in the public sector of Lithuania.

1. ACCESS TO THE PUBLIC SECTOR

1.1 Nationality condition for access to positions in the public sector

Text(s) in force

The employment in the public service in Lithuania remains restricted to Lithuanian citizens except a few jobs that are available to foreigners under labour contracts without performing the function of public administration. According to the Constitution of the Republic of Lithuania of 25 October 1992 (as last amended on 13 July 2004 No. IX-2343, No. IX-2344)⁵, the right to seek employment in the public service of Lithuania is reserved for citizens only (Art. 33). Furthermore, the requirement of Lithuanian citizenship is applied for becoming a member of the Parliament (Art. 56), the President of the Republic of Lithuania (Art. 78), judge of the Constitutional Court (Art. 103) or any other court (Art. 112). As concerns the members of municipal councils, not only Lithuanian citizen, but also permanent residents of Lithuania are eligible (Art. 119).

Employment in the public sector is regulated by the Law on the Public Service No. VIII-1316 of 8 July 1999 (new version adopted on 1 July 2002) (hereafter – Law on Public Service).⁶ It determines in its Article 9(1) that a person, entering the public service, must have a citizenship of Lithuania. The public servant is defined as a person performing the function of public administration, while the

‘Public service means a sum total of legal relations arising after the acquisition of the status of a public servant, the change or loss thereof, as well as those resulting from the public administrative activities of a public servant in a state or municipal institution or agency when implementing the policy of a particular sphere of state governance or ensuring the co-ordination of the implementation thereof, co-ordinating the activities of institutions of a particular sphere of state governance, managing and allocating financial resources and controlling their use, carrying out audits, adopting and implementing legal acts, decisions of state and municipal institutions or agencies in the sphere of public administration, preparing or co-ordinating draft legal acts, agreements or programmes and giving opinions on them, managing personnel, or having public administrative powers with respect to persons, who are not subordinate’ (Art. 2(1)).

This definition in itself should not raise any issues of incompliance with Article 39 of the EC Treaty. However, it should be read in conjunction with uniform lists of positions of public servants, approved by the Parliament and the Government of Lithuania. These lists were approved with the intention to avoid institutional subjectivity and to determine appropriate number of state institutions and public servants. In 2008 the Parliament adopted a new Resolution No. X-1511 (on 24 April 2008), which establishes a list of positions of public servants

5 Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

6 Available in Lithuanian at: <http://www.lrs.lt>.

in the Parliament, Chancery of the Parliament, institutions accountable to the Parliament, the President's Office and institutions accountable to the President, National Court Administration, courts, Prosecutor's Office and municipal institutions. This list includes the institutions that belong to public service rather than listing the categories of public servants as it was done in the previous Resolution of 2002. Furthermore, the Government Resolution of 2002 on related lists was also repealed by a new Resolution of 24 April 2008. It establishes a list of ministries, Chancery of the Government, government institutions and institutions at the ministries. Now, the list of actual positions for 2009 is attached as Annex III to the Law on Public Service. Some positions mentioned in the list could be considered as a rather broad expansion of the public service (e.g. court secretary, pilots, firemen, rescuers, etc.).

In conclusion, public servants can only be Lithuanian nationals, which means that public service remains reserved for nationals only. Language requirement also applies. The provisions of the Law on Public Service do not apply to persons providing public services and performing technical functions. Thus, as concerns engagement of foreigners, including EU nationals, in jobs in the government/municipal bodies under labour contracts (without performing public administration function), there are no restrictions provided in the laws.

No significant legislative developments took place in this field in 2008 and there has been no public debate or political discussion concerning possible opening of the public service to EU nationals.

1.2. Language requirement

There is an explicit Lithuanian language requirement following from paragraph 2 of Article 9(1) of the Law on Public Service, which mentions requirements for admission to public service. No changes were introduced during 2008 and first half of 2009. The law does not specify proficiency of language level, but reference could be made to Lithuanian language exam, which is mandatory when requesting citizenship of Lithuania or long-term residence permit of the EU. The level of proficiency for language exam is based on European Council A2 level, which means that the person understands short and clearly structured sentences, is able to speak about concrete known issues, able to fill simple forms of documents or write informal communication. The author of this Report is yet of the opinion that higher proficiency would be requested, e.g. for working in the ministry.

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

Given that Lithuanian public service remains restricted to Lithuanian nationals only, the recruitment issue of EU nationals is not relevant in this respect. However, should access for EU/EEA nationals to Lithuanian public services be given, according to the Public Service Department to the Ministry of Interior, there should be no problems to recognise professional experience acquired in another country, provided that there is an evidence of such experience which would have to be supplied. However, there would potentially be problems as concerns calculation of this experience for the purpose of grades and categories of public servants, because according to current legislation, service supplements are being paid on the basis of service for Lithuanian state only.

2. WORKING CONDITIONS

Concerning the work conditions and social guarantees, there are some differences between public servants and persons employed under labour contracts in the public service. First of all, the salaries of public servants are higher by virtue of qualification grade (the later is not granted to persons working under labour contracts) and length of service. Public servants are entitled to additions to their salaries, additional holiday days. Also, they may receive supplements for performing additional functions (not enlisted in the description of the post) for a period of one year.

Chapter VI

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

1. RESIDENCE RIGHTS – TRANSPOSITION OF DIRECTIVE 2004/38

Text(s) in force

The Aliens' Law provides that the family members could be admitted together with EU national or join him and stay in the Republic of Lithuania for the same period. The definition of EU national family member covers (Art. 2(4) of the Aliens' Law):

- a) spouse or his unmarried partner with whom a registered partnership agreement is concluded;
- b) direct descendants below the age of 21 or dependent, including those of the spouse or a person with whom registered partnership agreement is concluded;
- c) dependent relatives according to direct ascending line of the national of the EU Member State, his spouse or a person with whom registered partnership agreement is concluded.

Family members of EU nationals can stay with them for the same period of 3 months without formalities and later on they have to obtain EU residence permit (in case they are not EU nationals). They are entitled to permanent residence if reside with EU national for the last 5 years or retain a right of residence (Art. 104(2) of the Law). According to the Aliens' Law, application for EU residence permit must be processed within one month from the date of its receipt (Art. 100 of the Law) (in comparison with 6 months applied to all other foreigners). The definition of EU family members applied in Lithuania is in line with the Directive 2004/38.

There were two most important developments with regard to family members of EU nationals during 2008. Firstly, entry of family members of EU nationals who are third country nationals has been clarified in the Aliens' Law through amendments made on 1 February 2008. They can enter Lithuania and stay here without a visa for a period of three months within half a year (Article 11(4)). However this provision is somewhat limited, as it applies to third country nationals who have residence permits in other EU member states. Secondly, the Order on Issuance, extension and withdrawal of EU residence permits for family members of EU nationals was adopted on 25 July 2008 (Order of the Minister of Interior No. 1V-290). This Order deals with residence permits of family members who are third country nationals. According to the Order, the period of EU residence permit validity is fixed at 5 years or shorter period if the EU national's whose family member is issued intends to live shorter in Lithuania than for 5 year period. For children (foster children) the residence permit is issued until the end of formal education process, but no longer than for 5 years. The documents required for issuance of this residence permit are as follows (paragraph 13):

- valid travel document and document proving legal stay in Lithuania;
- documents confirming family relationship with the EU national;
- marriage certificate/registered partnership agreement or document confirming that he/she is a descendent of EU national below 21 years of age or relative;
- document confirming that he is dependent descendant;

LITHUANIA

- EU national residence certificate
- Document confirming health insurance

Requirement of legal stay in Lithuania as well as requirement of health insurance may raise concerns with regard to compliance with the Directive 2004/38, which does not require these conditions to be met by the family member of EU citizen.

Also, a document, confirming that family member is arriving from another Member State territory, is required (in case of family member of Lithuanian citizen), which though is not viewed by the authorities as not complying with the *Metock* judgment of the ECJ. The authorities are of the opinion that Article 101(2) of the Aliens' Law does not raise any incompliance with this judgment because restriction is only applied to Lithuanian national who has not yet used his/her right of free movement.

Depending on the ground on which residence permit is being issued, additional documents may be required. Decision on residence permit shall be taken within a period of one month according to the Order. Lithuania operates so called 'double stage system' (firstly, decision on issuance of EU residence permit is taken and secondly, application to formalise the permit, i.e. to be physically issued, shall be submitted). Decision to issue residence permit is valid for 6 months and if the permit is not formalised within this period, then decision to grant it is repealed. Among the documents required for formalisation of residence permit granted, the third country national is required to submit document proving that he is legally in the country, which might be at variance with ECJ jurisprudence if this would be applied to EU nationals who exercised their freedom of movement. Furthermore, this 'double system' in view of the author of this Report is unnecessary and creates additional bureaucracy in dealing with the migration authorities.

The right of permanent residence of the EU national family member who is non-EU national is confirmed by the EU permanent residence permit, which is being issued for a period of 10 years and afterwards extended (Art. 104(5) of the Law). This differs from permanent residence for EU nationals, who are not issued a residence permit, but instead a special certificate confirming their right to permanent residence. Issuance of residence permits to family members of EU nationals is regulated by the Order of the Minister of Interior on issuance of EU permanent residence permit for family members of 25 October 2007. In case of children, residence permit is issued until the end of formal educational programme, but for no longer period than 10 years. Decision on request for residence permit shall be adopted by the Migration Department within 1 month from the receipt of application by the migration service. When a family member of EU national receives notification about issued decision on residence permit, he/she needs to formalise the decision by applying to a local migration service ('double stage system' as already described above).

Family members who are EU nationals are issued residence certificate in the same manner as the EU national who arrives to Lithuania. The right of residence of the family member of EU national may be repealed on the ground of national security or public order, or if the right of residence of EU national is repealed, unless he has independent right of residence on other grounds. Decisions on repealing the right of residence are taken by Vilnius District Administrative Court. Right of residence for family members of the EU national is retained in the following circumstances (Art. 101¹):

- when EU national dies or departs from Lithuania and his family member is a EU citizen and complies with conditions of residence (is a worker, self-employed, student or has sufficient resources to reside);

LITHUANIA

- when EU national dies and his family members are not EU citizens, if they have been residing in Lithuania for at least one year before the death of his family member (in this case they have to submit with the request for permanent residence permit, documents proving their right to reside in Lithuania);
- when marriage is invalidated, terminated or registered partnership is terminated, if the family member is EU citizen and complies with conditions of residence;
- when marriage is invalidated, terminated or registered partnership agreement is terminated and the family member is not EU citizen, if marriage or registered partnership lasted for not less than 3 years, including one year in Lithuania, or if the family member has custody of the children of EU national or termination of marriage occurred due to fault of the other spouse (EU national) (in this case they have to submit with the request for permanent residence permit, documents proving their right to reside in Lithuania); this situation is more limited than that allowed by the Directive 2004/38 (Paragraphs c-d of Art. 13(2)). Furthermore, previous residence in another EU member state would be required, which might be in variance with ECJ jurisprudence if applied vis-à-vis persons who exercised their free movement.
- when EU national dies or departs from Lithuania, the right is retained to his children irrespective of citizenship and one of the parents taking care of them until completion of started formal education programme.

On 1 February 2008 the Aliens' Law was amended to include the following provision: 'the family members of EU national also acquire a right to permanent residence in the Republic of Lithuania, if they have resided here legally for the past 5 years with the EU national or they retain right to reside in Lithuania in accordance with paragraph 1 of Art. 101¹ of the Law, or are the family members of EU national who retained his right to Lithuanian citizenship pursuant to the Citizenship Law or are family members of person who has Lithuanian origin'.

The Aliens' Law seems to provide for no specific distinction to the situation of family members of EU national who are EU nationals and those, who are nationals of third countries as concerns e.g. work permits, entry (even though the legislation on entry has been clarified in 2008, this only concerns third country nationals who already resided with their family members - EU nationals in EU Member States). From the legislation and in practice it is difficult to see how third country nationals (even though family members of EU national) could be exempted from the general requirements applied to other foreigners under aliens legislation (e.g. as concerns entry visas and in particular the situations when the third country national is a national of the country, included on the so called 'black list', in case they have not been residing in another MS before coming to Lithuania). Since 2006, the condition of entry explicitly mentions the possession of EU residence permit (which is issued to third country nationals family members of EU citizens).

Draft legislation, circulars, etc.

Draft amendments to the Aliens' Law were adopted on 22 July 2009. Art. 101 was supplemented by a new paragraph 3. This paragraph provides that 'family members of EU citizens who are third country nationals shall be entitled to residence permit when they arrive to reside in Lithuania with EU national for more than 3 months within half a year [...], or to join him/her'.

1.1. Situation of family members of job-seekers

Since job-seekers are not mentioned in the Lithuanian legislation and job seeking is not included among the grounds of residence, the situation of their family members is unclear. However, it can be interpreted from the Aliens' Law that job-seekers could be covered firstly by the possibility of EU nationals to stay for 3 months without registration and, secondly, by the residence ground based on availability of sufficient resources. In this case, the situation of their family members would be the same as of other EU nationals residing on the grounds of employment, self-employment or studies. Also, as there are no norms affirming to the contrary, it is presumed that the family members of job-seekers who are EU nationals would be also exempted from work permits. Third country nationals who are family members of job-seekers could be exempted from requirement to obtain work permits if they fall under one of the categories of persons (arrived to Lithuania on the basis of family unity, or as intern or for vocational training for a period not exceeding 3 months within a year). In other cases they would have to obtain work permits.

1.2. Application of Metock judgment

Concerning the applicability of the *Metock* judgment, Lithuania seems to follow the ECJ rule established in this judgment. There is certain unclarity as concerns third country nationals who are family members of Lithuanian citizens. The Aliens' Law (Article 101(2)) requires that third country national family member of Lithuanian citizen who applies for EU residence permit has exercised the right to freedom of movement in the EU or has arrived from another EU Member State's territory. This indirectly implies the requirement of previous stay in another EU country, however the authorities are motivating that this provision applies to Lithuanian citizens who did not yet exercise their freedom of movement. However, there is another requirement (mentioned in paragraph 14.2 of the Order on issuance of Residence permits to EU nationals' family members who are third country nationals of 25 July 2008) that documents confirming that he is arriving from another EU Member State shall be submitted along with request for EU residence permit. Again, if this limitation would only be applied in respect of family members of Lithuanian citizens who did not yet exercise their freedom of movement, but not other EU nationals, then compliance with *Metock* judgment would be ensured.

1.3. How the problems of abuse of rights (marriages of convenience) are tackled

Text(s) in force

There were no new rules and amendments to existing ones made during 2008 as regards addressing the issue of marriages of convenience. The issue of marriages of convenience is regulated by the two Orders that do not have reference to EU nationals specifically: the Order on Temporary Residence Permits and Assessment of Marriages of Convenience of 2005 (as amended in 2007) regulates the assessments of the marriages of convenience. The Order establishes the rule that the marriages concluded within the last five years before applying for the residence permit might be verified if there are serious grounds to believe that the mar-

riage was concluded out of convenience. The Order establishes the situations that may raise serious grounds as concerns the marriage. If the foreigner is refused issuance/extension of the residence permit, repeated application can be submitted not earlier than after one year (paragraph 41 of the Order). The provisions of the Order stating among the factors to determine the convenience of the marriage the fact that the spouses have never met before the marriage (paragraph 33.4), might be problematic in view of cultural traditions in some nations and contemporary ways of communication (via internet). If there are serious grounds to believe that the marriage is of convenience, the residence permit would be refused or annulled. Secondly - the Order on issuance of permanent residence permits and assessment of marriages of convenience of 2005 (as amended in 2007 to cover EU long-term residents) also regulates the issue of marriages and adoptions of convenience. Since it does not explicitly mention EU nationals, it is not clear if the order for assessing the marriages of convenience would apply also to EU nationals. As there is no specific legal act adopted on the issue of marriages of convenience of EU nationals, it is believed that should such situation arise in the case of EU national, the authorities are likely to apply similar rules like described in the abovementioned orders. However, the migration authorities consider that the mentioned orders do not apply to EU nationals.

In addition to the marriages of convenience, definitions of fictitious adoption and registered partnership of convenience are covered by the Aliens' Law (Art. 2(6¹) and 2(6²) respectively). Fictitious adoption is described as adoption procedure completed between a Lithuanian citizen or legally staying foreigner and a foreigner who is non-EU national, when it is performed with the objective of obtaining a residence permit in Lithuania without the aim to create the legal effect of adoption. Registered partnership of convenience is described as registered partnership between a Lithuanian citizen or legally staying foreigner and a foreigner who is non-EU national, when it is concluded with the objective of obtaining a residence permit in Lithuania without the aim to create the legal effect of registered partnership.

2. ACCESS TO WORK

Similarly, as the EU worker, his/her family members who intend to engage in employment are exempted from the work permit. Family members who are third country nationals may be exempted from work permits if they fall under specific categories of persons enlisted in the law. If they fall out of explicitly provided list, they are not exempted from the work permit.

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

Family members of EU nationals are treated in the same way as EU nationals as concerns social and tax issues. Concerning third country national family members, e.g. the Law on Consular Fees of 23 June 1994 (as amended in 2006) provides in its Article 6(4) for an exception from the fee to the EU nationals as concerns the issue of visas to the family members of the EU/EEA nationals.

Chapter VII

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

The practice of applying the European Court of Justice judgments, as well as awareness about these judgments in the courts of the Republic of Lithuania, remained underdeveloped in 2008, however some progress has been also noted. There have been no cases submitted by EU nationals or decided concerning the freedom of movement of workers during 2008, as reported by the administrative courts. In this context, the overview presented below analyses on a comparative basis the issues raised in those judgments through the perspective of whether similar issues would be or not of concern in Lithuania.

The issues mentioned in *Hartmann case* are dealt with in Lithuanian legislation in a different manner than in Germany. Family benefit may be paid to the person on the basis of work place and not residence (competent country is a country of work even if one of the parents is unemployed). If the allowance is bigger in the country of residence, then the later pays the difference. On the issues mentioned in *Hendrix*, the Lithuanian legislation may be problematic, because benefits for handicapped persons are related to the permanent residence in Lithuania (Article 1(4) of the Law on State Benefits of 29 November 1994, new version of the law of 19 May 2005). Concerning *Geven*, frontier workers would be able to receive family social benefits. *Gattoussi* has not had any effect in Lithuania so far. A third country national whose residence permit expired or was terminated are not able to extend their stay on the basis of work permit, because the precondition for issuance/extension of a work permit is valid residence permit (Article 63 of the Aliens' Law). Work permit in Lithuania is being issued with two-year validity. With regard to issues of *Jia*, there should be no similar problems in Lithuania as those analysed in this case, except that it may affect the family members of the Lithuanian national, because in case of a family member of Lithuanian national the Aliens Law requires residence in another Member State before joining the family member in Lithuania (Art. 101(2) of the Law). Concerning *ITC*, where the national legislation limiting the payment of recruitment voucher to the private recruitment agency because the job found was in another Member State, was recognised as contrary to Article 39 of the EC Treaty, the impact of this judgment in Lithuania is not clear, because Lithuania does not apply the system of recruitment vouchers. However, it is believed if such system would exist, there would be no difference if the job was found within or outside the country. With regard to *Raccanelli* it is not very relevant to Lithuania for the mere fact that at the moment incoming researchers from other EU member states are very rare, usually Lithuanian researchers are going abroad. Lithuanian researchers who prepare doctoral thesis have the status of students, unless they are also employed under labour contract to teach at university. Therefore the issues as analysed in this judgment are not likely to arise in Lithuania. The author of this Report sees also little relevance of *Reneberg* for Lithuanian situation because no similar possibilities to deduct or not deduct income exist according to Lithuanian legislation (NB: the author of the Report is not specialist in tax law, thus given that Lithuania was undergoing major tax reform, the assertions on taxation are only preliminary).

Chapter VIII

Application of Transitional Measures

On 16 April 2003 Lithuania, together with other acceding states signed the Accession Treaty with the EU. Article 2 of Annex IX to the Accession Agreement provides that transitional arrangements apply only to the right to enter into employment. Lithuania can apply equivalent restrictions for those EU Member States that apply restrictions to Lithuanian citizens. However, it is unlikely that Lithuania would face an influx of workers from other Member States, which would necessitate the application of restrictive measures. Thus in practice, restrictions, if applied, would likely be a political reciprocal measure. There might be some legal issues though. As Lithuania granted the right to employment and opened its labour market to EU nationals already before signature of the Accession Treaty, it might be problematic to apply Article 2(10) of Annex IX to the Accession Treaty, providing for a right to apply equivalent restrictions to nationals of old Member States, who restrict the right of employment of Lithuanian citizens. It might be questionable therefore if Lithuania could reintroduce the labour quota and work permits to EU nationals, because it did not already exist at the moment of signing the Accession Treaty. The provision of Article 2(10) of Annex IX to the Accession Treaty mentions the phrase ‘may maintain in force equivalent measures’, but not to ‘reintroduce or apply national measures’.

In practice, Lithuania applies no equivalent restrictions for entry into its labour market either for old or new Member States of the European Union in response to transitional arrangements applied by them. This to a certain extent may be explained by the fact that labour migration to Lithuania has been rather low throughout the years, labour quota was frequently unfilled, while the situation in the labour market during the first half of 2008 due to large emigration of workers continued discussions about the need to bring over the workers from third countries. In this situation, it is unlikely that Lithuania changes its position as concerns equivalent restrictions because it itself lacks labour force. However, due to financial/economic crisis approaching in 2009, it is expected that there will be less need for third country workers, as national workers are likely to be more actively returning from other EU Member States.

Since August 2006 Lithuanian nationals have free access to labour market in Ireland, Greece, Iceland, Spain, Italy, the United Kingdom, Portugal, Finland, Sweden and the Netherlands. Only Germany and Austria remains as countries applying strict restriction regimes for access to their labour market. New member states, including Romania and Bulgaria as of 1 January 2007, do not apply restrictions for Lithuanian workers.

There were no significant developments in this area during 2008, as well as no individual cases have been brought to the attention of the author of this Report.

Chapter IX

Miscellaneous

1. Short analysis of existing policies, legislations and/or practices of a general nature that have a clear impact on free movement of Community workers

Given that Lithuania was lacking labour force in the first half of 2008, there were some discussions on whether rules for employment related entry of third country nationals should be relaxed (this is particularly in the interests of industries that are willing to import workers from third countries). However, this need reduced naturally with financial and economical crisis approaching at the end of 2008.

With regard to posted workers from third countries (e.g. from Turkey), Lithuanian legislation does not provide that they should be insured in Lithuania. Thus in this case the national laws of social security of sending state apply.

In 2008 a tendency of increasing illegal employment of foreigners was observed in Lithuania. The Labour Inspection of Lithuania established 161 cases when foreigners were employed illegally (i.e. without concluding labour contracts or violating the procedure for entering into employment). This number does not seem as a big one, however it is ten times bigger than the number established in the previous year (the number of identified cases in 2007 was 18 only, while in 2006-only 7).

With regard to application of Community preference principle, Lithuanian legislation gives preference to Community workers and residents who are family members of EU citizens by simplifying the entry and employment possibilities (e.g. no need to obtain work permit). Generally, Lithuania does not promote active labour immigration policies for workers from third countries. The Economic Migration Strategy of 2007 states the objective (while addressing the needs of Lithuanian labour market) to attract workers from third countries taking into account the influx of returning local labour force from emigration and providing preference to EU citizens.

There were no other significant developments in 2008 and first half of 2009 that would have clear impact on movement of Community workers.

Studies, seminars, reports, legal literature

Įmonių įsisteigimo laisvė: ES teisės siūlomos galimybės verslui (article published on 5 December 2008, available at: <http://www.spec.lt/index.php?cid=24312>). Translation: 'Freedom of establishment for companies: EU law opportunities for business'.

Vida Petrylaitė, Socialinės apsaugos sistemų koordinavimo srities nustatymo problematika reglamentuojant kai kurias Lietuvos socialinės apsaugos išmokas, *Jurisprudencija* 8(110), 2008. Translation 'Coordinating the Material Scope of Social Security Systems: Selected Social Benefits in Lithuania'.

Jūratė Stulgytė & Tatjana Railienė, Ar iš ne Europos Sąjungos šalių įmonių į Lietuvą komandiruotiems darbuotojams reikia mokėti socialinio draudimo įmokas Lietuvoje?, *Mokėsių žinios*, 2008/09-09. Translation: 'Do posted workers from non-EU countries have to pay social security contributions in Lithuania?'

LITHUANIA

Ignas Vėgėlė, Laisvas advokatų judėjimas pagal Europos Bendrijos teisę, *Jurisprudencija* 3(105), 2008. Translation: 'Free Movement of Persons and Services: Recognition of Qualifications'.

Ignas Vėgėlė, *Notarų ir advokatų teisės laikinai ir nuolat teikti palaugas kitoje nei kilmės valstybėje pagal Europos bendrijos teisę, Teisė besikeičiančioje Europoje = Law in the changing Europe = Le droit dans une Europe en changement*, Mykolo Romerio universitetas, Vilnius: Mykolo Romerio universiteto Leidybos centras, 2008, p. 859-884. Translation: 'Freedoms of Establishment and to Provide Services for Notaries and Advocates in the European Community Law'.

References to national organisation, bodies where citizens can launch complaints for violation of Community law on free movement for workers (apart from SOLVIT centres): Information not available to the author of this Report.

Annexes

- Annex I Number of applications of citizens of EU/EFTA Member States for issue of the residence permit proving the right to reside in the Republic of Lithuania lodged in 2008, by nationality
- Annex II Number of applications of a family member of a citizen of an EU Member State for issue / extension of the EU residence permit of the Republic of Lithuania in 2008, by nationality
- Annex III Number of decisions in 2008 to issue a document for a national of an EU/EFTA Member State proving his right to reside in the Republic of Lithuania, by nationality
- Annex IV Number of decisions in 2008 for issue of a document for a national of an EU/EFTA Member State proving his right to reside in the Republic of Lithuania, by grounds of arrival
- Annex V Number of documents issued in 2008 for nationals of EU/EFTA Member States proving their right to reside in the Republic of Lithuania, by nationality
- Annex VI Number of residence permits in the Republic of Lithuania of a family member of a national of an EU Member State issued in 2008, by nationality
- Annex VII Number of documents issued in 2008 for nationals of EU/EFTA Member States proving their right to reside in the Republic of Lithuania, by grounds of arrival
- Annex VIII Number of applications for issue of a Certificate confirming the right of an EU/EFTA Member State national to permanently reside in the Republic of Lithuania in 2008, by nationality
- Annex IX Number of decisions on issue of a certificate confirming the right of an EU / EFTA Member State national to permanently reside in the Republic of Lithuania in 2008, by nationality
- Annex X Number of applications of family members of citizens of an EU /EFTA Member State for issue of an EC permanent residence permit in 2008, by nationality
- Annex XI Number of decisions for issue / extension of permanent residence permits in the Republic of Lithuania for family members of citizens of an EU / EFTA Member State in 2008, by nationality