Annex 2: REPORT on the Free Movement of Workers in Slovenia in 2007

Chapter II
Access to Employment

Sub-chapter 3. Recognition of diplomas (including the academic diplomas) should be amended in a following way:

<u>- text on page 13 and 14</u>

As regards *mutual recognition of qualifications in EU*, special emphasize has to be given to the system of Recognition of qualifications for the pursuit of regulated professions in the Republic of Slovenia. This field is regulated by:

- Act regulating the recognition procedure for qualifications of citizens of EU Member States relating to access to regulated professions and professional activities in the Republic of Slovenia, ***which was amended in October 2007 due to the transposition of the Directive 2005/36/EC,***
- Rules on detailed rules for the procedure of recognition of qualifications for the pursuit of regulated professions or regulated professional activities in the Republic of Slovenia on the basis of sectoral Directives (Ur. l. RS, No.41/04, 107/05),
- Rules on detailed rules for the procedure of recognition of qualifications for the pursuit of regulated professions or regulated professional activities on the basis of the first and second Directives of the general system for the recognition of qualifications (Ur. l. RS, No. 41/04, 104/04, 6/07),
- Rules on detailed rules for the procedure for recognition of qualifications for the pursuit of regulated professions or regulated professional activities on the basis of third Directive of the general system for recognition of qualifications (Ur. l. RS, No. 41/04),
- Rules about more detailed contents and mode of keeping records in the field of mutual recognition of qualifications of nationals of the EU Member States for the pursuit of regulated professions or regulated professional activities in the Republic of Slovenia (Ur. l. RS, No. 41/04***), rules above were expire on March 2008 with adoption of the new Rules on procedure of recognition of qualifications for of citizens of EU Member States, EEA and Swiss Confederation for the pursuit of regulated professions or regulated professional activities in the Republic of Slovenia (Ur. l. RS, No. 23/08).***
- Register of regulated professions or regulated professional activities in the Republic of Slovenia (Ur. l. RS, No. 50/2006), ***since September 2008 the new Register is accessible only on the website of the Ministry of Labour, Family and Social Affairs***

(http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/evidenca_regul_poklici_dej_190908.pdf).

The system of mutual recognition of qualifications within EU Member States applies to the nationals of EU Member States. In Slovenia, it also applies to the nationals of third countries who have obtained their qualifications in the territory of the EU and who wish to pursue a regulated profession or professional activity as either employees or self-employed persons, in the Republic of Slovenia. The system of recognition, based on agreements between the EU and other countries, also applies to the nationals and qualifications of signatory countries to the Agreement on the European Economic Area (Norway, Iceland and Liechtenstein) and Switzerland.

System applies to professionals legally exercising a regulated profession or activity in a Member State. It is imperative to point out that the system of recognition only refers to fully qualified professionals already exercising a profession in their Member State of origin, or possessing all the qualifications required to exercise the profession in that country. The system does not address students or people not fully qualified in professional terms and wishing to validate their education in order to study or continue their studies in another EU Member State. These situations have to be resolved by making use of the existing national academic recognition mechanisms in the education institutions or national authorities of each EU Member State.

System only refers to regulated professions and professional activities. Regulated professions and regulated professional activities are professions and activities an EU Member State defines as regulated professions for which a person who wishes to pursue a certain profession has to fulfil other conditions determined by law or another legal act. In case a profession is not regulated in EU Member State or the activity in question is not legally reserved only for professionals with certain qualifications, the judgment of whether a person has suitable qualifications for the pursuit of that profession is only a matter for employers and the labour market. Professions or professional activities regulated in Slovenia are published in the Record of regulated professions and regulated professional activities in the Republic of Slovenia. This record also lists the ministries regulating each profession and is published in the Official Journal of the Republic of Slovenia ***(not anymore since September 2008 due to often changes – new professions are regulated or deregulated)*** and on the Internet pages of the Ministry of

Labour, Family and Social Affairs:
http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/evidenca_regul_poklici_dej_190908.pdf.
Specific qualification is recognised by decision of ***the competent authorities, which are listed in the Register mentioned above***. Procedure starts on applicant's request consisting of documentary evidence of citizenship, higher education diploma, which is subject of recognition and evidence on the education program, its duration etc. The act has foreseen the option to require the applicant to complete an adaptation period or take an aptitude test, if the ***regulator*** would consider applicants qualification as inadequate.

Draft legislation
System of mutual recognition of qualifications in EU, regulated by the Act covering the recognition procedure for qualifications of the citizens of EU Member States relating to access to regulated professions and professional activities in the Republic of Slovenia, ***which was amended in October 2007 and*** on March 19 2008, when the Ministry of labour, family and social affairs adopted **new** ***Rules on procedure of recognition of qualifications for of citizens of EU Member States, EEA and Swiss Confederation for the pursuit of regulated professions or regulated professional activities in the Republic of Slovenia*** (Ur. l. RS, No. 23/08). These Rules are already in force. The purpose of adoption of these Rules was to transpose the Directive 2005/36/EC into the legal order of RS.

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According to the Elementary School Act, children of all migrant workers are subject to compulsory primary education on the same basis as Slovenian children. The children of aliens with the permanent residence in RS also have access to secondary and university education.
All foreign children registered in primary and secondary schools receive special teaching in the Slovenian language.
As the language of the receiving country is a vital factor for the integration of migrant workers and for the equality of treatment, it might be interesting to point out courses entitled "Slovenian for foreigners", organised on a yearly basis by the University of Ljubljana.
Children of foreign workers lawfully residing within Slovenian territory may receive additional optional teaching of their mother tongue in primary and secondary schools. As example, lessons in Hungarian can be mentioned.

Chapter III
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT, INDIRECT DISCRIMINATION)

- comment to the text on the page 16, the last paragraph of this sub-chapter (non-resident):

Possibility of claiming general allowance, personal seniority allowances and family allowances, in the case when an individual can attest that 90 % of his entire taxable income for that year is derived in Slovenia, applies only to residents of EU/EEA member states and not to non-residents in general.

2. SPECIFIC ISSUE: FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES), SPORTSMEN/SPORTSWOMEN

2.1. Personal income tax of frontier workers

- comment to the text on the page 16:

According to the Personal Income Tax Act, residents of Slovenia are taxed on all of their income, regardless whether it is derived in Slovenia or abroad (principle of the world wide income taxation). In accordance with the Personal Income Tax Act and concluded double taxation conventions, double taxation of employment income derived by Slovenian employees working abroad is eliminated using the credit method, which in principle results in equal treatment of residents, regardless of the source of their income.

Application of either exemption or credit method for the elimination of double taxation is a matter of tax policy of each state. Principle of free movement of workers does not require solely one of the methods to be applied, it can be guaranteed with proper application of both.

Taking into account above mentioned principles it is not possible to agree in entirety with the statements in this paragraph, especially with the statement, that Slovene residents who work across the border (frontier workers) should be taxed on their income from employment only in the country where their work is actually performed.

Chapter IV
Employment in the Public Sector

1.5. Recognition of professional experience for access to the public sector (page 19)

The term "professional experience" should be substituted by the term "working experience" throughout the text of this sub-chapter as stated in official English version of the Civil Servants Act.

On the page 20 we suggest following changes of the text:

The sentence »Professional experiences that is to be met by officials in state administration, judiciary and local administration bodies, is provided for by the Government's regulations, professional experience that has to be met by the officials working in other public bodies, is set forth by "the employer's general act«, should be deleted and replaced by following text:

"The term relates to the years of employment spent at posts for which the same level of education and the period of apprenticeship at the same level of education or one-degree lesser level of education not including the apprenticeship at one-degree lesser level of education is demanded. Finally the term "working experience" includes any work at the same level of complexity which shall be proved with authentic documents."

Sub-chapter 2. Equality of treatment on the page 20 should be amended as follows:

The term **"years of service**" should be replaced by the term **"years of employment"** throughout the text of this sub-chapter except in the second paragraph, due to the fact that we are dealing with the periods of employment and not periods of service.

The second paragraph of this sub-chapter should be amended to read as follows:

"We distinguish between years of employment and years of service. The term years of service means the years of employment as a civil servant in state bodies and local community administration."

The last paragraph of this sub-chapter should be amended to read as follows:

"... the Ministry of Public administration issued in May 2008 a call to all Ministries, Government Offices, Administrative Units and Local Communities..."

Chapter VII

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

Texts in force

- Employment and Work of Aliens Act (Ur. l. RS, No. 66/2000, 101/2005, 52/2007, 76/2007- officially consolidated text)

The correct wording of the text on page 25 would be:

In 2000, the Employment and Work of Aliens Act has laid down that the Government shall, in accordance with its migration policy and taking into account the conditions and fluctuations of the labour market, annually determine the quota of work permits and in this way restrict

the number of aliens on the labour market and in due time prevent disturbances on the labour market. The said Act has explicitly provided that the quota shall not include aliens who, on the basis of an agreement with the EU, have been granted equality with the Slovenian citizens, nor shall it include aliens with personal work permits. According to the Act, quotas were divided into groups of work permits for different purposes: employment of aliens in the RS, aliens posted to the RS, training and advanced training, seasonal work, individual services provided by aliens, and into ***one priority, namely: valid work permits***.

Until now, the Government of RS adopted a quota of work permits for employment of third countries' citizens ***five*** times: for years 2004, 2005, 2006, 2007 and 2008[14].

- the performance of cross-border services with the posted workers (work permits shall be issued for the period of three months in a calendar year with the possibility of the extension ***for one another month***; the condition of at least one year employment with the employer before being posted to Slovenia has also been introduced);

<u>Changes of the text on page 26 would be:</u>

An application for a personal work permit valid for a period of three years may be submitted inter alia:

1. a member of a Slovenian citizen's immediate family who has been in possession of a valid permit for temporary residence for the purpose of family reunification;

2. an immediate family member of an alien who is in possession of a personal work permit valid for an indefinite period of time and who has been in possession of a permit for temporary residence for the purpose of family reunification if he/she has resided in the Republic of Slovenia on the basis of a permit for temporary residence for at least two years;

3. a Slovenian emigrant, or his direct descendants up to three times removed, who is not in possession of Slovenian citizenship;

4. a self-employed alien who has been uninterruptedly self-employed in the Republic of Slovenia and has been entered in the business register;

5. an alien with at least vocational education who for the last two years prior to submitting an application has been uninterruptedly employed with the same employer or his legal predecessor;

6. a working migrant who for the last two years prior to submitting an application has been uninterruptedly employed with the same employer or his legal predecessor;

[14] For the year 2008 the quota of 24.600 work permits has been adopted.

7. an alien who has completed the last year of his/her education in the Republic of Slovenia and obtained at least a higher degree of education if he/she finds an employer or becomes self-employed within one year after obtaining his/her title;

8. an alien who has completed a research programme in the Republic of Slovenia and finds an employer or becomes self-employed within a period of one year;

9. an immediate family member of an alien referred to in the preceding point;

10. an immediate family member of an alien who has the status of researcher;

11. a person eligible for subsidiary protection.

(2) In the case referred to in point 10 of the preceding paragraph a work permit shall be annulled if the alien loses his/her status of researcher, except if the immediate family member fulfils the conditions for obtaining a personal work permit valid for a period of three years on another basis.

(3) In the case referred to in point 11 of the preceding paragraph of this Article a work permit shall be annulled if the alien loses the status of a person eligible for subsidiary protection.

(4) Immediate family members of a Slovenian citizen shall be deemed to be:

1. the spouse;

2. unmarried children of up to 21 years of age;

3. unmarried children of the spouse of up to 21 years of age;

4. unmarried children over 21 years of age and their parents whom a Slovenian citizen is liable to maintain in accordance with the law of the state of which he/she is a national;

5. unmarried children over 21 years of age and the parents of the spouse whom a Slovenian citizen is liable to maintain in accordance with the law of the state of which he/she is a national;

6. parents of a Slovenian citizen until the latter reaches 21 years of age.

Under this Act, immediate family members of a Slovenian citizen shall also be deemed to be other relatives to whom an authority in charge of issuing a residence permit has issued a permit for residence in the Republic of Slovenia for the purpose of family reunification.

(5) Immediate family members of a Slovenian citizen shall be deemed to be:

1. the spouse;

2. unmarried minors of the alien;

3. unmarried minors of the spouse;

4. parents of a minor alien;

5. adult unmarried children and parents of an alien or spouse whom an alien or spouse is liable to maintain in accordance with the law of the state of which he/she is a national.

Under this Act, immediate family members of an alien shall also be deemed to be other relatives to whom an authority in charge of issuing a residence permit has issued a permit for residence in the Republic of Slovenia for the purpose of family reunification.

(6) A personal work permit valid for a period of three years may be reissued to an alien for the same period if the same conditions are fulfilled as for the first application or other conditions laid down by this Act.

A permit for employment is a form of work permit linked to the permanent employment needs of an employer. An alien in possession of this type of work permit may be employed by an employer that has submitted an application for such a work permit, but is not permitted to ***perform work*** for another employer.

On page 26 the changes of the text would be following:

The sentence "***Immediate family members of Slovenian citizens or of aliens in possession of a work permit are issued with a permit for employment for a period of validity of their permits for residence."*** should be deleted.

Chapter VIII
EU Enlargement

1. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATE

- text on the page 28

The first sentence on the page 28 should be amended as follows:

The right to free movement of workers, EU, EEA ***and Swiss Confederation*** citizens, and their family members is implemented in Slovenia.

The text under **1.1. Details of the legal regime, including relevant legislation, applicable for the second Phase** should be amended as well:

Due to the withdrawal of the application of the principle of reciprocity in May 2006, the existing three regimes of employment of aliens in Slovenia have changed. There are only two regimes to be applied now:

- EU/EEA ***and Swiss Confederation*** citizens have free access to the Slovenian labour market; they do not need work permit, but they shall be registered by the Employment Service of the RS;
- third countries' nationals need a work permit.

The free access to the labour market also applies to *family members of the citizens of the EU Member States**, EEA and Swiss Confederation***, to whom the free access to the Slovenian labour market applies, who, on the day of the entrance to the EU, were legal residents of the Republic of Slovenia. To those, who received the residence permit later, the free access to the labour market applies after a period of 18 months' legal residence in the Republic of Slovenia.

Citizens of the EU Member States, ***EEA and Swiss Confederation*** citizens equal to the EU citizens and their family members, to whom the right to free movement applies, do not need work permits. They only have to register with the Employment Service of the Republic of Slovenia.

Chapter X
Miscellaneous

On the page 41 the changes of the text are as follows:

http://www.uradni-list.si/1/main.cp2 (address of the Official Gazette);

http://www.mddsz.gov.si/en/legislation/ (Ministry of Labour, Family and Social Affairs)