REPORT

on the Free Movement of Workers
in Hungary in 2012-2013

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Introduction


However, the fast legislative work in absence of negotiations with trade unions, social partners and law practitioners explain why we can face numerous tensions and uncertainties in practice of the Labour Code. The transitory rules were passed by the Parliament just some days before July 2012. Attorneys have requested the interpretation of certain provisions from the judges at labour law court (that are fused with courts of administrative law in counties in 2013) but in vain. Many problematic rules1 have been outcropped during the first six months of the Code in full implementation:

- how can be the fixed term labour contract terminated using the rules of the regular notice;
- how the electronic version of documents are applicable in the case of notice;
- how the restrictions of employee’s conduct may be in harmony with the fundamental freedom of expression and opinion that shall be provided for all;
- who is the holder of employer’s rights because it was determined in the company law but now these provisions moved to the labour law;
- the ombudsman requested the constitutional review of provisions on limited protection against notice for pregnant woman and on other weak guaranties;
- provisions of sucession of employer in the Code may confront with the relevant Directives as it was stated by the attorney of the Deloitte Legal Service;
- according to a surevy made by the Policy Agenda at least the salary of 400 000 workers have been reduced due to the new rules on working time, shift complement and surplus time frame within five months since the Code entered into force. There are more and more cases of terminated collective agreements before entry in order to conclude ones on the grounds of the new Code allowing considerable derogation from the Code (e.g. in the issue of paid holidays, extraordinary work) that are disadvantages for workers. These efforts are confronted with minimal guarantees in privacy or rights to salary that must not be derogated consensually while these minimum provisions would be inserted to the newly concluded individual labour contract requiring familiarisation with labour and civil law knowledge for each worker;
- the new rules on leading/key workers (e.g. their extended responsibility, compensation for terminated contract and modified method of their notice) urge to restructure the management of companies soon. It is a bit problematic for the multinational companies implementing own model inside the company regardless national legal changes.

1 Százezrek fizetése csökkent az új Mt. miatt. Kiss Melinda, Index, 2013, January 2.
The Act on Family Protection (Act CCXI of 2011) provides parent’s right to support in daily child care during the working time if s/he is employed (Art. 4). However the duty of child care during the working time is not addressed to municipals or responsible state organ but employers have to manage work that they are taking into account the interests of young mothers in job. The definition of family (Art. 7) is limited covering only one couple in marriage, child (adopted child) or first line descendant/ancestor of the couple/spouse living in a common tie (household). In this way the registered partnership or other existing economic, emotional or family connections are discriminated in state supports regardless nationality.

On the other side, the definition of ‘family member’ in the FreeA (Art. 2bi, bj) includes also TCN registered partner of EEA national and of Hungarian national if partnership has been registered by the authority in a Member State or by the Hungarian authority. It means that their free movement is provided with reference on the FreeA for family members of EEA national but the daily child care on equal foot is not supported. Moreover this tight approach of family in the Hungarian law is confronted with the existing family connections as the case law of the ECtHR protects those, as well as the requirement of equal treatment defined in the 2004/38/EC Directive, e.g. in tax deduction, social supports. Reverse discrimination for nationals and their family members is very probable implementing domestic rules for them.

The Constitutional Court (20 December 2012) annulled this exclusive term of family for non-conformity with the Fundamental Act but the parliament inserted it to the fourth amendment of the Fundamental Act in April 2013 avoiding its further constitutional review. In parallel, the parliament passed a new Civil Code pushing the provisions on partnership to the chapter of contracts instead of the chapter on family ties – as it was proposed on the grounds of the existing act (2009) on registered partnership between different or the same gender partners. The preparatory team leader criticized this last minute motion as well as another change of the Bill, for instance on restriction of the size of public critics concerning public actors (e.g. deputies, ministers) due to the protection of ‘the public interests/public order’ because this limitation is not in harmony with the freedom of expression and freedom in public discourses. However, media freedom and pluralism also formed the basis of the discussions between the Commission and the Hungarian authorities on the new media legislation as regards the obligation of balanced coverage and the rules on offensive content. Some modifications were also agreed between the Commission and the Hungarian authorities on other provisions which could otherwise constitute an infringement of the Audiovisual Media Services Directive and/or the rules on free circulation of services and establishment.

The fourth amendment of the Fundamental Act (2011) modified the notion of family in Article L (1). Accordingly, ‘Hungary protects the marriage as voluntarily established community of a male and a female, and the family as a fundament of national survival. The fundament of family ties is the marriage or the parent-child connection’. The Explanatory Report to the Bill says that descent line includes adoption and guardianship. This amendment entered into force on 1 April 2013. The Central Statistical Office announced that almost half of newborn children nowadays have been born out of marriage. Thus the exclusive definition

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3 See Prof.Vékás, Lajos article in Magyar Jog, 2013/1:12-18.
of family discriminates partners (registered partners) and children born out of wedlock although they are living together or partners are bringing up their joint child together.

The Act on personal data protection and free accession to public data (Act CXII of 2011) replaced the prior Act (1992) dropping out the Ombudsman for Data Protection and Public Information and setting up further limitations in accession to data on public power, municipal and authorities operation (e.g. on labour offices). The further amendment excludes accession to public data by a civil organisation (e.g. a corruption case in a public procurement) if there is a public authority entitled to control the finance or operation of the interested entity (e.g. public prosecutor office, Audit Office). The watchdog NGOs (Association for Freedom, Transparency International, K-Monitor)\(^5\) requested the ombudsman, the chief public prosecutor and the president of the Supreme Court to initiate the recent amendment’s constitutional review in June 2013. Moreover, the Commission challenged interferences with the independence of the Hungarian data protection authority, on the ground that the ‘complete independence’ of national data protection authorities is a requirement under the 1995 Data Protection Directive and is recognised explicitly in Article 16 TFEU as well as in Article 8 of the Charter of Fundamental Rights.\(^6\)

The Act on civil sector (Act CLXXV of 2011) requires a re-registration of all existing non-profit legal entities (associations, non-profit companies, private-foundations) at the county/capital court setting up a new national data base until 2014 unless they want to be ceased. The statutory restrictions focus on financial and operative transparency and budget cut of non-profit sector while corruption has been spread in other (political, economic and municipal) spheres. Thus NGOs assisting migrant workers, integration of migrants also must face hardship in daily operation.

As regards the issue of judicial independence in Hungary more generally, the Commission expressed its concerns in a number of letters in 2012, in particular the powers of the Hungarian President of the National Judicial Office to reallocate cases from one court to another and to transfer a judge against his or her will. The Commission pointed out that these measures could affect the effective application of Union law in Hungary and the fundamental rights of citizens and businesses to an effective remedy by an independent court in cases based on Union law, as guaranteed by Article 47 of the Charter. Discussions have also taken place between the Council of Europe (in particular the Venice Commission) and the Hungarian authorities. The Commission keeps the matter under close review, in particular to verify compliance with the right to an effective remedy. Its deletion from the Fundamental Law is promised but not necessary from the act on judges.\(^7\)

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5 Még mindig nem alkotmányos az infotörvény, Index 2013, June 26.
Chapter I
The Worker: Entry, Residence, Departure and Remedies

Regulation in force:
- 2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról [consolidated Act I of 2007 on entry and residence rights of persons being entitled to free movement and right to residence] (FreeA)
- 28/2007. (V. 31.) IRM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek, valamint a harmadik országbeli állampolgárok beutazásával és tartózkodásával kapcsolatos eljárások díjáról [consolidated Ministerial Decree of Justice and Law Enforcement No. 28 of 2007, 31 May on fees paid by persons being entitled for free movement and residence relating to entry and residence authorisation] (FeeD)
- 27/2007. (V.31.) IRM rendelet az idegenrendészeti eljárásban elrendelt űrizet végrehajtásának szabályairól [consolidated Ministerial Decree of Justice and Law Enforcement No. 27 of 2007, 31 May on alien police detention],
- 26/2007.(V.31.) IRM rendelet a kitoloncolás végrehajtásának szabályairól [consolidated Ministerial Decree of Justice and Law Enforcement No. 26 of 2007, 31 May on deportation]
- 32/2007. (VI. 27.) EüM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek és a harmadik országbeli állampolgárok magyarországi tartózkodásával összefüggő közegészséget veszélyeztető betegségekről [consolidated Ministerial Decree of Health Care No. 32 of 2007, 27 June on diseases of third-country nationals and persons being entitled to free movement and right to residence endangering public health] (SanitD)

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Preconditions of entry are regulated by FreeA (Art. 3(1),(5), Art. 5, 36-37)
EEA citizens with a valid travel document, personal identity card or expired travel document or identity card or other recognised travel document as determined in international treaty are entitled to enter the territory of Hungary. The rules in Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

8 Art. 7(1a); art. 7 (3 a-d); art. 8(3a); art.14 (4 a-b), art.17, art. 24 (2) of Directive 2004/38.
shall be also applied to entry. If entry is denied because the entry conditions have not been fulfilled or s/he is under the entry ban order, the border traffic authority (police) shall, upon request of the (very probable) EEA national the opportunity to obtain the necessary documents, or otherwise prove that the entry conditions have been fulfilled, within 72 hours of return being decreed.

If entry of EEA national is refused s/he shall be directed back to the country from which s/he arrived, or to the country of his/her domicile or to the state that is obliged or ready to receive him/her. Up to departure refused EEA national shall remain on the board of vehicle or in a designated place no more than 72 hours. In absence of enforcement of refusal within 72 hours EEA national may be expelled.

Moreover, an EEA national with a valid travel document, identity card or expired travel document or identity card or other recognised travel document as determined in international treaty entering legally shall have the right of residence for up to three months from the date of entry as long as his residence does not become an unreasonable burden on the social assistance system of Hungary.

**Residence exceeding three months (Art. 6, 9, 10(4), 13, 14(1)):**

EEA nationals shall be entitled to residence for more than three months if:

a. the purpose of residence is paid employment;

b. they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the Republic of Hungary during their period of residence, and have adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law; or

c. they have been admitted to study at an educational institution falling under the scope of the Public and High including vocational training and adult education, if the training programme is accredited, and has, at the time of entry, sufficient resources for themselves and their family members not to become an unreasonable burden on the social assistance system of Hungary during their period of residence, and have adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.

Paid employment covers on the following situations (Art. 2 in Free):

a. anyone who works for consideration in a legal, hierarchical employment/labour relationship as defined by law, for and with another person;

b. anyone whose employment/labour may legally be performed independently and for consideration, if he sees to health insurance and pension plan cover himself according to the law; or

c. anyone not falling under the scope of par.b) and who performs his employment/labour as the owner or director of a business, co-operative or other profit-generating legal entity, or as a member of its directing, representative or supervisory body.

On ceasing paid employment, an EEA national shall retain the right of residence as a worker, if s/he

a. is unable to work due to accident or illness requiring medical treatment;

b. has become a job-seeker, as defined in separate rules, following the cessation of paid employment; s/he retains their right of residence endless based on paid employment for
at least one year and for less than one year as long as they are paid job-seeker support as defined under separate act but at least for six months, or

c. is participating in vocational training for performing professional activities at a higher level, providing that he gained the practical experience stipulated for such vocational training during employment.

Leaving territory of Hungary for more than six months within one year before obtaining the right of permanent residence means a waiver the right to residence. It shall not apply if the reason for absence is compulsory military service; or an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an (overseas) posting. The right of residence shall cease if: they no longer fulfil the conditions for the right of residence; or they have provided false data in order to obtain this right and liability by penal law is judged, or they are prohibited from entry and residence.

FreeA defines how EEA nationals obtains permanent residence (Art. 16-19)

It shall be provided for EEA nationals who have resided legally in the territory of Hungary for five years without interruption since the day of issued registration certificate (registered address). The following shall not constitute interruption to residence: residence outside the country of no more than six months per year; absence for compulsory military service; one absence, for an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. It shall be an interruption of residence if the EEA national stops exercising the right of residence in Hungary (leaving, disappearing).

EEA nationals residing in Hungary for paid employment purposes shall be entitled to permanent residence before the end of the five-year residence period, if:

• they have resided in the territory of Hungary for more than three years from the date of entry, and at the time of ending paid employment they have reached the age laid down for entitlement to an old-age pension, or have ceased paid employment in order to take early retirement, assuming that they performed their paid employment in the country in the twelve months prior to retirement including the prior period of paid employment in another EEA state;
• they have resided in the territory of Hungary for more than two years from the date of entry, and gave up paid employment as the result of an accident or illness requiring medical treatment including the prior period of paid employment in another EEA member state;
• their inability to work is the result of an industrial accident or occupational illness entitling them to treatment as defined in separate legislation; or
• they have been in paid employment in the territory of Hungary for at least three years without an interruption, and have subsequently been in paid employment in the territory of another signatory state to the Agreement on EEA, but keep their domicile in the territory of Hungary.

The mentioned period of paid employment shall also include time during which the EEA national: qualifies as a job-seeker as defined in separate legislation (UnemplA); or is not in paid employment as the result of accident or illness or for other objective reasons. Regardless the residence period prior to the time of ending paid employment the EEA national whose spouse is a Hungarian national shall be entitled to permanent residence if s/he has reached the
The right of permanent residence shall cease in the event of continuous absence of two years; or declaration of a ban on entry and residence.

**Documentation proving the right to residence is as follows (Art.21, 24, 26-32):**

**Registration certificate:** An EEA national, if his/her residence for more than three months, shall be obliged to register residence and personal details at the latest by the 93rd day after entry. Documents verifying that the conditions for residence are fulfilled, as defined under separate rules, must be shown or enclosed at the time of registration. Once the conditions given in FreeA are verified, the OIN\(^9\) regional unit shall immediately issue the registration certificate that attest to the fact and date of the registration. The paid employment as purpose of residence shall be certified with labour contract, property document in a company, entrepreneurship card or other proper way. The minimal monthly income must exceed the lawful monthly minimal pension\(^10\) per capita – about 105 € – in the family, or proving assets, real estate or other sources of income taking into account the size of the family *not to become unreasonable burden*. The study purpose may be proved with enrolment or student status document. In case of ceased employment the EEA national oblige enter into contact with the regional unit of the OIN proving the conditions for residence exist. Further on, the worker status may be certified with expert opinion issued by entitled medical institute on limitation/lost his/her work ability, certificate issued by the labour authority on obtaining a job-seeking allowance and its expiring date, or enrolment to the re/training course together with the certificate on possible length of the training. (Section 20-23, 28 of FreeD). The registration certificate shall be invalid if the right of residence has ceased. The fee of the registration certificate costs 4 € (FeeD)

**Permanent residence card:** it attests to the right of permanent residence of the EEA national. It is issued by the OIN regional unit within three months. The permanent residence card shall be invalid if the right of permanent residence ceases otherwise its validity is endless. Its fee is 6 € by FeeD.

S/he shall report *his/her first home (address) in Hungary:* for the purposes of issuing an official certificate attesting to the personal identification number and home address, the competent authority shall notify the personal data and address records agency of the personal identification data and address of the EEA national, and also information on the registration certificate or residence card. The local notary shall notify the personal data and address records agency if the registration certificate or residence card is invalid.

**Other obligations on verification of documents and rights:** EEA national as well as the family member are obliged to report the theft, destruction or loss of their travel document, personal identity card or document proving their right of residence, and also if they find a document believed and reported to be missing. The competent authority (OIN, Police) may issue a search warrant for the document, if the whereabouts of the document are unknown.

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\(^9\) The Office of Immigration and Nationality under the subordination of the Ministry of the Interior and the Ministry of Public Administration and Justice is responsible for authorisation of visa, residence, removal, asylum and international protection, statelessness, Hungarian citizenship of non-nationals and registration of EEA nationals, their family members. Its structure (central office, regional units and refugee centres) and competence is regulated in Joint Order issued by the minister of interior and public administration and justice No.9 of 2010, 29 September (BM-KIM)

\(^10\) It is decided by the Government Decree, so yearly its amount is changing, however since January 2008 it has unchanged: 28 500 HUF.
Moreover, EEA nationals shall be obliged to obtain a new travel document to replace a lost, stolen, destroyed or expired travel document if they do not have a valid personal identity card. An EEA national or family member in residence for more than three months shall be obliged to report with their personal details: the death of a family member living with him/her; name changes; if the death or cause of name change took place outside the country. The EEA national or family members have to present the document verifying his right of residence at the request of the authority empowered to monitor the legality of residence that may be verified in any other acceptable way. (Nationals also are obliged to carry always the ID and show it upon request of the checking authority. Its rejection or negligence means a minor offence, and its imposing fine is up to 550 €.) If the EEA national or family member stops exercising the right of residence, he/she may report this to the competent authority giving back the registration certificate and registration card.

The EEA national and family member may prove their right to residence in any other authentic way differing from the upper determined documents (Art. 32 (2) in FreeA).

Departure refers on the following issues (Art. 15(2)-(4), 30, 33-34, 38-48, 64 of FreeA).11 If the right of residence ceases, the EEA national must leave the territory of the country unless they are granted a residence permit under separate legislation. The obligation to leave the country must be fulfilled within three months of the decision taking legal effect. Moreover, a waiver a right to residence or final departure of EEA national or family member, this fact and the place of new residence may be reported to the regional unit of the OIN giving back the issued certificate/card.

The right of entry and residence can be restricted in accordance with the principle of proportionality and exclusively on the basis of the personal conduct of the individual concerned which represents a genuine, direct and serious danger to any of the fundamental interests of society, particularly public order, public security or public health. Return and expulsion shall respect for non-refoulement (protection against torture, death penalty, persecution).

Entry and residence is prohibited, if in respect of him/her Hungary has undertaken an international legal obligation to enforce a prohibition of entry and residence; or anyone in respect of whom the Council of the European Union has decided to enforce a prohibition of entry and residence. The authority shall determine the duration of a prohibition of entry and residence up to three years in the first instance, which may be extended by a maximum of further three years on each occasion, if the conditions for it still exist upon the expiry of the prohibition. It must be repealed if the grounds for prohibition no longer exist. There is no legal remedy against entry ban ordered alone (without expulsion order). This measure can be taken if EEA national resides out of Hungary or in an unknown place.

The competent authority may expel an EEA national or family member prohibiting entry up to one-five years who:

- who has not fulfilled the obligation to leave the territory of the country by the deadline stipulated;
- who does not have the right of entry or residence but who has nevertheless referred the competent authority to false information or untrue facts in order to verify a right of entry or residence;

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11 Ministerial Decree of Justice and Law Enforcement No. 27 of 2007, 31 May contains procedural provisions, e.g. claim for compensation of unlawful detention.
• whose residence endangers directly and severely the national security of the state as it is stated in the request of the competent law enforcement authority. However a penal court judgement automatically does not mean grounds of expulsion;
• who at the instigation of the public health authority, on public health grounds if s/he suffers from, could infect with, or is carrying a disease dangerous to public health as defined in separate rule (SanitD), and does not undergo compulsory treatment for these, unless he contracts, could infect with, or carries the disease after three months have passed from the date of entry;
• who has no permanent residence right in Hungary with exception of the case of severe threat to the national security and not minor (unless expulsion takes place in the interest of the minor), or
• who has legally in the country for less than ten years and not minor (unless expulsion takes place in the interest of the minor).

The authority in expulsion case must evaluate the nature and severity of the action committed; the age and state of health of the individual concerned; the family situation of the individual concerned, and the duration of family relations; the number and age of any children of the individual concerned, and the means and frequency of his/her contact with them; whether there is another state where there is no legal obstacle to the family continuing to live together, taking into account any difficulties the family members might encounter if they were forced to settle in the territory of that state; the financial situation of the individual concerned; the duration of the individual’s residence in Hungary; the social and cultural integration of the individual concerned, and the closeness of his links to the country of origin. According to the Art. 61/A the final decision on expulsion shall be executed within 59 days.

Against the expulsion and prohibition of entry and residence there is a court review with suspensive effect on enforcement. The court shall rule on the application within eight days of its arrival. The EEA national or family member must also be heard in person at the proceedings if a request for this is made. A hearing in person may be dispensed with if the EEA national or family member cannot be summoned at the given address, or has moved to unknown whereabouts. The court may amend the decision. There shall be no further right of appeal against the decision of the court. However, the judicial review of the court judgement on expulsion is initiated by the immigration authority, if more than two years pass from the court judgement until its enforcement, with exception of imprisonment. In this case the court shall examine whether there has been any significant change in the expelled person’s circumstances since the expulsion ordered, or s/he represents a significant and real danger to public order, public security, and shall decide whether to uphold or revoke the expulsion order.

An EEA national prohibited from entry and residence at the same time as his/her expulsion as an alien may, after two years have passed since the date of expulsion, request that the prohibition of entry and residence be repealed with reference to a change in his state of health or family situation that justifies his residence in the territory of Hungary. The competent authority shall decide on the application within three months. If the competent authority ends the prohibition of entry and residence, it shall see to its repeal. Expulsion is enforced by the police (deportation) if EEA national is released from imprisonment or intentionally committed crime or his voluntary departure has failed. Detention prior to deportation may be ordered by the immigration authority for 72 hours and its extension shall be decided by the local court monthly.
An EEA national may not leave the territory of Hungary if he/she is under arrest pending criminal proceedings, under house arrest, forbidden from leaving his/her place of residence, in custody, in extradition custody, under arrest pending extradition, under arrest pending handover, under arrest pending temporary handover, or undergoing temporary, compulsory medical treatment. The competent authority shall decide to withhold the travel documents in mentioned cases. There is no right of appeal against this decision.

The ‘unreasonable burden’ as regularly returning exclusive preconditions means that EEA national or family member has not at least the minimal lawful old age pension per month per capita in the family – as the general threshold for social benefit – , or has obtained for at least three months (continuously or in parts within a calendar year)\(^{12}\)
- regular social allowance for old person,
- regular active age benefit, or
- nursing benefit on the grounds of SocialA.

However, the authority shall evaluate the prior length of residence in the country, length of provided social benefits and reasons for material shortage of the family or the persons in concern (e.g. timely shortage or standard need). (Section 21 and 35 of FreeD) Its amount is really solid but we have to add that all non-nationals (EEA nationals, family members and third country nationals) entering the territory of the country have to prove as minimal source \(1000\, \text{HUF} \times 4\, \text{€} \) per residence \textit{per entry}\(^{13}\) and not per capita per day. It is obviously anachronistic but today is in not in harmony with the ‘social burden rule’ which is applicable per capita. Due to kin-minorities living across the (EU) borders this amount has not been lifted up for years.

Residence of EEA national shall meet public health conditions. The OIN may contact with epidemiologic authority in favour of controlling or defining certain behaviour for family member. According to the SanitD public health is endangered by the following diseases, or in being of the pathogen condition of:
- tuberculosis,
- HIV-infection,\(^{14}\)
- lues,
- typhoid or paratyphoid in pathogen condition, or
- hepatitis B.

If the sanitary authority recognized one of these, this fact is noticed officially to the OIN regional office as a general alien policing rule.

Right to residence is guaranteed through the exceptional measure of expulsion of the union citizen. The Supreme Court stated in a trial of a Romanian national charged for the organised crime of man smuggling of 38 persons via Hungary (to Austria): expulsion can be implemented as additional punishment for an offence that is punishable for more than five years by the Penal Code regardless how many years of imprisonment is sentenced in final judgement.\(^{15}\) The same interpretation was issued in another trial against a Romanian of-

\(^{12}\) Section 21 of FreeD was amended by the Government Decree No.395 of 2007, 27 December, No.34 of 2008, 30 December in order to use the same reference on benefits in changing SocialA.

\(^{13}\) Section 25 of FreeMD.

\(^{14}\) Since mid-90s human rights organisations have criticized the HIV-infection and AIDS for being treated as usual, traditional epidemiological appearance in public law in Hungary. \texttt{www.tasz.hu}.

\(^{15}\) BH 2009:196 refers back to the Penal Code [Art. 61(6)] and Act 1 of 2007. His final imprisonment takes 4 year and 10 months but the compliable term for smuggling of human being is up to 8 years.
fender that was sentenced additionally to expulsion but it was annulled in the final judgement because he committed a simple theft, so he could not be expelled.16

2. SITUATION OF JOBSEEKERS

The most relevant provisions can be found in Art. 6 (1)a, 9 and 18 of FreeA, Section 28 of FreeD and Art. 24-30, 36, 36/A-B of UnemplA.

On ceasing paid employment, an EEA national shall retain right of residence as a worker, if s/he has become a job-seeker, as defined in separate act, following the cessation of paid employment; s/he retains their right of residence endless based on paid employment for at least one year, and in case of less than one year as long as they are paid job-seeker support as defined under separate act but at least for 6 months. The Explanatory Report to the Bill (to the FreeA in 2007) explains that ‘job seekers are considered as persons residing for a purpose of gainful employment. Taking into account the case law of the ECJ the Bill determines no time limit of lawful seeking because only reasonableness is the guiding principle until genuine chance for a job can be proved. [Antonissen-case, C-292/89].’

Furthermore, EEA nationals residing in Hungary for paid employment purposes shall be entitled to permanent residence before the end of the five-year residence period, if:

• they have resided in the territory of the Republic of Hungary for more than 3 years from the date of entry, and at the time of ending paid employment they have reached the age laid down for entitlement to an old-age pension, or have ceased paid employment in order to take early retirement, assuming that they performed their paid employment in the country in the 12 months prior to retirement including the prior period of paid employment in another EEA state.

• they have resided in the territory of Hungary for more than two years from the date of entry, and gave up paid employment as the result of an accident or illness requiring medical treatment including the prior period of paid employment in another EEA member state;

• their inability to work is the result of an industrial accident or occupational illness entitling them to treatment as defined in separate legislation; or

• they have been in paid employment in the territory of Hungary for at least 3 years without an interruption, and have subsequently been in paid employment in the territory of another signatory state to the Agreement on EEA, but keep their domicile in the territory of Hungary.

The mentioned period of paid employment shall also include time during which the EEA national: qualifies as a job-seeker as defined in separate legislation (UnemplA).

An EEA national who is no longer engaged in any gainful employment shall retain his/her right of residence if s/he has registered for the period of eligibility for job-seeking assistance as prescribed in UnemplA. Accordingly, s/he shall be registered upon his/her request if in previous four years s/he had one year period of employment relation, and assistance is available for up to 90 days. While the FreeA regulates on job-seeking assistance in the context of preserved right for residence, the UnemplA provides assistance to private entrepreneur assistance for EEA national, too. On the other side, it considers a person in an

active to be a job-seeker who is able and ready to be employed undertaking the co-operation with the Labour Service in job seeking and to be registered by the Labour Service. This definition shall be implemented on all persons under the ambit of the FreeA (EEA nationals and family members). Also the UnemplA determines that its rules shall be implemented on migrant workers, self-employed (private entrepreneur) persons, students, pensioners and self-sufficient persons and their family members in accordance with the EC law (in particular in job-seeking assistance for EEA nationals, family members and other persons under the Community preferences).

**How job-seeking position is documented? [FreeD (Section 20 (1)d, 28(2)b, (3)]**

If the purpose of stay is to engage in gainful employment, the applicant shall supply as proof for a person seeking employment, document ‘to evidence that he/she is actively seeking employment, and there is a probability of entering into gainful employment’. No declaration of support of the family member is required if the EEA national or the Hungarian citizen is engaged in gainful employment.

Upon receipt of any information concerning the termination of gainful employment, in particular from the employer, the EEA national affected shall provide proof for the right of further residence when so requested by the competent OIN regional directorate. Where an EEA national retains his/her right of residence as job-seeker s/he shall verify compliance with the conditions for residence by a certificate issued by the relevant labour office (employment centre) concerning the payment of job-seeking assistance when requested by the OIN regional directorate. In this case the certificate shall indicate the projected date until which the job-seeking assistance will be provided.

3. **OTHER ISSUES OF CONCERN**

Due to relatively fast and simple procedure of registry for right to residence and low threshold for living conditions there is no information on legal disputes on free movement. However, the income threshold to eligible for social benefits provided by the 3200 municipals is over the required minimal monthly income for EEA nationals. On the other side the amount of job-seeking assistance in average is below the minimally accepted life standard. Hence the ‘unreasonable burden’ indirectly requires additional sources from jobseekers in self-subsistence. This contrast is more significant because job-assistance eligibility (its period and amount) was cut by the passed regulation (from 270 days to maximum 90 days).

4. **FREE MOVEMENT OF ROMA WORKERS**

In absence of ethnic statistics on labour or migratory movements there are only some fragmented data based on surveys. There are not known other conflicts with Roma labourers or job-seekers coming from other Member States to Hungary than news from the press. For instance, Roma seasonal workers coming from Romania can cause tensions in local labour market due to the wage dumping, mainly in poor border zones. Moreover, the accommodation conditions of these seasonal workers are inhuman inspiring public disorders as well as
actions by extremists.17 Entitlement for prevention of public disorders is enlarged by the Act CLXXXIX of 2011 on Local Municipals (self-governments) including to regulate what is the required conduct in local community, how its violation is sanctioned (Art. 143 (4)d) and what are the most flagrant behavior against the local community and how to imply a fine (up to 500 € per capita) for its commitment (Art. 143 (4)e) Municipals have been very diligent to pass local decree prohibiting failed address registration, playing a ball on the grass, shaking out the cleaning cloth, using skate board on pavement or flower-bed edges, nutrition of birds or abandoned pets or holding puppy of own pet-dog, since this entitlement entered into force on 1 January 2013. However the Constitutional Court annulled the Art. 143(4)e (Resolution, 12 November 2012) because it was not compatible with the Fundamental Law. Thus the local decrees are referring on the entitlement given from the Art. 143 (4)d. Although the principles in both points are similar and unconstitutional, the epidemic of ‘making order in local communities’ is going ahead. NGOs initiated to revise these decrees requesting self-restrain of municipals (e.g. in a town a poor family had to pay 1200 € for failed registry of address) but in vain.18 It would be problematic for migrants not being familiarized with local provisions and facing discriminative measures. Moreover, paid fine means own income for municipals.

The unemployment is the biggest difficulty for Roma citizens in Hungary, so they are migrating to maintain the family from salary or small (lawful or semi-lawful or illegal) business. Some of them are asking asylum in overseas. However, international migration including circular migration and commuting is affordable only for Roma in better (social, economic) position because it requires embedded to a social, communication network, accumulated capital for travelling, living cost in the new place of residence or for small business.

The adopted Roma Framework Strategy (19 May 2011 by the EPSCO) and in June 2011 by the Council the scheme of integration for unemployed Roma and returnee was developed in 2011-2012. The state secretary responsible for Roma integration in 2010-2011 (in the Ministry of Public Administration and Justice) was appointed as a new Minister for Human Resources as successor of this task in May 2012. He inserts the Roma strategy into the human resources context in future in Hungary.

Recent literature


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17 See the report from Békés county by Falusy Zsigmond: Dinnyék és pofonok. Index, 2013 May, 27.
18 Társaság a szabadsággókért (TASZ) www.tasz.hu.
Chapter II
Members of the Family

Regulation in force:
- 2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról [consolidated Act I of 2007 on entry and residence rights of persons being entitled to free movement and right to residence] (FreeA)
- 28/2007. (V. 31.) IRM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek, valamint a harmadik országbeli állampolgárok beutazásával és tartózkodásával kapcsolatos eljárások díjról [consolidated Ministerial Decree of Justice and Law Enforcement No.28 of 2007, 31 May on fees paid by persons being entitled for free movement and residence relating to entry and residence authorisation] (FeeD)
- 27/2007.(V.31.) IRM rendelet az idegenrendészeti eljárásban elrendelt őrizet végrehajtásának szabályairól [consolidated Ministerial Decree of Justice and Law Enforcement No.27 of 2007, 31 May on alien police detention],
- 26/2007.(V.31.) IRM rendelet a kitoloncolás végrehajtásának szabályairól [consolidated Ministerial Decree of Justice and Law Enforcement No.26 of 2007, 31 May on deportation]
- 32/2007. (VI. 27.) EüM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek és a harmadik országbeli állampolgárok magyarországi tartózkodásával összefüggő közegészséget veszélyeztető betegségekről [consolidated Ministerial Decree of Health Care No. 32 of 2007, 27 June on diseases of third-country nationals and persons being entitled to free movement and right to residence endangering public health] (SanitD)
- 1991.évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [consolidated Act IV of 1991 on Job Assistance and Unemployment Benefits] (UnemplA)

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

FreeA and the legal practice of the OIN differentiate the following categories of family members (Art. 2b in FreeA):
- spouse of EEA national or Hungarian national;
- dependent or below 21 descendant of EEA national or Hungarian national or of his/her spouse;
- dependant ancestor of EEA national or his/her spouse;
• ancestor of Hungarian national or his/her spouse;
• person entitled for parental supervisory right on a minor Hungarian national;
• person whose entry and residence is allowed by the OIN on the ground of attendance for severe health ground, age or financial support under the same roof if the householder is actually is taking care or before arrival Hungary at least during one year was supported him/her living in the same household in the country of departure. This one-year threshold before arrival Art. 1(1)da of FreeA is applicable only for family member of Hungarian national; or
• TCN partner of EEA or Hungarian national if the partnership is registered by the Hungarian or other authority in a member state.

There is a discrepancy between the term of family and legal status of family members. The right to free movement covering family members regardless their nationality is separated from the constitutional and other legal terms on family. The fourth amendment of the Fundamental Act (2011) modified the notion of family (Art. L (1): ‘Hungary protects the marriage as voluntarily established community of a male and a female, and the family as a fundament of national survival. The fundament of family ties is the marriage or the parent-child connection’). The Explanatory Report to the Bill says that descent line includes adoption and guardianship. This amendment entered into force on 1 April 2013. The Act on Family Protection (Act CCXI of 2011) also uses a tight definition of family (Art. 7) covering only on couple in marriage, child (adopted child) or first line descendant/ancestor of the couple/spouse living in a common tie (household).

In this way the registered partnership or other existing economic, emotional or family connections would be discriminated in state supports regardless nationality. On the other side, the definition of ‘family member’ in the FreeA (Art. 2bi, bj) includes also TCN registered partner of EEA national and of Hungarian national if partnership has been registered by the authority in a Member State or by the Hungarian authority. It means that their free movement is provided but the daily child care on equal foot is not supported. The exclusive definition of family discriminates partners (registered partners) and children born out wedlock although they are living together or partners are bringing up their joint child together.

Hungarian law does not contain reverse discrimination as regards family members of Hungarian nationals. Since the adoption and entry into force of the FreeA (1st of July 2007) family members of EEA nationals and family members of Hungarian nationals are put on the same footing. Both categories fall within the personal scope of the FreeA, both enjoy the rights attached to family member status. The Act clearly regulates in Article 1 (1) that Hungary guarantees the right to free movement and the right of residence to family members of EEA nationals (also of Swiss nationals) and this right is also provided for the family members of Hungarian nationals (irrespective of their nationality). Family members are included in the term ‘persons being entitled to free movement and right to residence’ (Article 1(1) involved). However, the Art. (1)da as new requirement (December 2010) combating false marriage means distinction in treatment.

FreeA changed the personal scope of several very important acts upon its entry into force (1 July 2007). Usually these acts refer to ‘persons being entitled to free movement and right to residence’ in their personal scope meaning that family members are covered by this term. In 2008 some new areas of law lifted family members into the category of migrant workers (family, social and disability benefits). These legislative steps generally contributed to the enhanced rights of family members.
However, the fee for EEA family member and Hungarian national’s family member is different requesting residence card: issuing of the card, its extension or its change (e.g. the document is destroyed) costs 34 € for a family member of a Hungarian national while the family member of an EEA national must pay only 5 € for the same (Appendix 2 in FeeD).

2. ENTRY AND RESIDENCE RIGHTS

Entry and residence not exceeding three months [Art. 3-5, 7-15, 20, 35/A, 36-38 of FreeA]

A family member with the nationality of a third country accompanying an EEA or Hungarian national or joining an EEA or Hungarian national living in the territory of Hungary shall be entitled to enter the territory of the country with a valid travel document and, unless otherwise provided for in directly applicable European Community law Reg.539/2001/EC) or by international agreement, a valid (multi-entry) visa. It covers on dependant of a Hungarian/EEA national, or s/he has lived in the same household as a Hungarian/EEA national for at least one year in the country of departure, or is cared for in person by a Hungarian national upon serious health grounds. They can enter without visa, if they have a document proving the right of residence under this Act, or a residence card issued to them as a family member of an EEA national, having the nationality of a third country, by a signatory state to the Agreement on the EEA.

The Schengen Borders Code shall also apply to entry and visa issuing including the reconciliation in visa authorisation between the responsible authorities of Schengen members (Art. 3(7) of FreeA). The genuine family relationship of the applicant to EEA/Hungarian national shall be proved and checked avoiding abuse (Art. 4(1a) of the FreeA). Refusal and withdrawal of visa not exceeding for three months of residence can be appealed (Art. 20(1a) in FreeA). The right to entry by visa shall cease if the conditions in the Code cease to exist. If entry is denied because the entry conditions have not been fulfilled, the border traffic authority (police) shall, upon request of the (very probable) EEA national or family member the opportunity to obtain the necessary documents, or otherwise prove that the entry conditions have been fulfilled, within 72 hours of return being decreed.

A family member having the nationality of a third country and entering legally, shall have the right of residence for up to three months from the date of entry as long as his residence becomes an unreasonable burden on the social assistance system of Hungary.

The FreeD provides further opportunity for adjacent state nationals as family member of EEA/Hungarian national obtaining a small border traffic permit at consular office (Section 18/A-C in FreeD). Applicant living permanently in the border zone may claim this permit completing a format and showing a valid passport to which the permit is inserted.

Residence exceeding three months [Art. 6-8, 10-15(1) of FreeA]

Due to derivative residence right of family member, the FreeA requires that EEA national shall be met the requirements: paid employment, sufficient resources for him/herself and

19 Its executive provisions are regulated in the joint ministerial decree (No.29 of 2010, May 12 by IRM-KüM-PTNM e.r.).
20 In accordance with the Reg. 1931/2006/EC and bilateral treaties.
family members during become an unreasonable burden on the social assistance system, or s/he has been admitted to study at an educational institution (enrolment to accredited training programme in public education, vocational training school or in high-level education)21 if at the time of entry, sufficient resources for him/herself and family members (only student’s spouse or dependent child) are provided not to become an unreasonable burden on the social assistance system during their period of residence, and s/he has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.

A family member of a Hungarian national in paid employment shall be entitled to residence for more than three months, if s/he or the Hungarian national has sufficient resources for said family member not to become an unreasonable burden on the social assistance system, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.

Family member of EEA/Hungarian national living permanently in the border zone may obtain a small border traffic permit (Section 18/A-C in FreeD). A court case interpreted the bilateral agreement with Ukraine determining that period of residence (for economic, cultural or family reasons) within six months is not allowed to exceed the uninterrupted three months.22 However, the interpretation of the bilateral agreement with Ukraine is different by the OIN, local court, Supreme Court and embassy of Ukraine, so the question of aggregated three months or continuous three months of residence within a half year has provoked a judicial initiative to preliminary ruling at CJEU.23

Residence may be authorised in absence of self-subsistence conditions for the parent or guardian of a Hungarian national below the full age (minor). Authorisation also may be allowed for dependant of a Hungarian national, or s/he has lived in the left country in the same household24 as a Hungarian national for at least one year, or is cared for in person by a Hungarian national upon serious health grounds; or the said person was a dependant of an EEA national, or lived in the same household as an EEA national for at least one year, in the country from which they arrive, or who is cared for in person by an EEA national upon serious health grounds, where the EEA national was in a paid employment, had sources for subsistence or admitted to study. It is conditional, the authorisation shall cease: if those concerned no longer live together, the Hungarian national died, his/her Hungarian nationality terminated, EEA national died, lost or gave up the right of residence.

The family member obtain own right to residence

• despite the death or giving up the right of the residence of EEA national, if s/he can meet the requirement of self-subsistence, or is in paid employment, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law,
• the family member’s right to residence of a Hungarian national shall retain after the death of the national, if s/he can meet the requirement of self-subsistence, or is in paid employment, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law.

24 Household defines in FreeD (Section 1d: community of EEA national or Hungarian national with family members living under the same roof in a common registered address or place of residence).
the right to residence of spouse of the EEA/Hungarian national shall retain despite of marriage is dissolved or annulled by the court, if s/he can meet the requirement of self-subsistence, or is in paid employment, and has adequate insurance cover for taking advantage of health services as defined under separate legislation, or shall see to covering these themselves as provided for in law. Moreover, the right of residence depends on length of valid marriage and prior residence: if the marriage lasted for at least two years prior to its dissolution or annulment, and the ex-spouse resided in the territory of Hungary for at least one year of the marriage as a family member of the EEA or Hungarian national; if the ex-spouse is also accorded by the courts the right of parent or guardian over the child of the EEA national residing in the territory of Hungary, or is responsible for the supervision of the child by agreement; or if so justified by exceptional circumstances, particularly if their spouse, being an EEA or Hungarian national, carried out an intentional offence against them during the marriage, or if they had the legal status of settler prior to the marriage; or if the ex-spouse has visiting rights in respect of the child by agreement or by court judgment, assuming that such visiting take place in the territory of Hungary under the terms of the agreement or court judgment;

the spouse of a Hungarian national having the nationality of a third country shall retain unconditionally the right of residence if the spouse also exercises the right of parental supervision over a child born of the marriage;

if the EEA national dies, or loses or surrenders his/her right of residence, the right of residence of his/her children shall be retained, regardless of age, until they have completed their education, if they have already commenced their education and continue it without interruption;

the other parent with the right of parental supervision over the children shall retain the right of residence until the children have completed their education.

Leaving territory of Hungary for more than 6 months within one year before obtaining the right of permanent residence means a waiver the right to residence. It shall not apply if the reason for absence is compulsory military service; or an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.

The right of residence of family members shall cease if: they no longer fulfil the conditions for the right of residence; or they are prohibited from entry and residence. Family members with the nationality of a third country shall also lose their right of residence if s/he provided false data in authorisation process, the family (couple) stops living together within one year of the right of residence having been obtained, assuming that this only happened in order to obtain the right of residence, or the right of parental supervision shall lose and s/he is not entitled to continued residence on other grounds. The authority has to take a decision on recognition of these legal facts. The FreeD (Section 27-33) regulates what documents are required (e.g. registered address, marriage certificate) to prove the right of residence but in fact right to residence, retained family status and own (autonomous) right to residence are the same.

Right to permanent residence [Art. 16-19 of FreeA]

It shall be provided for
• family members who have resided legally in the territory of Hungary for five years without interruption,
• persons who have the right of residence in respect of an EEA or Hungarian national and who have resided legally in Hungary for five years without interruption;
• children born in Hungary to a parent with the right of permanent residence,
• a family member of a Hungarian national, with the exception of the spouse, if he/she has lived together with a Hungarian national for at least one year without interruption,
• the spouse of a Hungarian national, assuming that the marriage took place at least two years prior to the submission of the application and that they have been living together continuously ever since,
• a person with the right of residence as a family member, if the EEA national obtained the right of permanent residence (in paid employment and become inactive and job-seeking),
• a person with the right of residence as a family member, if an EEA national in paid employment in Hungary dies before obtaining the right of permanent residence, and the EEA national resided in the territory of Hungary for two years without interruption prior to death; or the death was the result of an industrial accident or occupational illness.

An amendment provides (Art. 18 (2a) of FreeA) that period of employment (remunerating activity) in another EEA state shall be added to the time of economic activities in Hungary in order to obtain the right of permanent residence.

If the family member surrenders the right of residence in the territory of Hungary and then returns for a period of more than three months, the period of time required for obtaining the right of permanent residence shall start again. The following shall not constitute interruptions to residence: residence outside the country of no more than six months per year; absence for compulsory military service; one absence, for an important reason, of a maximum of twelve months, particularly pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. It shall be an interruption of residence if the family member stops exercising the right of residence in Hungary (leaving, disappearing). The right of permanent residence shall cease in the event of continuous absence of two years; or declaration of a ban on entry and residence.

**What documents are required proving the right to residence? [Art. 20-206(1) of FreeA]**

- **Visa**: is valid for six months from the date of issue but not exceed that of the travel document. It shall be issued free of charge, within 15 days by the consular office, if the purpose of travel is certified (Section 9(3) and 11 of FreeD). A visa must be invalidated if a third country national family member does not fulfil the conditions defined in the Schengen Border Code at the time of entry. There shall be no right of appeal against visa refusal or invalidation of a visa. Genuine family tie shall be checked on the grounds of available documents, visit in site, hearing the applicant and sponsor and expert opinion by the authority proceedings. (Section 9(2) of FreeD)
- **Residence card**: The right of residence of more than 3 months for a third country family member shall be attested to by this document issued by the OIN regional directorate, and which must be applied for at the latest by the 93rd day after entry. Documents verify that the conditions for residence are fulfilled, as defined under separate legislation, those must be shown or enclosed at the time the application is submitted. Fee for the residence card including its renewal or change issued for family member of Hungarian national is
34 € and for EEA national’s family member is 5 € by the FeeD (it is about the same as ID fee for nationals). This distinction between family members on the ground of sponsor’s nationality together with biometric identifies (facial image and fingerprint images) entered into fore in May 2011.

Since 1 October 2009 the submitted documents in the residence card procedure shall be accepted in the original language by the OIN instead of authentic translation in Hungarian. The paid employment as purpose of residence shall be certified with labour contract, property document in a company, entrepreneurship card or other proper way. The minimal monthly income must exceed the lawful monthly minimal pension per capita – about 100 € – in the family, or proving assets, real estate or other sources of income taking into account the size of the family not to become unreasonable burden. The family ties shall be proved by birth/marriage/adaptation certificate. The sponsorship declaration undertakes to provide subsistence for family member on a format. (FeeD, Section 20-25) At the same time as the application is submitted, the authority shall issue a certificate attesting to the right of residence of a family member with the nationality of a third country until the application has been decided upon (three months). The residence card shall certify that the conditions for residence are fulfilled for as long as it is valid (up to five years). The card shall be invalid if its holder stops exercising the right of residence in the territory of Hungary, or if the right of residence ceases. The format of the card fits to the requirements of 1030/2002/EC Reg., and the 380/2008/EC Reg.

- **Small border traffic permit** that may prove lawful residence not exceeding three continuous months.

- **Permanent residence card:** it attests to the right of permanent residence of the family members. Third country family member shall submit an application for a permanent residence card before the expiry of the residence card. If s/he submits with delay and cannot give a valid excuse, it must be proved whether the conditions for the right of permanent residence have been fulfilled. At the same time as the application is submitted, the OIN regional directorate shall issue a certificate attesting to the right of residence until a permanent residence card is issued (3 months). The permanent residence card shall be invalid if the right of permanent residence ceases. The endless permanent residence card shall be renewed in each tenth year controlling whether the conditions are met. Fee is the same as for residence card (5 €) by FeeD.

The family member shall report his/her first home (address) in Hungary during the procedure for issuing a residence card. The residence card holder is obliged to request address card and personal identification number from the local registry office as nationals (e.g. valid, existing address can be controlled by the list of existing addresses, legality of living also has to prove by a rental contract or property certificate concerning the apartment/house).

**What are the main limitations in free movement of family members?**

Departure of family member and other restrictive measure can be implemented against him/her not meeting the preconditions of right to residence.27

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25 Government Decree No.182 of 2009, 10 September.
26 It is decided by the Government Decree, so yearly its amount is changing, however in 2008-2010 was fixed in 28 500 HUF.
27 Art. 15(2)-(4), 33-34, 38-48, 64 of FreeA), Ministerial Decree of Justice and Law Enforcement No. 27 of 2007, 31 May on alien police detention was modified by the Ministerial Decree No. 51 of 2007. 11 December.
If the right of residence ceases, the family member must *leave the territory* of the country unless they are granted a residence permit under separate legislation. The obligation to leave the country must be fulfilled within 3 months of the decision taking legal effect.

The right of *entry and residence can be restricted* in accordance with the principle of proportionality and exclusively on the basis of the personal conduct of the individual concerned which represents a genuine, direct and serious danger to any of the fundamental interests of society, particularly public order, public security or public health. Return and expulsion shall respect for non-refoulement (protection against torture, death penalty, persecution). However, these closures are not explained or objective criteria of violation of fundmanetal, interests, seriousness of danger etc. are not defined in law.

*Entry and residence is prohibited*, if in respect of him/her Hungary has undertaken an international legal obligation to enforce a prohibition of entry and residence; or anyone in respect of whom the Council of the European Union has decided to enforce a prohibition of entry and residence up to three years in the first instance, which may be extended by a maximum of further three years on each occasion, if the conditions for it still exist upon the expiry of the prohibition. It must be repealed if the grounds for prohibition no longer exist. There is no legal remedy against entry ban ordered alone (without expulsion order). This measure can be taken if family member resides out of Hungary or in an unknown place.

The competent authority may *expel an EEA national’s family member* and s/he must not return to Hungary up to one-five years who:

- has not fulfilled the obligation to leave the territory of the country by the deadline stipulated;
- does not have the right of entry or residence but who has nevertheless referred the competent authority to false information or untrue facts in order to verify a right of entry or residence. The authority in both upper cases must evaluate the nature and severity of the crime committed; the age and state of health of the individual concerned; the family situation of the individual concerned, and the duration of family relations; the number and age of any children of the individual concerned, and the means and frequency of his/her contact with them; whether there is another state where there is no legal obstacle to the family continuing to live together, taking into account any difficulties the family members might encounter if they were forced to settle in the territory of that state; the financial situation of the individual concerned; the duration of the individual’s residence in Hungary; the social and cultural integration of the individual concerned, and the closeness of his links to the country of origin;
- at the instigation of the public health authority, on public health grounds if s/he suffers from, could infect with, or is carrying a disease dangerous to public health as defined in separate rule, and does not undergo compulsory treatment for these, unless he contracts, could infect with, or carries the disease after three months have passed from the date of entry;

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• has legally in the country for less than ten years and not minor (unless expulsion takes place in the interest of the minor), or
• has committed an offence and the court imposed the expulsion.

The authority in expulsion case must evaluate the nature and severity of the action committed; the age and state of health of the individual concerned; the family situation of the individual concerned, and the duration of family relations; the number and age of any children of the individual concerned, and the means and frequency of his/her contact with them; whether there is another state where there is no legal obstacle to the family continuing to live together, taking into account any difficulties the family members might encounter if they were forced to settle in the territory of that state; the financial situation of the individual concerned; the duration of the individual’s residence in Hungary; the social and cultural integration of the individual concerned, and the closeness of his links to the country of origin. According to the Art. 61/A the final decision on expulsion shall be executed within 59 days.

Against the expulsion and prohibition of residence there is a court review with suspensive effect on enforcement. The court shall rule on the application within eight days of its arrival. The family member must also be heard in person at the proceedings if a request for this is made. A hearing in person may be dispensed with if the family member cannot be summoned at the given address, or has moved to unknown whereabouts. The court may amend the decision. There shall be no further right of appeal against the decision of the court. However, the judicial review of the court judgement on expulsion is initiated by the immigration authority, if more than two years pass from the court judgement until its enforcement, with exception of imprisonment. In this case the court shall examine whether there has been any significant change in the expelled person’s circumstances since the expulsion ordered, or s/he represents a significant and real danger to public order, public security, and shall decide whether to uphold or revoke the expulsion order.

Family member prohibited from entry and residence at the same time as his/her expulsion as an alien may, after two years have passed since the date of expulsion, request that the prohibition of entry and residence be repealed with reference to a change in his state of health or family situation that justifies his residence in the territory of Hungary. The competent authority shall decide on the application within three months. If the competent authority ends the prohibition of entry and residence, it shall see to its repeal. Expulsion is enforced by the police (deportation) if family member is released from imprisonment or intentionally committed crime or his voluntary departure has been failed. Detention prior to deportation may be ordered by the immigration authority for 72 hours and its extension shall be decided by the local court monthly.

A family member may not leave the territory of Hungary if he/she is under arrest pending criminal proceedings, under house arrest, forbidden from leaving his/her place of residence, in custody, in extradition custody, under arrest pending extradition, under arrest pending handover, under arrest pending temporary handover, or undergoing temporary, compulsory medical treatment. The competent authority shall decide to withhold the travel documents in mentioned cases. There is no right of appeal against the decision.

The ‘unreasonable burden’ as regularly returning exclusive preconditions means that EEA national or family member has not at least the minimal lawful old age pension per
month per capita in the family – as the general threshold for social benefit –, or has obtained for at least three months (continuously or in parts within a calendar year)\(^{28}\)
- regular social allowance for old person,
- regular active age benefit, or
- nursing benefit on the grounds of SocialA.

However, the authority shall evaluate the prior length of residence in the country, length of provided social benefits and reasons for material shortage of the family or the persons in concern (e.g. timely shortage or standard need) (Section 21 and 35 of FreeD). Its amount is really solid but we have to add that all non-nationals (EEA nationals, family members and third country nationals) entering the territory of the country have to prove as minimal source 1000 HUF (4 €) for residence per entry\(^{29}\) and not per capita per day (Section 25 in FreeMD).

Residence of family member shall meet public health conditions that are proved by a declaration of the visa/card applicant. However, the OIN may contact with epidemiologic authority in favour of controlling or defining certain behaviour for family member. According to the SanitD public health is endangered by the following diseases, or in being of the pathogen condition of tuberculosis, HIV-infection\(^{30}\), Lues, Typhoid or paratyphoid in pathogen condition, or hepatitis B. If the sanitary authority recognized one of these, this fact is noticed officially to the OIN regional directorate as a general alien policing rule.

3. **IMPLICATIONS OF THE METOCK JUDGMENT**

Application of Metock judgement means that previous lawful residence in another member states is not required from family member of the union citizen. The OIN confirmed that residence card is issued without previous lawful residence. However, family unification (visa) is not an automatic opportunity.

4. **ABUSE OF RIGHTS**

The marriage of convenience (Art.35 of Directive 2004/38/EC) is a joint task of the OIN and consular office but share of responsibility in practice has not been defined clearly. Issuance of visa for TCN family member is discretionary decision of the OIN upon proposal of the consular officer. Art. 3 (6) and 4 (1) requires consultation upon request between Schengen national visa authorities before issuance of visa for short term (not exceeding three months) and applicant has to meet the requirements as defined in the Schengen Border Code (Art.5 (1) a, c-e. points).

The public administration office (at county/capital level) theoretically may check the personal status and marital status documents of non-nationals during the marriage procedure. They hardly can screen out the false documents in absence of professional knowledge. Furthermore, the OIN is entitled to control couples as the family members that apply for resi-

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28 Section 21 of FreeD was amended by the Government Decree No.395 of 2007, 27 December, No.34 of 2008, 30 December in order to use the same reference on benefits in changing SocialA.

29 Section 25 of FreeMD.

30 Since mid-90s human rights organisations have criticized the HIV-infection and AIDS for being treated as usual, traditional epidemiological appearance in public law in Hungary. [www.tasz.hu](http://www.tasz.hu).
dence card. For instance, the officials of OIN enter the home of applicant looking for evidence on joint life and family contacts (e.g. whether the name of foreigner can be read on the door, on post box, the personal belongings can be seen in the bathroom, where are the joint photos, what is the impression of the neighbours on the joint household). Due to this mechanism the number of failed applicants was 105 in 2010. (The family unification requests are also checked, e.g. increase of Nigerian male from 101 to 192 within a year in 2010 has launched investigation on marriage-mediator network.) However the OIN has neither investigation nor sanction power for released for gain in marriage.

A new method for family unification and right to free movement is the authentic paternity admission of a minor without clear identity of own father by a Hungarian national as a father. The mother of minor is the partner to the false marriage in the second step. The OIN cannot stop these actions.

The UK Border Agency data indicate how marriage may abuse the right to residence. There were 13 Hungarian nationals in 2009 and 25 in 2010 that were arrested for acceptance of money to marriage. The same data on false marriage with TCN spouse by Romanians (30), citizens from Czech Republic (63), Slovaks (53) or Polish (91) in 2010 may show the tip of iceberg.

A court case also proves that right to residence shall be based on at least one year lawful co-existence of the couple, namely the union citizen and third country national (Art. 8 of FreeA) shall to provide a registered joint address (Section 1d and 27(1) of the FreeD). The Chinese woman application for residence card was refused at first instance although she attached an authentic declaration of sponsorship and partnership given by her partner. In appealing procedure she attached the bank account on her spared money (1 million HUF) but in absence of payslip of her partner and missing data on joint household for at least one year in the population address or alien police registration. The Supreme Court in final decision stressed that Dir. 2004/38/EC requires authority in Member States to fight against marriage of convenience controlling joint life in a common household. Art. 10(2)b and c must check the valid document on partnership, the registered address or genuine period and place of residence while the Art. 10(2)f specifies the evidence on stable family tie of TCN with the union citizen. The national regulation is based on a least a joint household life for at least one year under the same roof that shall be documented in the address registry at least for a year before the application for residence card as family member. Although in Hungary many persons are not registered in the population address registry (e.g. the owner of the rent house refuses to sign the registration format or there is no a formal contract concluded) but foreigners have to manage this hardship.

Gathering further data from the Supreme Court I could find at least five further cases in which the status of family member of a Hungarian national was disputed. It is common in each that family members’ right to residence had never existed in the opinion of the OIN and the Supreme Court because conditions of residence were absent due to the pure presumption that third country nationals married and gave birth children in an abusive way obtaining the family member status and right to free movement. The Capital Court annulled the decisions of the OIN on refusal the residence card or its extension with reference on false marriage of the applicant saying that facts and evidences of abusive conduct of family member were not clarified. But the Supreme Court annulled all judgements of the Capital Court and confirmed

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31 Eladó a menyasszony. Heti Válasz – 2 February 2012.
32 Information thanks to dr. Parragi Mária, OIN – March 2012.
the original administrative decisions to force all of family members in concern to leave the
country. The main argument in these cases was from the OIN side that the Council Conclu-
sion 97/C.382/01 requires measures combating marriage of inconvenience, while the Capital
Court explained that Treaties and 2004/38/EC Directive would be decisive, and marriage
certificate and registered address are only required to prove the family connection that are
available in these cases.

- marriage with the Hungarian national dated in March 2008 and spouse’s application for
  residence card in December 2008 was denied. The TCN was a refused asylum seeker.
  Their marriage was considered as formal tie ‘demolishing the conditions that are re-
  quired to the right to residence’;34

- marriage with the Hungarian national dated in 2008 and their child was born in 2009.
  The spouse was a prior asylum seeker. TCN had to leave the country because ‘marriage
  was made only to obtain the right to residence’, and the rights and fate of newborn baby
  ‘was not object of the judicial review’;35

- marriage with a Hungarian national was made in 2009 during the authorisation period for
  residence card. The spouse was a former asylum seeker. The OIN and the Supreme Court
  finally refused the card because living community of the couple within six months of
  marriage was ceased (‘including the case if he has never existed the right to residence’)
  although they were living together in a small flat in 2007-2010. The issue that TCN had
  an existing other marriage and child in Hungary was not disputed but the recent marriage
  was qualified as formal one to acquire right to residence;36

- marriage with a Hungarian national was made in 2008 with an ex-asylum seeker. The
  check in situ by the OIN regional directorate released that the couple was living separa-
  tely. The OIN and Supreme Court said that applicant for residence card had never right
  to residence making a formal marriage and it is considered the same as ceasing the con-
  ditions for obtaining the card because the joint life was finished within six months from
  the marriage. The Supreme Court ordered the repetition of the judicial review at the
  Capital Court in order to clarify the facts and harmony of the FreeA with the Directive;37

- in an ongoing case at the Supreme Court the TCN has living consciously and lawfully for
ten years in Hungary. He was a student and a participant in a vocational training, could
  speak in Hungarian, and as self-subsistent person he made marriage with a Hungarian
  national in 2006. The reasidence card at first was issued for a year instead of five. The
  couple was living together in the joint flat in 2006-2010, and in 2010 the unemployed
  wife moved for paid work to the UK. The application for extension of his residence card
  has been pending since 2012 due to false marriage.

- the TCN arrived in Hungary as visitor in October 2009 and married a Hungarian national
  on March 2008. The husband requested residence card attaching the marriage certificate
  but if was refused for marriage of inconvenience but without fact-finding or seeking in-
  dividual circumstances at first instance and in appealing procedure. The decision was re-
  viewed at the Capital Court that annulled the administrative decision and ordered repeti-
  tion of the whole administrative procedure proving the stated false marriage and meeting
  the conditions of self-subsistence. Moreover, the their child was born in May 2008 butt
  soon the Hungarian national was imprisoned so the guardian authority put the baby into a

children home. Upon request of the husband the grandparents carried their home the baby nursing her. He provided all documents to the repetitive procedure (documents of health care, own salary slip, declaration of housing proving the preconditions in Art. 7 in FreeA) but the residence card was refuges again saying that there was no a living community with wife and baby. The second judicial revision by the Capital Court ordered to issue the residence card for the family member. This judgement was challenged by the OIN because there was no legal ground to family status with reference on Art. 10(1) of 2004/38/EC Dir. and Art. 1(1)c in the FreeA. The Supreme Court his final decision explained that husband was a family member of a Hungarian national entitled to the right to free movement and residence (Art. (2)b in FreeA) because he was a parent of a minor Hungarian national. As parent he had parental custody on minor regardless whether this right was practiced or not – the grandparents’ nursing activity and contacts with the guardianship authority speaking Hungarian could not deprive the parent’s right. Due to the Family Law, parent has a right to minor’s custody until the court would deprive parent from this right. Mother was imprisoned – so her parental custody was out of practice - and baby was nursed by the grandparents. However, all of these conditions could exclude neither his parental custody right nor marriage connection. The repetitive procedure of the OIN the evidences and facts of abusive conduct of third country national was not collected (Art. 14(2) in FreeA), and imprisonment was the objective basis of interrupted living community with his wife. Consequently, the Supreme Court ordered to issue the residence card for the applicant.38

In brief, the interpretation of the spouse’s right to residence and free movement in practice of OIN is narrow saying that joint living under the same roof is physically and legally shall be proved, the marriage certificate and registered address is not enough in a legal dispute and authorisation of residence card. It seems different approach than it is in Diatta (C-267/83 ECJ) or Baubast cases (C-413/99 ECJ). Moreover, the family ties for parent of a minor may become neglectable.

5. ACCESS TO WORK

The Hungarian labour market has been fully opened with effect from 1st of January 2009. Article 2 (2) of the UnemplA lays down that ‘… persons falling within the personal scope of the FreeA shall enjoy the same rights and obligations as Hungarian nationals’. However it adds that these main rules may be supplemented by act and government decree without clarification whether different provisions mean preferences or derogation. On the other side, Art. 7 (4) delegates the regulative power to the Government determining conditions that are ‘differing from the equal treatment’ for persons who are entitled the right to free movement and residence in their employment in accordance with international treaty or EU legal norms.

The term ‘persons falling within the personal scope of the FreeA’ encompasses the family members of EEA nationals and the family members of Hungarian nationals as well. The definition of family member derives from the FreeA (Article 2 (b)), the UnemplA does not have an independent term for family member.

It shall be underlined that Hungarian law is in full compliance with Directive 2004/38/EC, in particular Article 23 thereof, that states that equal treatment shall be accorded to the family members of EEA nationals irrespective of their nationality. As a main rule, family members of EEA nationals and of Hungarian nationals can freely enter the Hungarian labour market, there are no nationality restrictions.

Article 59 (1)-(4) of the UnemplA expressly confirms the obligation of equal treatment. It states that for matters falling within the ambit of the UnemplA (the registry as a job-seeker, and for the grant of cash benefits, etc) the rules of EC law shall be applied to any union citizen as migrant worker or self-employed person and his/her family member. In this regard union citizens’ family member is put on the same footing as Hungarian nationals (e.g. required period of prior employment in another member state of the EU or in EEA shall be accounted as in Hungary to eligible unemployment support).

Further on, Article 58 (9)b of the UnemplA provides equal treatment for any legal employment relationship that is valid and effective according to the national law of another Member State must be equally treated in terms of supports as a Hungarian employment relationship (active labour market measures). This kind of support targets on employers in favour of wider, lawful employment. However, discretion is exercised by labour offices but the evaluation must focus on the merit of the application and can not reject it just because the planned work place is outside Hungary. Discretion power is essential for labour authority in budget cutting period and in neck-of-bottle situation in active labour market supports.

The Act XXIII of 1992 on Legal Standing of Public Officials regulated also the family members of EEA nationals. Art. 7 (1) stated that public officials would be only Hungarian nationals. As an exception, Art. 7 (8), however, declared that lower ranked public official (file-keeper) might be ‘a person being entitled to free movement and right to residence’, if the work at issue is not confidential or it is not a leadership, and the person possesses the language skills necessary to perform the tasks. The new Act CXCIX of 2011 on public officials covering on the decision making and administrative staff at central, regional and local state administration and law enforcement that entered into force on 1 March 2012 preserves this exception for union citizens and their family members only as lower ranked officials (file-keeper) in public administration at central/governmental and municipal level (Art. 207(2), Art. 241(2).

6. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

The rule of EC law is that persons who exercise their right to free movement are entitled to install themselves in another member state and they are also entitled to bring their family members with them. It means that if the union citizen obtained in Hungary the registration certificate, s/he is entitled to bring his/her family members under the criteria set forth for his category.

The family members shall be granted the residence card in due time on the basis of the FreeA. If the residence card is issued, access to work is granted irrespective of whether the union citizen is a job-seeker or an economically inactive person. Neither Directive 2004/38/EC, nor the Hungarian law sees a difference in the status of the family member based on the status of the union citizen of whom s/he is a family member.
There are no restrictions but there are no benefits available. In this context of family member right to residence the absence of unreasonable burden (Section 21 (7) and 35(1) in Freed) shall be proved. Due to the fact that amount of job-seeking allowances is really limited, in fact only self-subsitent migrant worker and family can prove it.

Recent literature
Chapter III
Access to Employment

Regulation in force:
- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [the consolidated Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] (EqualA);
- 2001. évi C. törvény a külföldi bizonyítványok és oklevélek elismeréséről [the consolidated Act C of 2001 on Recognition of Foreign Diplomas and Qualifications] (QualA);
- 2011.évi CXCIX.törvény a közszogálati tiszviselőkről [the consolidated Act CXCIX of 2011 on Civil Service Officials entering into force on 1st March, July and September 2012] (CiA);
- 2006. évi XCVII. törvény az egészségügyben működő szakmai kamarákrol [the consolidated Act XCVII of 2006 on professional chambers functioning in the health care sector];
- 1997. évi LXVIII. törvény az igazságügyi alkalmazottak szolgálati viszonyáról [the consolidated Act LXVIII of 1997 on Employee in Administration on Justice];
- 1996. évi XLIII. törvény a fegyveres szervek hivatásos állományú tagjainak szolgálati viszonyáról [the consolidated Act XLIII of 1996 on Legal Standing of Officers in Law Enforcement];
- 1992. évi XXXIII. törvény a közalkalmazottak jogállásáról [the consolidated Act XXXIII of 1992 on Legal Standing of Public Servants] (PubsA);
- 1991.évi IV.törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [the consolidated Act IV of 1991 on Job Assistance and Unemployment Benefits] (UnemplA)

1. Access to Employment in the Private Sector

1.1. Equal treatment in access to employment

Access to employment in the private sector is free for union citizens and their family members. Usually employment is not subject to additional conditions. However, in certain cases affiliation to a certain chamber is required for the pursuit of a given profession (e.g. Chamber of Attorneys) union citizens are required to register. Due to changes (with effect from 1 April 2011) the health care professionals (doctors, pharmacists, nurses etc.) are again required to be affiliated to their respective chamber as a pre-condition of their lawful exercise
of activity since 1st June 2011. The mandatory affiliation was terminated in 2006 and it was set up again in 2011 saying that mandatory membership contributes to professional supervision and credibility. It has never been proved because these chambers operate as public administration (e.g. managing registry of members including personal data, obtaining information from the government offices on their regular training, gathering membership fee as a tax) and not as protectors of professionals controlling own members. Among the neutral conditions of accession I mention that credit points proving the participation of regular professional training practically is a tailor-made only to nationals.

The equal treatment requirement in Treaties, Charter of Fundamental Rights and Directives on employment and against racial discrimination is transposed to the EqualA implemented by the ETA. The Labour Code and other connecting rules on employment regulate guarantees in respect for equal treatment and human dignity of workers:

- The rule of Labour Code covering on all employers in Hungary including manpower requesting parties if labour is regularly made in the country with some exceptions (Art. 2-3) shall be interpreted in harmony with the ‘Hungarian and EU legal system’ [Art. 5(1)].
- Equal treatment in labour connections, in particular in remuneration shall be ensured but in case of its violation the legal remedy shall not invade rights of other labourers [Art. 12(1)].
- Equal treatment is required for lending manpower so the same labour conditions including payment and other connected allowances shall be provided for lended workers as for own workers taking into account in particular the protection of pregnant women, mothers with small child and young workers. However this equal treatment is applicable from the 184th day of employment for fix time workers or labourers in employment by a company in majority ownership of municipal, by non-profit company or by public utility entity (Art. 219).
- In absence of more preferable law on the given labour relations the rules on equal treatment shall be implemented also for posted (non-national) workers that are working in Hungary on the grounds of contract between the foreign employer and third party including the rights and allowances based on the collective agreement at the employer in concern; for labourers in building industry that are in ambit of industrial branch collective agreement. However, it is not applicable for labourers employed on commercial maritime ship or workers in short time servicing work. These rules shall be communicated in writing to foreign employer before work is beginning (Art. 295-297).
- Rules of Labour Code may become secondary if peculiarities are decisive in acts on branches or professions. [Art. 298(4)]

The minimal lawful monthly salary is defined yearly by the government in a decree taking into account the consultation with National Economic and Social Council replacing the tripartite system in 2011. Different amounts may be defined for certain groups of workers, and the decree may regulate the minimal amount of salary lifting by all employers in order to

39 For instance, the Chamber of Health Care Workers determines in the Statute the mandatory yearly fee for member, i.e. 0.65% of lawful minimal salary per month (in 2013 it means 2.5 EUR monthly). Accession to the Chamber is decided in a formal resolution, issuing a membership certificate but application shall be submitted to the Health Authorisation and Public Administration Office and data on credit points of required regular training of the worker shall be gathered by the Health Care Authority (GYEMSZI) as determined in the ministerial decree No.63 of 2011, November 29, NEFMI.
maintain the real value of monthly salary below 1000 EUR (rate of expected saise) [Art. 153].

However, the judicial practice has not developed the parameters of violation of labourers’ dignity in behaviour or in the context of duties and rights of employment. The gradually established case law of ETA is richer in this field but legal consequences of ETA anti-discrimination procedure are limited. However, in 2012 there was no complain for discrimination on the grounds of nationality at ETA.

Finally it can be mentioned that neither ETA, nor the ombudsman or Hungarian judicial system is ready to differentiate the discrimination on the grounds of a protected feature of individual, such as gender, age, health condition, etc. from the discrimination in labour or social rights based on certain employment position of individual (e.g. occasional worker, seasonal worker, part-time employee, lended workforce).

1.2. Assistance of employment agencies

Equal treatment in private employment services is ensured by law and authority control. According to UnemplA [Art. 6(2)] the private employment agencies must be registered at county labour authority meeting the requirements as determined in Government Decree covering on labour force lenders and manpower intermediary agencies or entrepreneurs. Moreover, mediating jobs abroad shall meet the requirements as legal rules determined in the destination state. Mediating fee shall be paid by the employer to the agency with exceptions of payment by ‘certain groups of labourers or special services that are provided by the agencies as may be regulated by the government in a decree’ [Art. 6(3)(4)]. This wide delegated power of regulation includes a derogation of the ILO convention No.181 on private manpower intermediary that prohibits payment by the job seekers.

Accordingly, the number of private manpower intermediary agencies dealing with workforce lending was 391 at the end of 2012. From them 60 percent was mediating labour force also abroad. The activity and number of companies managing manpower intermediary for migrant workers in 2011 is not known due to the changed statistical system. However, 594 974 clients used these private agencies in 2012. It is a severe drop (in 2010: 1 494 842, in 2011: 805 532). 42% of their clients were unemployed persons and about the half of these persons had a diploma. The rate of success in placement and seeking a job was also decreasing, in 2012 the number of successful placement of Hungarian nationals was 33 260 (in 2011: 46 663) and their 20% was not qualified workers. They obtained employment in manufacturing industry and catering. Only 19.5% of successful placement were placed abroad that means increase to the year before (+7%) while successful placement was declining internally. The successfully mediated non-national job-seekers’ number was 809 in 2012 that is higher than in 2011 due to placement abroad: 668 persons (mainly to Austria and Germany) while the total number of internally mediated workers’ number was only 141 to the financial and administrative services.

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41 During the ratification period of the Convention the government passed a resolution (No. 2004 of 2002, January 11) that requested the labour minister to initiate negotiations with social partners how to prohibit fees or other payment by job-seekers to private agencies and how exceptions on certain groups of labourers and services would be defined (point 3 inserted to the text in 2003, March 27).

42 Government Decree No. 171 of 2011, 24 July introduced the on-line registry of manpower intermediary.
UnemplA regulates the eligibility conditions for state-run labour market services and job assistance subsidies. While equal treatment of persons in ambit of FreeA with nationals, ‘acts and government decrees may regulate in other way on persons with right to free movement and residence than it is defined in this act’ [Art. 2(2)] in accordance with international treaties or EU effective legal norms – but this delegated law-making power covers on government decrees [Art. 7(4)].

Access to the job-seeker services is guaranteed to all persons who are legally entitled to enter the Hungarian labour market (Hungarian nationals, foreign persons possessing an immigration/settlement permit, refugees, EEA and Swiss nationals and their family members). EEA and Swiss nationals are placed on an equal footing with Hungarian nationals hence they are qualified as ‘job-seeker’ and enjoy this status. The principle of Community preference is also applied hence EU citizens are entitled to use job-seeker assistance services by the employment agencies regardless of the fact whether they are required to hold a work permit or not. Moreover, employers are entitled to take into account these workers when applying for certain benefits as if they were Hungarian nationals.

Pursuant to Art. 13/A the Government Employment Service shall provide services to assist job seekers to find employment, and for employers to find appropriate personnel and in maintaining existing jobs. Labour market services shall include the following:

a. providing information pertaining to the labour market and employment,
b. consulting on work, career and employment opportunities, and rehabilitation and local (regional) employment policies, and
c. providing for placement services.

From these state-run labour services are freely eligible for all employee and employers services in point a), and c) [Art. 4(1)].

Additionally, job seekers are also entitled to apply for training assistance or assistance to become an entrepreneur. Employers can also apply for certain assistance: assistance to create new jobs, to maintain the level of employment, to employ incapacitated workers, or to employ workers in unconventional employment relationship (part-time, temporary work).

Employers can apply for social security contribution exemptions (START. cards as defined in the Act CLVI of 2012) if they employ disadvantageous labourer (up to 50% of his salary and its contributions), person with reduced capacity to work (up to 60% of his salary and its contributions) to one year in employment or to two years when worker was unemployed for longer than 24 months before his employment. The rate of benefit may go up to 70% of monthly salary and its contributions if disadvantaged labourer will be employed longer than 150% of the benefited period, e.g. in a social co-operative.[Art. 16] When employing career starters with a START. card (contribution relief for the employment of career starter young people), if the employee has basic or medium level qualification, the benefit can be used for two years, if the employee has higher level qualification, the benefit is applicable for one year but not longer than the age of 30. The START. PLUS and START. EXTRA cards are available for other disadvantageous groups (e.g. worker over 50 or young mothers returning to the labour market from child care) for two years but no longer than the old pension age, as well as START. BONUS card that provides benefits for one year but no longer than the old pension age. (Art. 20/A in TaxPA) All benefits can be used up to the contribution base equal to double the minimum wage as a maximum, above that amount general contribution payment rules apply. All the benefits are valid for union citizens residing in Hungary.
It is worth mentioning that there is no statistical data on how many union citizens took part in active labour market measures. The statistics are built-up according to the sex – age – schooling of the job-seekers but not on the basis of their nationality.⁴³

Act CXLVI of 2012 on the amendments required for the implementation of the objectives defined in the Employment Protection Action Plan and Act CXLVII of 2012 on the Fixed-rate Tax of Small Taxpayer Enterprises and Small Company Tax were promulgated on October 15, 2012. The provisions of the acts enter into force progressively, starting on the day following promulgation, and then on November 1, 2012, December 1, 2012 and January 1, 2013. The legislative amendments related to the implementation of new Action Plan grant substantial social contribution tax credits to employers of workers facing a labor market disadvantage, thereby supporting job creation and job retention.

I. The new tax credits on social contribution tax and vocational training tax available from January 1, 2013 for the following groups of employees:
   a. workers below the age of 25
   b. workers above the age of 55
   c. employees in positions not requiring qualification
   d. long-term jobseekers (registered as jobseekers by the state employment body for 6 out of the 9 months preceding employment of the beneficiaries)
   e. employees with small children (if the beneficiary is employed after having received, or still receiving maternity (GYED), child care benefits (GYES) or child-raising benefits).

The action plan not only applies to new hires, but to current employees as well, therefore the amendments contribute to both new recruitments and job retention. The basis of the credits is the (gross) salary of up to HUF 100,000, including social charges and other deductions payable by the employees; the portion over this amount is subject to the ordinary rules of taxation. These benefits are available for nationals and others in ambit of FreeA.

The tax credits (Table 2) cannot be combined with the tax allowances granted on the basis of the START. PLUSZ, START. EXTRA or START. BÓNUSZ cards.

II. New tax forms available for businesses

The second group consists of simpler and more advantageous tax conditions for businesses.

III. Measures aimed at assisting the funding and administration of businesses

The third group consists of measures supporting funding and other accounting tasks.

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⁴³ According to the analysis on adults’ training system in Hungary the labour centres support courses for low skilled unemployed persons and courses in crafts with severe shortages. The other training is financed by workers alone (e.g. re-training, training in advance). Looking at structure of the residing union citizen labourers their participation rate would be marginal. It is confirmed by the Audit Office information. See Pulay Gyula: A hazai felnőttképzési rendszer hatékonysága európai kitekintésben. Munkaügyi Szemle 2010/2: 72-81
Hungary

### Table 2

<table>
<thead>
<tr>
<th></th>
<th>Career starters below the age of 25 (max. 180 day insurance period)*</th>
<th>Employees below the age of 25 (insurance period in excess of 180 days)</th>
<th>Employees above the age of 55</th>
<th>Employees in positions not requiring qualification</th>
<th>Long-term job-seekers (for 6 out of the previous 9 months)</th>
<th>Mothers with small children*</th>
</tr>
</thead>
<tbody>
<tr>
<td>social contribution tax (27%)</td>
<td>0</td>
<td>12.50%</td>
<td>12.50%</td>
<td>0</td>
<td>12.50%</td>
<td>0</td>
</tr>
<tr>
<td>vocational training contribution (1.5%)</td>
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<td>1.50%</td>
<td>1.50%</td>
<td>0</td>
<td>1.50%</td>
<td>0</td>
</tr>
<tr>
<td>total social charges (28.5%)</td>
<td>0</td>
<td>14%</td>
<td>14%</td>
<td>0</td>
<td>14%</td>
<td>0</td>
</tr>
<tr>
<td>duration of credits</td>
<td>first 2 years of employment until the age is reached</td>
<td>continuously above the age</td>
<td>no time limitation</td>
<td>first 2 years of employment in the 3rd year</td>
<td>first 2 years of employment in the 3rd year</td>
<td>first 2 years of employment in the 3rd year</td>
</tr>
</tbody>
</table>

* can also be applied in case of employment relationships valid on December 31, 2012.

### 1.3. Atypical forms of employment

Hungarian law contains specific rules aimed at simplifying the administrative surroundings of atypical employment. Between 1997 and 2010 there has been the instrument of the Temporary – Working – Book (TWB) that provided for a very flexible way of employment for both the employer and the employee. Simplified administrative procedures, reduced labour law consequences and special social security arrangements were attached to this form, however, the too many abuses and the very difficult ways of state control made it subject to ongoing debates. In the first half of 2010 the prior government modified (the Act CLII of 2009) and in the second half of the same year the present government passed a new Act on the new rules of atypical employment, called ‘simplified employment’.

The Labour Code (Art. 201-203) determines numerous exceptions from the general requirement of labour relationship in simplified or occasional work. For instance, an employment contract-sample as determined in the act may be applied, modification of the concluded employment contract in order to extend on simplified or occasional work is excluded, simplified or occasional employment is valid if it is notified to the tax authority (even by phone or SMS), uneven working time may be determined within the time frame.

The Act LXXV of 2010 on simplified employment is applicable equally to Hungarian and union citizens (and their family members). It enables an employee-employer relationship to be established in a simplified manner for seasonal work in agriculture, tourism or casual...
work. Simplification here means that only the most important labour law rules (e.g. minimum wage) need to be applied. The administration for registering the start and end of employment is also less. The daily wages for persons in simplified employment are the same as for regular workers. However, the public dues are less: HUF 500 for agricultural seasonal work, HUF 500 for tourism seasonal work and movie industry employee while HUF 1,000 for casual work. There are numerical limits for the number of workers and days that can be employed in simplified employment. For example if an employer employs 5 workers the maximum number of workers in simplified employment is 2. The same employee can only be employed with the same employer for a maximum of 120 days.

The Labour Code introduces a special form of employment by semi-nationalised employers (i.e. public trustee or company in which the majority of ownership, property or influence belongs to the state, municipal, joint municipals, minority self-government or public financed institute). Here the maximal monthly salary of workers may be defined in act, the content of collective agreement is limited, the working time cannot be shortened, there are no optional rules on trade union or collective disputes, the employment contract with workers in leading position shall contain the close of loyalty up to two years from the terminated employment (ex-labourer conduct is ban threatening the business interests of prior employer) but its compensation is much more below than in free labour market (maximum 50% of the contractual monthly salary). [Art. 204-207]

The Labour Code sets up the main but flexible provisions on lending workforces [Art. 214-222] that would be relevant for union citizens (e.g. in border zones the processing industry is employing labourers from manpower companies). The equal treatment principle shall be implemented (see upper) in this working relation, too in which employee is standing under dual control of employers (by lender and borrower) while work is made at borrowing company. The maximal length of lending workforce would be five years regardless change of parties in employers. Borrowing may be a corporate entity with seat in any EEA state with entitlement of manpower lending or limited company or co-operative seated in Hungary if it is registered by the labour authority meeting all requirements of manpower lending defined in the act. Labour force must not be substituted with lended workers during a strike, and lending contract is void if there is overlapping ownership/property of lending and borrowing parties. Moreover, worker shall be informed in writing on all relevant conditions in work including how travelling cost is covered by the borrowing employer (e.g. from Slovakia to the company in Hungary and back that is managed by shuttle in practice) and how to pay the fees in medical checking in labour, how to prove the communication on labourer’s tax and social contributions with the authority. Government is entitled to regulate workforce lending relations in details (e.g. registry of lending entities, requirement of collateral for manpower companies) [Art. 298(5)]

44 The government announced the new policy: gain or profit is prohibited for public suppliers, so their corporative form has to be changed (non-profit company), they have to apply new labour law provisions, state/community majority of the property is ensured by law or their permission that is required to certain economic activity is withdrawn without the state/community majority in their corporate property. For instance, waste management would collapse soon due to the massive termination of public suppliers’ contracts with municipals. The key staff members at privatised public suppliers (providing drinking water, gas, electricity, etc.) are mainly EEA nationals. HVG, 2013 June 24.
1.4. Language requirements

Article 3 of Reg. 1612/68/EEC declares that language requirements are not *per se* prohibited, only those that are not necessitated by the job at issue. This has been confirmed in the cases of the ECJ too (*Groener, Angonese*). Article 7 (2) b) of the EqualA, in this spirit, lays down that the obligation of equal treatment shall not be complied with if it has a reasonable justification based on a careful and objective deliberation of the concrete legal employment relationship. In case of language skills necessary for a certain job this exemption from the obligation of non-discrimination can be deemed lawful. The Labour Code contains no reference on language requirements.

In QualA the rules dealing with language requirements are found in Part. III on recognition of EEA diplomas of EEA nationals and their family members. Art. 22 (3) defines that the EEA national and family member applicant is only entitled to exercise a regulated profession in Hungary if s/he disposes of the language skills *necessary for the pursuit of the concrete profession*. Art. 28 (14) of the Act on the aptitude test states that an aptitude test is a test made by the competent authorities of the host Member State in Hungarian language with the aim of assessing the practical and theoretical ability of the applicant to pursue a regulated profession in Hungary. The aptitude test takes into account the fact that the applicant is a qualified professional in the Member State of origin and the test concerns only those abilities which are inevitable in the pursuit of the said profession in Hungary. The authority may require adaptation period up to three years in Hungary instead of the aptitude test and EEA national and their family member can opt it unless the practice of the profession requires the precise knowledge of the Hungarian law and ethics, and its inherent part is the counselling on applicable Hungarian law. In latter case the aptitude test is mandatory. However, the authority has to take into account the specific minimal rules on the given profession determined in law [Art. 31-32] Moreover, pursuant to Art. 31 on the rules applicable in case of free provision of services if the given profession requires the regular use or knowledge of Hungarian laws the competent authority may chose between prescribing probation period or aptitude test.

Section 8 of Ministerial Decree No.31 of 2004, April 26 on the recognition of health care diplomas and its procedure regulated the language requirement in the same spirit. It declared that the competent authority informed the applicant in Hungarian or English language about the professional and ethical rules, the applicable social security laws and the possibilities on learning Hungarian language – up to 2009 when it was replaced by the No.30 of 2008, July 25 deleting this provision. Point 5 in Annex 2 of the latter decree requires the applicant to indicate his/her language knowledge. However, lack of language knowledge does not result in any kind of consequences.

The consolidated Act LXXV of 2007 on Chamber of Certified Auditors regulates how to join the Chamber if EEA national and family member wants to operate as mandatory certified auditor as determined in separate legislation in accordance with 2006/43/EC Dir. Without membership in the Chamber mandatory certified auditor cannot be employed or work as entrepreneur. Accession to the Chamber shall be ensured if applicant proves that s/he has a certificate issued in an EEA state allowing his/her to work as a mandatory auditor and s/he meets general requirements (e.g. absence of incompatibility to auditor function, clean crimi-

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nal record, liability insurance is provided) and s/he has taken a successful difference exam.
(Art. 11). This exam managed by the Chamber shall be taken in Hungarian in writing and
orally evidencing the applicant’s knowledge that she/he obtained the necessary information
on Hungarian laws and ethical rules. The details material, fee and procedure is determined
by the Chamber (Art. 105). Furthermore, auditors providing auditing service shall be regis-
tered by the tax authority that is based on their regular (yearly) training. Without this train-
ing deletion from the registry means loss of their entitlement to supply service (Art. 152 of
Act C of 2009). After deletion the new entry the register is possible after two years. How-
ever, the training is managed in Hungarian.

The Ministerial Decree issued by the Ministry of Economy and Trade (GKM) No.17 of
2008, 30 April determined the language requirements for skilled workers in air navigation
service that is operated by private company. Due to traffic security the employment criteria,
testing method, language ability in English and Hungarian, its evaluation system of stagier,
junior and senior worker are clearly regulated (see its Section 14 and Annex).

Due to belonging to the continental legal system, the Hungarian law constituted official
translator and interpreter office in 1869. This state-run entity (OFFI) was reformed in 1994
to a single corporation and its owner rights are practiced by the minister of justice. However,
this market economy step is controversial because monopoly of authentic translation of offi-
cial documents, judicial and police intepretation in the capital was granted to the OFFI to-
gether with the right to set up its own fee system\textsuperscript{47}, while authentic translation from one lan-
guage in the EU to another of the excerpts (Handelsregisterauszug) issued by the Court of
Registry as well as of required incorporated documents submitted to this Court may be pro-
vided also by freelance specialised translators.\textsuperscript{48} The interpretation and translation is consid-
ered as service activity in the Act LXXVI of 2009 transposing the 2006/123/EC Directive. It
means that authentic or official translation belongs to the market of service providers, it is
not a part of public power – with the mentioned exceptions. The qualification required for
specialised translators and conference/interpreters that is obtained in other state shall be sup-
plemented with a Hungarian certificate if Hungarian is a target/source language in transla-
tion/interpretation.\textsuperscript{49} This additional certificate is available at universities giving degrees on
specialised translators/conference interpreters. In possession of a decree or language certifi-
cate\textsuperscript{50} union citizens and family members may be employed or undertake as entrepreneur (or
freelance self-employed person) may work in free market. OFFI also employees union citi-
zens and family members, too. However, absence of standardized language and experience
test of translators, interpreters\textsuperscript{51} in Hungary – including nationals and non-nationals both -
there is a bit chaotic situation in the supplies of translation and interpretation. It is problem-
atic in authentification of translation and interpretation in authority proceedings, legal ac-
tions but in whole Europe this diversity is disturbing\textsuperscript{52}.

\textsuperscript{46} See the Government Decree No.93 of 2002, May 5.
\textsuperscript{47} Section 5 of the Government Decree No.24 of 1986, June 26 on specialised translation and interpretation and
Section 6 of Ministerial Decree No.7 of 1986, June 26 IM on implementation of the Government Decree.
\textsuperscript{48} Section 6/A in Government Decree No.24 of 1986, June 26 MT.
\textsuperscript{49} Section 8 in Ministerial Decree No.7 of 1986, June 26 MM.
\textsuperscript{50} Qualification criteria see in Ministerial Decree No. 5 of 2004, February 27 OM concerning how to issue
degree for interpreter and special translator.
\textsuperscript{51} ISO 12616, ISO/DIS 17100, EN 15038 would be applicable.
\textsuperscript{52} See the conference papers at the European Legal Interpreters and Translators Association EULITA,
\url{http://eulita.eu}. 

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Otherwise, the private sectors’ language requirement is not explicitly regulated – with some exceptions. Employers in Hungary are free to offer employment on terms laid down by them. In these cases the degree of necessary language abilities is set by the employer, however, they are required to comply with the case law of the ECJ. Some articles and news prove how competition among professionals may upgrade the level of tests.

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

There are some legal rules on self-employed or contractual driven occupations of which the evidence of professional experience are determined. The Hungarian Chamber of Engineers was established by the Act LVIII of 1996 providing training, registry, granting permission for and ethnical control on members. According to the Act there are three forms of engineering, planning or expertise work in Hungary: mandatory membership of the Chamber obtaining its permission on technical planning, examination of plans and technical counselling; technical and building inspectoral work that requires permission from the Chamber; and other engineering work that shall be noticed to the Chamber before it is beginning. In all cases evidence on prior experience of engineers obtained in other member state or in Hungary is required. For instance, the Government Decree No. 244 of 2006, 5 December contains the preconditions of how to practice the building and technical superintendent. Although the membership in the relevant chamber is optional, the exam on entitlement by the national chamber is required in order to practice lawfully these professions and to be put on the list of entitled professionals. The Section 5 and the appendix to the Decree regulate the exam procedure and minimum abilities of the applicant. EEA national has to submit his application to the Capital Chamber of Engineers or Architects attaching the documents of paid fee, prior practice(s) in other member state(s) also in Hungarian translation, professional CV and references.

Private investigator, safeguard and bodyguard service may be provided by entrepreneurship in mandatory membership in the Chamber of Bodyguards, Property guards and Private Investigators (Art. 3(2) in Act CXXXIII of 2005). According to the Ministerial Decree issued by the Ministry of the Interior No. 22 of 2006, 25 April, the lawful operation of private investigator, safeguard and bodyguard requires his/her individual licence issued by the police authority, membership in the responsible chamber or as a company in possession of a permit issued by the police authority. The applicant may be also a registered local office of a company established in another EEA state or as EEA national in possession of individual entrepreneurship card. In case of non-national applicants the documents shall be translated into Hungarian and clean criminal record issued by the place of (foreign or Hungarian) residence shall be also attached. In case of EEA national entrepreneur with licence issued in another EEA member state, only its validity and expiring data can be controlled in police authorisation (Section 3). It means that there is no specific criterion of prior professional practice of applicant if it means a cross-border service supply. The operation certificate procedure was accelerated in 2011.53

53 Ministerial Decree No. 55 of 2011, 21 December 2011.
2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

The new Act CXCIX of 2011 on public officials that entered into force fully on 1 September 2012 preserves the exception for union citizens and their family members as lower ranked officials (file-keeper) in public administration at central/governmental and municipal level.

The publicly financed and regulated jobs covering about one-fifth of all workers are divided into the following sub-groups by law:
1. Certain elected positions defined by public law;
2. Officers in defence;
3. Officers at law enforcement (officers of police, prison, fire brigades and catastrophe dissolution, customs, secret services);
4. Government and public officials,
5. Administrators of justice (court, public prosecutor office) has own regulation on employment;
6. Public servants.

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

The Hungarian nationality is tightly required in (1), (2) and (3) sub-groups. It can be said that dual nationality means a hindering status in (2) and (3) categories that would be exempted by the competent minister. The decision making workers in (4) and (5) predominantly shall be nationals but low ranking file-keepers or non-leading positions can be fulfilled by union citizens and family members (persons entitled for right to move). Finally, employees in (6) can be either nationals or EEA national, long-term migrants (TCN) equally but exceptionally in certain branches or positions they shall be nationals or Hungarian speakers. Taking into account the frequent amendments in public sector provisions, we can see that the list of elected positions excluding non-nationals has become longer while exceptionally excluded applicants to public sector, the reasons are not explained in Bills or proposals. For instance, the local escort in environment protection had to be a national but it was modified including the residing EEA nationals and long-term migrants (TCN) to this employment. At the same time auctioneer as leader of mart or executive director in publicly financed media shall be a Hungarian citizen.

The Fundamental Law (25 April 2011) maintains right to undertake position or work in public sector only for Hungarian nationals [Art. XXIII (8)].

Ad (1) Elected positions defined by public law: Certain positions shall be fulfilled by exclusively by Hungarian national in accordance with Fundamental Law (for instance, state president, member of the Constitutional Court, mayor or chair of county municipal). Each of them is regulated in separate acts requiring directly or indirectly (for instance, in case of the member of National Auditor Office the Parliament is entitled to elect the proper, qualified person regardless even his nationality). According to the Act on National Bank of Hungary, the

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54 Ministerial Decree on guards of natural protection No. 33 of 1997, 20 November (KTM) modified in 2010 (KvVM).
55 Ministerial Decree No. 16 of 2001, 26 October (IM) Section 65.
56 Act CLXXXV of 2010 on market and publicly financed media services, Art. 103 (1).
57 Act LXVI of 2011, Art. 7.
member of the Monetary Council and Inspectoral Board of the National Bank shall be a Hungarian national.\textsuperscript{58}

Ad (2) Officers in defence: The Act XCV of 2001 on legal standing of professional and mercenary (fixed-time) members of the National Defence requires nationality as precon-dition in all jobs additional to clean criminal record, determined qualification, proper health conditions and permanent residence in Hungary [Art. 41 (1)]. For this reason, the legal relation is terminated in case of ceasing nationality or acquisition of another nationality. Moreover, the director of National Defence University shall be a national.\textsuperscript{59}

The Constitutional Court annulled \textit{pro futuro} the provision of the Act that bans on recruitment dual nationals to the army as incompatible with the Constitution.\textsuperscript{60} Accordingly, the security screening and check that is statutory to entry of decisive positions can explore the risks in the candidate’s personal conditions. Consequently the automatic exclusion of applicants with multiple nationality means unconstitutional limitation in right to work or other fundamental rights because the citizen’s allegiance to the state and defence is a moral but not a legal phenomenon. However the provision saying that intentionally acquired second citizenship of an officer terminates his position.

Ad (3) Officers at law enforcement (police, prison, fire brigades and catastrophe dissolution, customers, security services) are regulated in the Act XLIII of 1996 that was amended more times, recently by the Act CCXIV of 2012). This Act covers on members of police, national security services, parliamentary-guard, catastrophe-management, emergency-management, customs and tax officers, fire brigades and officers in penology institutes (Art. 1). This is a wide and gradually extending group being entitled to use coercive measures. In general applicant for employment in officer position has to be full age but below 35, and s/he shall have a standard residence in Hungary, clean criminal record, qualification as defined in the given position by law, Hungarian citizenship and confirmation by the security checking. (Art.37) This rationale appears in regulation on students and lecturers of military and law enforcement high education.\textsuperscript{61} Further requirement is determined of applicants joining the police and civil security services.

Ad (4) The public officials were decimated in 2010 with introduction the legal standing of government officials. Thus only the labourers in municipal authorities and non-governmental agencies (State President Office, Audit Office, Parliament, Constitutional Court, Ombudsman Office, National Media and Communication of Information Authority, National Competition Office, Financial Inspector Office, Secretariat of the Hungarian Academy of Sciences, National Public Procurement Office, etc.) belong to this regime. Their dismissal, removal were also unburdened by the Act CLXXIV of 2010. Hence in April 2011 the Constitutional Court annulled the rules on dismissal of officials without reasoning as incompatible to the Constitution violating human dignity.\textsuperscript{62} Preventing the further annulment the Parliament modified the existing act (by the Act LII of 2011) determining at least formal criteria and reasoning of employment termination by the employer.

\textsuperscript{58} Act LVIII of 2001 on Hungarian National Bank, Art. 49., 52/A.(5).
\textsuperscript{59} Act XLV of 1996 on legal standing of students, lecturers and leaders of defence and law enforcement high education institutions, Art. 11(1).
\textsuperscript{60} Constitutional Court Resolution No.52 of 2009, 30 April.
\textsuperscript{61} Act XLV of 1996 on legal standing of students, lecturers and leaders of defence and law enforcement high education institutions, Art. 11(1) replaced by the act and ministerial decree on National Public Service University and criteria for its staff (Art. 342(7a) in the Act CCXIV of 2012.
\textsuperscript{62} 29/2011. (IV.7.) AB határozat.
The government official as a new status was inserted to the consolidated Act CXCIX of 2011 providing wide manoeuvring room for the employers (Prime Minister Office, ministries, central and regional offices, agencies or law enforcement units) to redirect to another organisation in public sector (transversal movement) or to remove and dismissal of officials (previously public officials that were re-labelled by the Act as government officials in great extent) or to provide more prerogatives for leaders. The government officials with university degree are entitled to practice public power thus labourers with secondary education can be employed as additional, physical, administrative or technical worker. The Act re-established the legal standing of public administrators inserting this category to the public officials.

The CiA differentiates governmental officials, governmental/public administrators and other employee at governmental/municipal agencies or organisations. While union citizens and family members are excluded from the status of government officials (Art. 39(1) in CiA), the governmental/public administrators in a non-leading position or without confidential tasks (such as file-keepers, typists, archive-manager) may be recruited from union citizens and family members in ambit of FreeA as well as nationals in party state of the European Social ChArt. if they have the proper Hungarian language knowledge that is required to the given job (Art. 207 and 241). Moreover, they have to take an administrator exam (in Hungarian) during the first six months of employment or his/her employment is terminated. The other employee at governmental/municipal agencies or organisations is in ambit of the Labour Code if they meet security requirements and they make a confidential declaration (Art. 258). It means that union citizens and family members may be employed in this position if their medium level education and clean criminal record is evidenced.

The general entry exam to the public administration was introduced in January and ceased in September 2011 but non-nationals were exempted. CiA sets up a workforce list for candidates to government/public officials that is available for nationals [Art. 3(2), Art. 45] and to candidates to the position of government/public administrators that includes also union citizens and family members [Art. 207(5), Art. 241(5)]

Ad (5) Administrators of justice (court, public prosecutor office) has own regulation on employment: Accession to employment in administration of justice (judge, drafter, administrator, expert in judicial/forensic sciences, protocol writer, typist, physical worker) the basis requirement is to be a national in possession of voting right, clean criminal record and defined qualification. Certain exceptions are regulated in the Act in favour of EEA nationals and their family members. Thus EEA nationals and their family members belonging to the personal scope of the FreeA is employable as typist or physical worker at the Public Prosecutor Office, if s/he has basic qualification, has Hungarian language knowledge which is necessary to perform work in the given job, s/he has a clean criminal record, required labour experience and exam taken on administrative issues – if it is determined by the Chief Prosecutor. This exception cannot be implemented for a confidential position. Moreover, only a Hungarian national may be appointed to judge at court, public prosecutor, drafter, secretary and investigator at prosecutor office. Further on, EEA nationals and their family members belonging to the personal scope of the FreeA is employable as typist, physical worker, expert of justice and candidate for expert – with exception of protocol writer and editor at company

63 Act CLXIV of 2011 on chief public prosecutor, public prosecutors’ legal status and prosecutors’ career, Art. 122.
64 Act CLXII of 2011 on standing of judges and their remuneration, Art. 4.
65 Act CLXIV of 2011 on chief public prosecutor, public prosecutors’ legal status and prosecutors’ career, Art. 11, 109, 122(1).
court (court of registry) – at court administration, if s/he in possession of a proper Hungarian language knowledge that is necessary to perform the given position. In brief, the key position means implementation on power of justice (such as judge, member of tribunal, public prosecutor) that shall belong to nationals together with their assistance in a wide circle.

Ad (6) *Public servants:* It means a gathering term providing workers for all kinds of publicly financed institutions (e.g. at public schools, hospitals, universities) on the base of PubsA and executive decrees on branches. The Hungarian national and residing EEA nationals and family members (persons under the ambit of FreeA) and long-term migrants (TCN with open-ended residence permit) are eligible to public servant employment. However Art. 20(3) delegates the regulation in two directions: either to exempt nationality, legal status of applicant, or to require Hungarian nationality and Hungarian language knowledge from the applicant to the given job. The Government is entitled (Art. 85(3) and (3a) to regulate on the public health sector, on public education, on high-level education, on the academic researchers, on national defence, on security services, migration management, police, law enforcement and in artist, culture and public collections in this respect determining *working and leader positions* in which public servant is to be a Hungarian national with clean criminal record in full age, or proper Hungarian language knowledge. Moreover, all responsible ministers governing a branch of public administration is also entitled (Art. 85 (4)-(5) to regulate the nationality, linguistic and/or previous labour experiences as preconditions for applicants in certain jobs. According to the PubsA the public servant’s position shall be fulfilled by a competition procedure with numerous exceptions in order to make the public service sector more competitive and transparent through the public tenders of jobs.

The executive Decree requires in certain positions the requirement of Hungarian nationality or/and Hungarian language: For instance,

- Public servant in position of security or asset-guard of *archives and public collections (museum)* must be a Hungarian national unless the minister of culture and public education exempts him/her. This acceptance is totally discretionary, there are no substantial preconditions. This provision was modified requiring Hungarian citizenship from all public servants employed in archives, and security checked positions in cultural heritage collections of defence.
- Contract of public servant employment in all public institutions, organs under the *supervision of the minister of the interior (law enforcement)* requires proving the Hungarian language knowledge without further determination. Moreover, in each branches under the supervision of the minister (Section 2) determines that only Hungarian nationals can be employed as administrators, security-technician, night watchman, captain and member in security guard with gun, receptionist, gatekeeper, preparation in duty, communication and telephone-technician at National Catastrophe-Management Directorate and its all units including its Training Centre.

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66  Act LXVIII of 1997 on legal standing of workers in administration of justice, Art. 11 (3) amended by the FreeA.
69  Government Decree No. 150 of 1992, 20 November, Section 2 (2).
• Only Hungarian nationals are eligible for Hungarian speaking public servants almost in all positions that are based on security checking at Police, Penology institutions, Internal Security Service of the Police, Office for Immigration, Forensic Sciences Institutions and Law Enforcement Training Centre. Moreover, in other positions – with exception of manual workers, and waiter, cooker, cleaner, hostess and kitchen helper – only Hungarian nationals must be employed as public servant at Penology Institutions and refugee centres. This modification\textsuperscript{71} extended the whole law enforcement circle of employment that is eligible only for nationals because previously only the prison-guard and service-men had to be a national.

• The recent amendment maintains nationality preconditions in all jobs that shall be fulfilled after nationality checking in each unit of National Defence without exception.\textsuperscript{72}

2.2. Language requirements

At first, the rules In QualA dealing with language requirements are found in Part III on recognition of EEA diplomas of EEA nationals and their family members shall be equally implemented if worker needs the qualification or degree to the job.

As regards public servants the knowledge of Hungarian language is not expressly required. However, the PubsA delegates the legislative power to Government and ministers determining further preconditions in public servant jobs. In this public servants belonging to law enforcement sector the Hungarian language knowledge is required for employment.\textsuperscript{73} The Government is entitled (Art. 85(3) and (3a) to regulate on the public health sector, on public education, on high-level education, on the academic researchers, on national defence, on security services, migration management, police, law enforcement and in artist, culture and public collections in this respect determining working and leader positions in which applicant is to be a Hungarian national with clean criminal record in full age, or/and Hungarian language knowledge (e.g. Section 2 in the Ministerial Decree No. 37 of 2011, October 28 BM). Moreover, all responsible ministers governing a branch of public administration is also entitled [Art. 85 (4)-(5)]. Previously, the ‘proper level of Hungarian language knowledge that is needed to his/her working task’ was decisive (such as in Section 2(1) in Ministerial Decree No. 27 of 2008, 31 December HM) but now it changing. Beyond this restrictive modification neither formal nor informal ways of language competence, its testing method has been developed. In fact it would hinder the free movement of non-Hungarian speaking workers.

Governmental officials shall be Hungarian national which inherently presumes the knowledge of Hungarian language. It is indirectly evidenced by Art.40 (1) of CiA which says that career starters must possess foreign language skills – English, German or French – which also presumes that Hungarian language skills are present. In case of public officials the knowledge of Hungarian language is not expressly required, either. However, Art. 141 in CiA declares that government official is entitled to wage-supplement if s/he regularly uses a foreign language besides Hungarian. The foreign language knowledge shall be evidenced with certificate or equivalent document including degree obtained abroad. This means that the knowledge of Hungarian language is evident. While union citizens and family members

\textsuperscript{71} Ministerial Decree No.37 of 2011, October 28 (BM).
\textsuperscript{72} Ministerial Decree of Defence No. 25 of 1992, 25 November was modified by the Ministerial Decree of Defence No.27 of 2008, 31 December and No.7 of 2010, 23 April entering into force on 8 May 2010.
\textsuperscript{73} Ministerial Decree of the Justice and Law Enforcement No.10 of 2009, 17 April, Section 2(1)a.
are excluded from the status of government officials (Art. 39(1) in CiA), the governmental/public administrators in a non-leading position or without confidential tasks (such as filekeepers, typists, archive-manager) may be recruited from union citizens and family members in ambit of FreeA as well as nationals in party state of the European Social ChArt. if they have the proper Hungarian language knowledge that is required to the given job (Art. 207 and 241). Moreover, they have to take an administrator exam (in Hungarian) during the first six months of employment or his/her employment is terminated.

EEA nationals and their family members belonging to the personal scope of the FreeA is employable as typist or physical worker at the Public Prosecutor Office, if s/he has basic qualification, has Hungarian language knowledge which is necessary to perform work in the given job, s/he has a clean criminal record, required labour experience and exam taken on administrative issues – if it is determined by the Chief Prosecutor. Further on, they are employable as typist, physical worker, expert of justice and candidate for expert – with exception of protocol writer and editor at company court (court of registry) – in administration of justice, if s/he in possession of a proper Hungarian language knowledge that is necessary to perform the given position.

In brief, there three level of language requirements in public sector:
- native speakers as inherent component of nationality requirement;
- almost full or high level of knowledge because it is not determined the minimal competence and language ability of non-native applicant to certain jobs as public servant; the required exams taking in Hungarian (e.g. as public/judicial administrators) are equivalent with it in certain positions;
- limited/functional language knowledge that is necessary to perform the given job, task or work.

However, neither formally, nor informally the Hungarian language competences of foreigners and the testing method have been developed. Despite of the ongoing reform in public administration it is neglected to determine the level of (Hungarian) language skills to which task or to regulate how to make an objective test of communication ability while there are more and more persons as candidate with dual nationality to the public sector.

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

The Hungarian public sector is not only exclusive for non-nationals but also frequently reformed altering the legal standing of workers as well as the name of public administration units in almost each government period. In this context the carriers in public sectors including prior experiences are fragmented without stable provisions on passage from one unit to another. Thus human resource management developing, preserving qualified manpower neither in entry, nor inside ranking has become periphery.

It is apparent that the Burbaud ruling is important only for those Member State that have similar systems or training methods. It shall be emphasised at the outset that Hungary introduced a similar entry exam for applicants of public officials in 2009. However, it was a precondition to the employment as public official only for nationals, and non-nationals are exempted by law. Accordingly, Hungarian law does not envisage any such kind of recruitment or selection process in the course of which a post-graduate candidate is in a preliminary civil servant status. It seems that Hungary belongs to the majority of the Member States in this
regard but the exam and recruitment system has been targeted by the new ruling power. Thus the newborn entry exam was ceased in September 2011.

CiA sets up a workforce list for candidates to government/public officials that is available for nationals [Art. 3(2), Art. 45] and to candidates to the position of government/public administrators that includes also union citizens and family members [Art. 207(5), Art. 241(5)]. The passage from one branch to another in the public sector is encouraged in the Act (Art. 6) saying that practice in public administration includes work at governmental, municipal agencies and in any authority in ambit of the Act XLIII of 1996 (police, law enforcement, etc.). In addition, Art. 2(2) determines that law enforcement practice includes prior work as public servant or public official, governmental official. However, this transversal movement covers on practice made at authority in other member state not at all.

The Government and each responsible minister is entitled (Art. 85(3)-(6) to regulate on the public health sector, on public education, on high-level education, on the academic researchers, on national defence, on security services, migration management, police, law enforcement and in artist, culture and public collections in this respect determining working and leader positions in which public servant is to be an experienced applicant in certain jobs.

It has to be added that there is a scholarship construction in Hungary for students studying in high level education, on the basis of which the administrative body wishing to employ the selected students enters into a contract with the student with a view of at least one year long employment after the completion of the studies. These students are not qualified as civil servants but trainees and their status is determined only in the course of the actual employment.

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

Since January 2012 the unified National Labour Office has included the labour policy, labour protection, vocational and adult training. Its general statement that illegal (irregular) employment was reducing in 2012 due to the rules on simplified employment. The unit of labour inspection authority was controlling and on-line counselling on labour law. For instance, in the first quarter of 2012 470 questions were arrived by e-mail, on-line and by post to the inspectors. The regional units of the inspectoral authority organised ‘open days’ in about 100 venues attracting 4000 participants inquiring new requirements of labour protection and changing provisions on remuneration, benefits in social insurance contributions, Labour Code, etc. in 2012. This information and awareness-raising campaign covers on modernisation of homepage in the Office and EURES, too. For instance the latter contains labour inspectoral authorities and their contacts in each MS of the EU, the most important rules on employment in MS of the EU that shall be respected by the Hungarian workers, job offers in MS of the EU or information for job-seekers how to be registered.

Absence of proper information on labour law has been the main reason of success by abusive manpower agents or job offers abroad – for years it has been the conclusion of labour inspectors and police together. The high migration potential upgrades greed in workforce agents and migrant workers. A manager in manpower agency (Trenkwalder) draws

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76 www.afsz.hu.
77 Trükkös munkaközvetítők: ezekre nem árt, ha gyanakodsz. 2013, May 28, Pénzcentrum.hu.
the attention to needs of preparation to foreign job and employment. Ad hoc departure is risky and due diligence of labourer is required. It is not known that employment agency must give detailed information on the offered job, required qualification, place of work, working time, shifts and salary and speaking on job abroad it is necessary to provide written information on employment provisions in the country in concern, e.g. the issue of registration, lawful residence and movement. The manager offers to control the promises, such as the vacancy, the health risks and guarantees in venue of labour and labour protection conditions. The absence of language knowledge the risk of abusive conduct and dirty work is higher. It is frequent conflict that accommodation fee, its location or conditions of accommodation provided by the employer are unacceptable. Cost of personal interview with applicants (flight ticket, travelling cost) and expenses of clean criminal record certificate or other documents to the application is not reimbursed. Avoiding these frustrations manpower and employment agency networks with liability insurance are offered providing relevant information on jobs from first hands. Moreover the intermediary placement or mediation of workforce must be free for workers so the evidence of deception is the fee required from the applicant. The Government Decree on private employment agencies allows requiring money from applicants of placement but only for special services (e.g. management of travelling or accommodation abroad).

According to the fresh data on illegal employment it is growing. On the homepage of the labour office the disclosed employers (entrepreneurs and corporate entities) in June 2013 was 4700, and its number is extended monthly with further 100-150 entities due to the in site labour checking. The implied fine is close to one million HUF per checking action.78

Recent literature

78 Napi Gazdaság, 30 June 2012.
Chapter IV
Equality of Treatment on the Basis of Nationality

Regulation in force:
- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [the consolidated Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] (EqualA)
- 194/2000. (XI. 24.) Korm. rendelet a muzeális intézmények látogatóit megillető kedvezményekről [the consolidated Government Decree on benefits at museum admission] (MusD)
- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [consolidated Act on Social Administration and Social Benefits] (SocialA)
- 1998.évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról [the consolidated Act XXVI of 1998 on the Rights and Safeguarding of Equal Opportunities of Disabled Persons] (DisabledA)
- 12/2001. (I. 31.) Korm. rendelet a lakáscélú állami támogatásokról [consolidated Government Decree on the housing-related state subsidies] (HouseD)
- 51/2007. (III. 26.) Korm. rendelet a felsőoktatásban részt vevő hallgatók juttatásairól és az általuk fizetendő egyes térítésekről [the consolidated Government Decree No.51 of 2007, 26 March on benefits and fees of students in high-level education] (StudD)
- 1/2012. (I.20.) Korm rendelet a hallgatói hitelrendszerrel [Government Decree on student loans and credits entered into force on 1st August 2012] (LoanD)
- 152/2005. (VIII.2.) Korm. rendelet az Úttravaló Ösztöndíjprogramról [the consolidated Government Decree on the scholarships for promoting the equal opportunities of disadvantaged groups]
- 1998.évi LXXXIV.törvény a családok támogatásáról [the consolidated Act LXXXIV of 1988 on Family Benefits] (FamA)
- 1995.évi CXVII. törvény a személyi jövedelemadóról [the consolidated Act on Personal Income Tax] (TaxA)
- 2003.évi XCII. törvény az adóeljárás szabályairól [the consolidated Act on Taxation Procedural Rules] (TaxPA)
- 2011.évi CXCV. törvény a nemzeti köznevelésről [consolidated Act CXCV of 2011 on public education entered into force gradually on 1 September 2012, 1 January 2013 and on 1 September 2013] (PubedA)
- 2011. évi CLXXXVII. törvény a szakképzésről [consolidated Act CLXXXVII of 2011 on Vocational Training entered into force on 1 January 2012] (VocA)
1. Working Conditions – Direct and Indirect Discrimination

One of the main objectives of Regulation 1612/68/EEC is to guarantee the principle of non-discrimination enshrining in particular in Articles 1-4. Pursuant to these nationals of the Member States and their respective family members, shall, irrespective of their place of residence, have the right to take up an activity as an employed person, and to pursue such activity within the territory of another Member State with the same priority as nationals of that State and in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting there from.

The main pillars of Hungarian law as regards the principle of equal treatment in employment relations are: the Labour Code, the Act on Labour Control (Act LXXV of 1996) or Penal Code as well as other provisions, action plans together intending to provide equal access to remunerating work.

The Fundamental Law entered into force on 1st January 2012. It regulates the protection of inviolable human dignity (Art. II), right to work, entrepreneurship and free choice of occupation but individuals’ ability and capacity in proper work have to contribute to development of the welfare in community. The state encourages labour for all persons that have working ability and intention (Art. XII). The legal equality and the ban of discrimination is said, in particular on the grounds of race, colour, gender, disability, language, religion, political opinion, ethnicity, social or family origin, property or other situation. Males and females are legally equal. (Art. XV). This phrase contains no direct reference on citizenship while the EqualA is in silence on discrimination for citizenship. The legal practice has used the term of ‘other situation’ for protection of victims in nationality based discrimination.

The personal and institutional scope of the EqualA covers also on private and public labour relations thus all definitions of prohibited behaviours (direct/indirect discriminative, segregation, harassment, retorsion, instruction for discriminative action) and sanctions shall be applicable on this part of life (Art. 3a-b, 5d, 8r) including the part-time job and personal economic activity on the grounds of civil law, company law, public law and labour law.

The Labour Code and other connecting rules on employment regulate guarantees in respect for equal treatment and human dignity of workers:

- The rule of Labour Code covering on all employers in Hungary including manpower requesting parties if labour is regularly made in the country with some exceptions (Art. 2-3) shall be interpreted in harmony with the ‘Hungarian and EU legal system’ [Art. 5(1)].
- Equal treatment in labour connections, in particular in remuneration shall be ensured but in case of its violation the legal remedy shall not invade rights of other labourers [Art. 12(1)]. It means that equal treatment in remuneration can be considered as a special case of equality in employment setting up different standard than in other components of employment. The term of remuneration covers on either directly or indirectly provided financial or in-kind allowances in connection to the performed work. The comparability of equal value of work and equal remuneration shall be defined ‘taking into account the character of work, its quality, quantity, labour conditions, required qualification, physical and mental efforts, experiences, responsibility and labour market conditions’ [Art. 12(3)]. Picking up the remuneration from the structure of equality system we may concluded that criteria of comparability in other aspects of equal treatment in employment are marginal. This private-law approach is stronger in the new Labour Code looking at less guarantees for employee, and labour market conditions explain the different regional
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and sectoral lawful minimal salary scheme as introduced. The idea of ‘structural/flexible equality’ effects not only on remuneration but also on other points in the Code (e.g. Art. 51 entitles the parties to agree on usage the own instruments of employee in work, Art. 45 allows to prolong the probation period, Art. 145 allows to pay mandatory bonus for employee optionally). All of the provisions may diminish the practical relevance of equal treatment in remuneration.

- The minimal lawful monthly salary is defined yearly by the government in a decree taking into account the consultation with National Economic and Social Council replacing the tripartite system in 2011. Different amounts may be defined for certain groups of workers, and the decree may regulate the minimal amount of salary lifting by all employers in order to maintain the real value of monthly salary below 1000 EUR (rate of expected saise) [Art. 153]

- Equal treatment is required for lending manpower so the same labour conditions including payment and other connected allowances shall be provided for lended workers as for own workers taking into account in particular the protection of pregnant women, mothers with small child and young workers. However this equal treatment is applicable from the 184th day of employment for fix time workers or labourers in employment by a company in majority ownership of municipal, by non-profit company or by public utility entity. (Art. 219)

- In absence of more preferable law on the given labour relations the rules on equal treatment shall be implemented also for posted (non-national) workers that are working in Hungary on the grounds of contract between the foreign employer and third party including the rights and allowances based on the collective agreement at the employer in concern; for labourers in building industry that are in ambit of industrial branch collective agreement. However, it is not applicable for labourers employed on commercial maritime ship or workers in short time servicing work. These rules shall be communicated in writing to foreign employer before work is beginning (Art. 295-297).

- Rules of Labour Code may become secondary if peculiarities are decisive in acts on economic sectors, branches or professions [Art. 298(4)].

The judicial practice has not developed the parameters of violation of labourers’ dignity in behaviour or in the context of duties and rights of employment. The gradually established case law of ETA is richer in this field but legal consequences of ETA anti-discrimination procedure are limited. However, in 2012 there was no complain for discrimination on the grounds of nationality at ETA. Neither ETA, nor the ombudsman or Hungarian judicial system is ready to differentiate the discrimination on the grounds of a protected feature of individual, such as gender, age, health condition, etc. from the discrimination in labour or social rights based on certain employment position of individual (e.g. occasional worker, seasonal worker, part-time employee, lended workforce). On the other side, the new Labour Code finally dropped the horizontal and connecting rules to remunerated workers out of employment (such as trade agent, see 86/653/EC Directive, 97/81/EC Directive, 99/70/EC Directive) that may result in balances in social protection of workforce. In order to establish flexible labour law with many private law components would explain this wider horizon.

Chapter III of the EqualA (Arts. 21-23) determining further specific requirements expressly refers to employment. Pursuant to Article 21 it is considered a particular violation of the principle of equal treatment if the employer inflicts direct or indirect negative discrimination upon an employee, especially when the following provisions are made or applied in:
a) access to employment, especially in public job advertisements, hiring, and in the conditions of employment;
b) a provision made before the establishment of the employment relationship or other relationship related to employment, related to the procedure facilitating the establishment of such a relationship;
c) establishing and terminating the employment relationship or other relationship related to employment;
d) relation to any training before or during the work;
e) determining and providing working conditions;
f) establishing and providing benefits due on the basis of the employment relationship or other relationship related to work, especially in establishing and providing wages;
g) relation to membership or participation in employees’ organisations;
h) the promotion system;
i) the enforcement of liability for damages or disciplinary liability;
j) the claim of parental benefit in working time for child care (additional holidays for parent bringing up small children).

The principle of equal treatment is not violated if

a) the discrimination is proportional, justified by the characteristic or nature of the work and is based on all relevant and legitimate terms and conditions, or
b) the discrimination arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit (Art. 22 of EqualA).

The provisions laid down in Article 21 of the EqualA mirror the obligations of a Member State pursuant to Regulation 1612/68/EC. In compliance with the Regulation the EqualA prescribes non-discriminative advertisements and hiring procedures, training, working conditions, membership in certain organisations and increment opportunities. All of these complaints for discriminative actions may be submitted to the competent administrative authority (e.g. labour inspector, local registrar office) or to the ETA implementing the Equal imposing fine, and as a remedy to the Ombudsman or to the judicial revision (to the Capital Court).

Act XXXVIII of 2009 (entered into force on 1 November 2009) modified the rules on public list of employers that violated the EqualA (Art. 17/A). Accordingly, the ETA puts the data of the employer and the case of violation to its homepage, if the court states the violation repeatedly within two years upon request of ETA. In this way the prior list of trespassing companies was deleted putting this condition is out of practice. However, the published cases of ETA in 2012 contains no cases on the grounds of nationality, so other reasons for discrimination can be found. For instance, discrimination for age was investigated in a complaint because the manpower agency refused his application for a job saying that vacancy was eligible for worker below the age 35. The agency referred on general labour force need (serviceman on a foreign vessel requiring good physical condition) although the advertisement did not contain the criteria of age limit. The agency made no individual evaluation of the applicant but only a mechanic refusal on CV. So the ETA prohibited this discriminative

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79 http://www.egyenlobanasmod.hu/cikkek/rendezett-munkaugyikapcsolatoknak-megnemfelelo-munkaltatok
80 http://www.egyenlobanasmod.hu
action of the agency. Another case was based on discrimination against landed workers because the equal treatment in remuneration was not respected. ETA investigated the remuneration of standard workers and lended workers at the same employer setting up similar groups of workers by age, practice, qualification, etc. A difference was proved between lended and own employee (e.g. in allowances, such as canteen, support to holidays, rewards). However the employer explained that comparability of lended workers to own labourers was impossible because the labour experience of own employee (500-600 persons) was much more than of lended workforce that could be considered as starter, and lended workers (40-60 persons) were employed in occasional, seasonal work, consequently the equal treatment was complied with remuneration. It was not denied that wage of lended workers were lower than of own employee (-100-150 €). Art. 21 f in EqualA prohibits discrimination for seasonal or short term employment, and Labour Code requires the same remuneration in the most important components of wage for lended labourers from the 184th day in continuous employment than for own employee. ETA evaluated the lended workforce as discrimination for ‘other situation’ in the EqualA regardless the Labour Code. Finally the employer was forced to introduce a new wage system respecting for equal treatment in remuneration for lended and own employee within 60 days. The measures taken by the employer were notified ETA within 8 days.

The Advisory Board of the Equal Treatment – compensating the limited independence of ETA – is recruited from experts in NGOs and academics. It is entitled to issue guidelines to the ETA and its equal treatment investigations. For instance, the ABET Decision No. 288/4/2010, 21 June on the implementation of the equal treatment requirements of the EU law and ECJ case law in ETA procedure. It explains that ETA is entitled and obliged to submit requests for preliminary ruling at ECJ if the interpretation of a provision in the EU law is necessary to a pending legal dispute laying on the table of ETA. The other important ABET Decision No.309/2/2011, 25 March gives a very detailed list of what public organisations and private organisations, suppliers can be investigated by ETA (institutional scope of the EqualA).

The non-equal labour conditions can be monitored by the labour inspectors. Due to limited capacity of National Labour Safety and Inspecting Authority (OMMF) inserted to the county governmental offices in 2011, it has to select the most endangered industries or fields of employment.

In view of complaints the ombudsman investigated employment of minors (e.g. in highway building) in 2010 taking some proposals how to improve the labour inspection practice. Due to his proposals the Act LXXV of 1996 on labour inspection was amended in two points entering into force on 1 August 2011. Namely, the connection of the performed task and the age of controlled labourer would be checked by the labour inspectors, and unlawful employment of a minor below the age threshold would be noted to the child protection (guardian) authority (inside the children alert system). In 2012 the ombudsman checked whether these requirements were performed, how the labour inspector authority released unlawful employment of minors (e.g. in absence of parental consent, employment without official notice to the authorities) – not including the prostitution of minors that was investigated in 2011. The Labour Code entering into force in 2012 determines [Art. 34(2)-(3)] that em-

81 Government Decree No. 314 of 2010, 27 December.
82 AJB 4152/2012.
83 See the report AJB 1472/2011.
ployee shall be at least 16 years old and at least 15 years old if s/he is employed during the summer holidays or below 16 his/her employment is permitted in the field of culture, sport, arts or advertisement by the guardian authority. The National Labour Authority informed the ombudsman that ten cases of children below 14 in employment were released in 2010-2012 in agriculture, in building industry. The authority had no specific actions investigating child labour but in the frame of labour inspection they introduced a Guideline on checking methods of child labour in October 2012 (preventing also the labour accidents of minors). From the mentioned 14 there were union citizens concerned in two cases:

a) in Győr-Sopron county 479 unlawfully employed Romanian citizens were released in agriculture and from them 6 were below 14 so 10 million HUF fine was imposed on employer and a signal was sent to the Romanian responsible guardian authority but it did not take any measure;

b) in Fejér county a Romanian minor below 16 was employed in a house building but in absence of his parental consent, so his further employment was stopped but signal in favour of minor’s protection to the guardian authority was not managed. The reports of labour inspectors indicate this frequent omission.

The ombudsman requested the labour authorities to the institutional co-operation with child protection network taking into account mandatory obligations coming from the UN Convention on Children Rights and schooling age up to 16, and he offered to extent the Guidelines with these points of views.

The Labour Code refers on equal treatment that is word by word is the same as the paragraph in the CiA prohibiting discrimination, in particular in remuneration. Art. 13 requires equal treatment in employment but in case of violation ‘its remedy must not interfere or limit the rights of other labourer’. Moreover, ‘for the principle of equal salary for equal value in work shall be provided taking into account the character, quality, quantity, conditions of work and qualification, experiences in job as well as labour market environment’. Is there any difference of working conditions in the public sector? I have to say that provisions on recognition of professional experience for the purpose of determining the grade – and through it the salary and career perspectives – are not existing, or they are considered as can be performed only in Hungary. The transversal mobility inside the public sector among different statuses was very restrictive for all workers regardless nationality. The rules inside the public sector and outside on the free labour market are different in the right to strike, right to be nominated in local and general elections, right to joint political party are limited by law and they are eligible to be tested confidentially by anti-corruption and reliability. However in the CiA covering on law enforcement units (e.g. police, penology) and clerks at municipal the transversal mobility from and towards government agencies and ministries will be supported.

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84 The ombudsman investigated in general the flexibility of legal rules in favour of employers in a project. See A munka méltósága projekt AJB Projektfüzetek, 2013/4, Budapest, January 2013.
85 In 2010-2012 87 labour accidents of labourers below 18 were registered and from those 3 minors injured seriously and 1 minor died, www.nmh.hu.
86 For instance, clerk at municipal office cannot be replaced to another public administration office, see dr. Németh, Erika: A jegyzői jogviszony és a közigazgatási áthelyezés. Jegyző 2010/5 (26 October).
87 Modifications entered into force on 1 July 2010 by the Art. 37 of Act XLIII of 1996, Art. 7/A-C of Act XXXXIV of 1994, Art. 21(6) of PpubA.
2. **SOCIAL AND TAX ADVANTAGES**

A general observation to be made is that the Hungarian social protection is quite generous in terms of granting benefits to eligible EEA nationals on the same footing as for Hungarian nationals. However, the access to this information for EEA nationals is lacking. Promotion of information in other languages than Hungarian would be of vital importance in this field.

Secondly, social advantages are highly dependent upon the documentation of residence. If the EEA national or the family member disposes of right of residence in Hungary and can verify it with a residence (registration) document, s/he is entitled to apply for benefits. Except frontier workers, other persons are excluded from social advantages if their residence status is not properly documented. This is the same as in most of the Member States: the residence status becomes constitutive even if it is clearly settled case-law that it should be declarative.

Thirdly, social advantages for residing union citizens are more and more overlapping with significant presence of elderly migrants and their welfare. According to CSO statistics (2010) the rate of all immigrants over 60 was 14.2% and of all naturalised persons over 60 was 8.2% (but in 2006 their rate was 23%). This appearance has not been properly recognised in social and welfare planning and legislation 88.

2.1. **General situation as laid down in Art. 7 (2) Regulation 1612/68**

Since 1 January 2008, in accordance with the personal scope of FreeA several social laws and governmental decrees have been amended. The former approach based on the requirement of economic activity has been revisited in a number of cases and the concept of union citizenship has been pronounced. 89 In this spirit not only Community workers and their family members but every union citizen and their family members (including the family members of Hungarian nationals) became entitled to claim social advantages if they are residing lawfully in Hungary and are properly registered.

In this sense Hungarian law went beyond EC law that does not require full equal treatment for economically inactive persons. It shall be emphasised, however, that the practical implementation of the concept of social advantages is still very difficult for it concerns potentially the whole body of law, and inequalities might remain hidden for quite a time.

Most importantly, union citizens (including Hungarian citizens) 90 and their family members residing lawfully in Hungary for more than three months and being registered in the permanent address register can be entitled to all benefits enshrining in the SocialA [Art. 3(1)-(4)]. The Act contains both cash and in kind benefits, the most of which are means tested and awarded by the self-governments.

However, benefits from the social assistance system are subjected to the limitation that the person cannot be an unreasonable burden to the social assistance system of the host Member State. The SocialA and FreeA reading together, interprets in Hungarian national law the ‘unreasonable burden’. According to Article 21 (1) of FreeD – in line with Article 8 (4)

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88 See the Recommendation CM/Rec(2011)5 of the Committee of Ministers to member states on reducing the risk of vulnerability of elderly migrants and improving the welfare (25 May 2011).
89 Most prominently Act CXXI of 2007 on social laws.
90 The personal scope has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated.
of Directive 2004/38/EC – a person has sufficient resources, if the income per capita in one household reaches the minimum amount of the old age pension.\textsuperscript{91} According to Article 35 (1) of FreeD

‘an EEA citizen or a family member becomes an unreasonable burden on the social assistance system of Hungary if he/she receives
a) old age allowance (as set out in Art. 32/B Para 1 of SocialA)
b) benefit for persons in active age (as set out in Art. 33 of SocialA)
c) nursing allowance depending on the income (as set out in Art. 43/B of SocialA)
for more than three months.’

In accordance with this provision a condition for obtaining the right of residence for longer than three months – in case they are not workers or self-employed persons, or are not following a course of study – is not to become a burden on the social assistance system of Hungary during their period of residence. In case a person is entitled to the right of residence for longer than three months, s/he is entitled to have recourse to the social assistance system as well. Such benefits are old age allowance, benefit for persons on active age, nursing allowance, home maintenance support, temporary assistance, funeral support, public funeral, public health care card, debt management service.

A typical form of benefits for active persons not having sufficient income and for their family members is the benefit for persons in active age. As a type of benefit for persons in active age for those being able to be employed within the meaning of the SocialA wage subsidizing allowance can be granted. Wage subsidizing allowance can be granted to those who have already exhausted their entitlement for unemployment benefit, or have not even been entitled for such a benefit due to the lack of required eligibility period.

In case the beneficiary receives old age allowance, benefit for persons in active age or nursing allowance depending on the income for more than three months, the clerk in municipal (or the district governmental office) has to report this fact to the immigration authorities. A result the immigration authorities decide on a case by case basis whether the person has sufficient resources in order not to become an unreasonable burden on the social assistance system of Hungary. During such verification the criteria set out in Article 21 (4) of FreeD needs to be taken into account (number of persons having income or assets in a household; number of dependants in a household; whether the applicant is the owner, beneficiary or user of the real estate providing accommodation for the applicant and his/her family members).

Further cash benefits and benefits in kind specified in the SocialA can be obtained without verifying whether the person concerned would become an unreasonable burden on the social assistance system of Hungary. According to public information no case has ever appeared in Hungary where a union citizen has sought recourse to the social assistance system and was rejected. There are no statistics either on the number of non-Hungarian nationals drawing social assistance benefits in Hungary.

The non-equal treatment concerning the social advantage was mentioned on the base of nationality in complaints to the ETA from the prior periods:
- the preferential price of Harkány spa is available only for resident pensioners with Hungarian citizenship.\textsuperscript{92} Despite of a prior binding decision of ETA imposing fine in 2007 and the judgement of the Capital Court in 2008 to stop discrimination – upon the claim-

\textsuperscript{91} Since 2008 it has been 28 500 HUF (100 €) per capita.
\textsuperscript{92} EBH case 1054/2010. \url{www.egyenlobanasmod.hu/jogesetek/hu.1054-2010.pdf}. 

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ant of a residing German pensioner - , the spa owned by the local municipal has continued the discriminative practice since 2004. The case was also targeted by the European Parliament session. Its representative referred on tight preference because the equal treatment for Union citizens ‘would extremely open this benefit for non-national retired persons’. ETA again imposed a fine (5600 €) and ordered to equalise the entry price within 90 days, and to publish the whole decision on the homepage of ETA;

- the price of services was different for foreign clients in a private clinic because they have to pay an extra fee for consultation. The patient complained for this practice because he is speaking Hungarian. The representative of the clinic referred on the plus expenditures concerning the translation of medical documentation and oral communication between the doctor and the non-native patient, and the costs of marketing was also contributed to this extra fee. However, the case of patient speaking Hungarian is discriminative regardless his/her citizenship, so the clinic offered to modify the advertisement, the homepage and treatment with patients. This compromise including the repaid extra fee for the claimant was approved by the ETA;

- the service conditions were different for nationals on a private entrepreneur’s fishing lake. The claimant could not accept the shorter service hours for nationals and more convenient hours for nonnationals. During the ETA process the Austrian owner expressed his troubled experiences with Hungarians fishermen, so he had to reduce their time of service - but it was considered as discrimination. Hence the decision of ETA prohibited him to continue this practice, and he was forced to provide equal accession for nationals publishing this decision on the homepage of ETA.

In 2012 ETA published the case of a German pensionaire whose complaint was forwarded by the ombudsman in February 2012. Since 2006 the German national as owner of a house and registered resident in a town has had a preferential entry ticket to the local curative spa. He could use it freely but in May 2011 his ticket was refused saying that his name was not on the list of beneficiary given by the local municipal. The investigation launched by the ETA proved that an agreement between the local municipal and the spa was concluded in March 2004 that provided benefited price to entry the spa for all permanent resident in the town (with registered address) regardless their age. The resolution of the local municipal (16 March 2004) determines how to implement the benefits in entry ticket purchase and how to reimburse the loss by the local municipal to the spa. This agreement was modified (10 December 2010) inserting the Hungarian citizenship to the criteria of whom the preferential price ticket could be purchased, namely only Hungarian citizens living with permanent residence (registered address) in the town could obtain this benefit regardless their age. This modification entered into force on 1 January 2011. The refusal of the applicant was based on the criteria of Hungarian citizenship. Due to the launched procedure on EqualA the local municipal modified the resolution on benefits deleting the requirement of nationality (No.215 of 2012) that entered into force on 1 November 2012.

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2.2. **Distinct sectors**

DisabledA aims at mitigating the disadvantages suffered by disabled by enhancing their equal opportunities and by changing the attitude of the society towards disabled issues. The purpose of the DisabledA is to define the rights of people with disabilities, to determine the instruments of asserting such rights, to regulate comprehensive rehabilitative services to be offered to persons with disabilities, and as a result, to ensure an independent living and active involvement in social life for persons with disabilities. The Act has a general personal scope stating that disabled person is ‘anyone who, to a significant extent or entirely, is not in possession of sensory functions, specifically vision and hearing, of locomotor functions or mental capacity, or who is significantly limited in communication, which constitutes a long-term disadvantage or obstacle in active participation in social life’ [Art. 4(a)].

The definition of disabled is determined without referring to nationality. Article 23(2) of DisabledA concerning cash benefit for the disabled states that every union citizen residing lawfully in Hungary for more than three months and being registered in the permanent address register (in possession of address card) is eligible to apply for the cash benefit for disabled. The personal scope has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated. If the beneficiary leaves for another EU or EEA Member State the benefit is not withdrawn until benefit is granted in that other Member State. The modification in 2011 (Act CCI of 2011) extends the benefit to persons under the scope of social coordination in Dir. 883/2004/EC.

However, the structure of Hungarian law has been mixed up. The legislation has formed separate groups inside disabled or handicapped persons (DisabledA does not cover on blind persons obtaining a special benefit, etc.) while disability is inserted to the anti-discrimination rules in general. For instance, the Fundamental Law protects the deaf-mute language but special support or legal guarantees to others hindered in social participation have not been determined at constitutional level. In this way enforcement of provisions of affirmative action or equal treatment has been poor without clear responsibilities. There are numerous examples on failed or reluctant dissolution of obstacles when handicapped persons want to access to public building and public services. The final deadline of their equal accession was 31 December 2010.

Act LV of 1994 on arable land contains provisions for the acquisition of ownership title of non-arable lands (housing). From 1 May 2004 free access to EU nationals to housing has been provided. According to the Act EU nationals, legal persons and unincorporated entities established in any Member State of the EEA or Switzerland may acquire title of ownership of non-agricultural land under the same conditions as Hungarian nationals (without special permission). This free acquisition refers to the permanent, principal place of residence. EEA national is entitled to acquire without permission the non-permanent place of

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96 Act CXXI of 2007 (its Art. 65 (1) paragraph) changed the personal scope of the Act with effect from 1 January 2008. The reference to Reg. 1612/68/EEC has been deleted and FreeA is cited. It means that from 1 January 2008 the personal scope is again extended, from this date not only Community workers and their family member but every union citizen residing lawfully in Hungary for more that 3 months is eligible.

97 Recently a demonstration was in Eger organised by local handicapped association to draw up the attention to access to local public supply and authorities, such to a public toilet or to the city hall with a wheelchair. Népszabadság, 12 July 2013.

98 Due to the end of transition period is coming in acquisition of arable lands in Hungary a Bill is under preparation by the Government targeted by landowners, farmers and pressure groups as non-compatible to the EC law. See articles in Index, 13 June 2012.

99 Act XXXVI of 2004 amended the LandA, Art. 88/A – 88/D.
residence (secondary home) estate if s/he has resided continuously and lawfully at least four years in Hungary. It means that permission of the county administration office is not needed from 1 May 2009.\(^{100}\) The residence in Hungary shall be proved by the OIN certificate. The Bill on arable land and usage on arable land has been passed by the parliament liberalising the rules a bit.\(^{101}\)

Impacts of free accession to the real estate market can be seen. For instance, in the Slovak-Hungarian and Romanian-Hungarian border zones more and more commuting, frontier workers from Slovakia and Romania\(^{102}\) have purchased property that upgrades price level of houses in a depressive border zone in Hungary. This comparative attraction of low price level in Hungarian side means awake of aged population in almost inhabited villages by commuting workers,\(^{103}\) especially after the introduction of euro in Slovakia, or enjoying lower prices and better loan conditions here than in Romania.

HouseD aims at regulating the *subsidies to housing* that can be accorded to married couples, families with more children and other persons in need. The subsidy can take the form of state contribution to the price of the house (flat), contribution to the interest payable, beneficial methods of payments, contribution to abolishing obstacles in movement inside the house (for wheelchair) etc. Only those can qualify who belong to the personal scope of ‘*supported person*’. As from 1 February 2008 union citizens (including Hungarian nationals) and their family members can qualify as supported persons in terms of the Government Decree if their residence is lawful and they are registered in the permanent address register (Section 1(1)point 7). The Act IV of 2009 on collateral assurance by the state concerning house loans also provides equal treatment. Art. 1(10) point b) entitles union citizens and family members living in Hungary and are registered in the permanent address register are eligible to obtain guaranteed credit or loan for house purchase or lintel credit.

TransD regulates the *advantages available for passengers in public transport*. A general revision of benefits has been started in 2009 due to the economic crisis and to make the whole system more transparent. Moreover, the personal scope of tariff advantages was cut for instance, for disabled below the age limit of old age pension. However, there have not been severe changes in other rules. As regards advantages in public transport, TransD grants benefits for certain groups of persons using the inland transport facilities as follows:

- persons given advantage on the basis of age,
- persons given advantage on the basis of being students,
- persons being old age pensioners,
- job-seekers,
- refugees, internationally protected persons,
- workers at publicly financed institutes or private foundations, churches,
- ethnic Hungarians’ card holder (from Serbia and Ukraine),
- disabled with state benefit, or
- persons travelling in groups.

\(^{100}\) On the other side, the prohibition on free purchase of arable land will be maintained in future. This prohibition expires in 2011, however the Parliament adopted a resolution (2/2010, 18 February) requesting prolongation of this transition measure from the EU at least up to 2013.

\(^{101}\) The passed Act CXXII of 2013 on usage of arable land and forestry enters into force on 15 December 2013.

\(^{102}\) Invázió a keleti határon, [http://penzcentrum.hu/lakas/roman_invazio_keleten.1012960.html](http://penzcentrum.hu/lakas/roman_invazio_keleten.1012960.html).

There are travel fare exemptions or reductions for long-distance and local travel facilities. Transport exemptions or reductions are as a main rule attached to the status of the person (such as student, job-seeker participating on a supported re-training, applicant for international protection, refugee, pensioner obtaining pension from the national pension scheme) not to his/her nationality. For instance, students or job-seekers are entitled to the advantages irrespective of whether they are Hungarian or EEA nationals. TransD contains two positive exceptions to this rule:

- in case of persons exceeding 65 years of age. In accordance with FreeA EEA nationals and their family members, family members of Hungarian nationals and persons possessing permanent residence in Hungary being above 65 years of age are horizontally free to travel. Elderly persons not having these nationalities are required to pay. Here, albeit TransD mentions nationality condition, union citizens and their family members are put on an equal basis with Hungarian nationals.

- It embodies rather a positive discrimination in content. Pursuant to Art. 3 (1) point h) students who qualify as ‘entitled person’ in terms of FreeA – consequently having the nationality of an EEA state (including Hungarian), being family members of those or of Hungarian nationals – and who study full time in an EEA state or in Switzerland can avail themselves of the same benefits as students studying in Hungary. This means that if a German student of the Humboldt University comes to Hungary as a tourist she is to enjoy the benefits. Equally, if a Hungarian national studies in Paris, when she is at home, she can refer to these benefits as well.

Pursuant to the CardD Hungarian student card is automatically accorded to persons who are students of a public schools or high school that is accredited or recognised in Hungary including partial education on the grounds of internationally agreement irrespective of their nationality (Section 13 in CardD) with direct reference on persons in ambit of FreeA. According to the CardD the Student Card must be applied for, and entitles the holder for traveling only together with the seasonal ticket on public transport as benefited person on the grounds of TransD. These students may travel on unlimited occasions too. The Act LXXXVII of 2003 on consumer price-supplement gives a complementary element to the system, it regulates how the state subsidies the service providers for the loss of income resulting from the above-mentioned benefits where no discrimination occurs between Hungarian and EEA nationals. From 1 January 2012 new smArt. cards with a chip are issued for students, teachers and instructors in public and tertiary education. All students after enrolment are eligible this smArt. card with a chip providing advantages in museums, public transports and in commerce (Section 15 in CardD). Applicant has to pay a fee (5 €) for the student card [Section 39(2)]

A complaint of a union citizen was investigated by ETA in 2012. The complainant with international student card could not use benefit bying a movie ticket while his team-member with Hungarian student card could enjoy it. The representative of the movie said that the electronic reader of student cards could not recognised the international cards but its system was under reconstruction. Since May 2012 the modernised reader would read all codes, and compensating the complainant offered free tickets. The procedure was finished with consent of parties.104

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104 www.egyenlobanasmod.hu.
MusD was amended more times by Government Decree (No. 132 of 2011, 18 July) recently with effect from 26 July 2011 by which the nationals of the EEA have been put on equal footing with Hungarian nationals as *visitors in the museums*. Section 2 (2) in MusD lays down the cases of free of charge entries to standing exhibitions and 50 percent reductions into other exhibitions in accredited museums for the nationals of the EEA including Hungarian nationals. It is worth noting that family members are not mentioned in the personal scope of the MusD. Furthermore, the circle of advantages for pensioners was cut (e.g. old-age pensioners are eligible to 50 percent reduction and only persons over 70 can visit free).

Non-native family members of union citizens as other migrants attending public education may obtain a special *pedagogical programme* for a year in order to catch up the Hungarian language curricula. The ministerial decree\(^\text{105}\) provides financial contribution to this programme per capita upon the schools’ request from a fund of the budget (Wekerle Sándor Alapkezelő). It is questionable how this extra pedagogical effort can fit to the tight teaching plan determined in law for all schools from September 2012. Moreover, the ministerial decree determines the financial contribution only to 2011 (45 000 HUF yearly per student) that would be followed in coming year.

The many times amended Government Decree No. 152 of 2005, August 2 it promoting the equal opportunities. It regulates *scholarship possibilities* for students and their tutors who are qualified as being severely disadvantaged or lives in a child protection institution. There are five types scholarships for primary schools, secondary schools and also preparatory to the vocational training, high-level education or sciences. Pursuant to Section 3 (1) the personal scope of the Decree encompasses both Hungarian and foreign nationals including settled third-country nationals attending public schools in Hungary in age 13-18 as well for three types of scholarships. For the fourth type (Road to Science) Hungarians, permanent residents and persons in ambit of FreeA [Section 3(4)] can apply. There is no discrimination based on EEA nationality in accordance with Directive 2004/38/EC. All enrolled students attending the courses are eligible for scholarship. In practice residence in Hungary is required from applicants.

As regards *social advantages* a substantial body of law (in form of self-governmental decrees) is created by the local self-governments, for instance on the base of entitlement given in the SocialA. The personal scope of SocialA covers on family members of Hungarian nationals, persons under the FreeA residing lawfully in Hungary for more than three months and being registered in the inhabitants’ address register (in possession of address card). However, there is no information whether local self-governments apply these rules in their own practices (transposition of the personal scope is not necessary hence a local decree cannot have a different personal scope than the Act itself). There are 3200 self-governments in Hungary and therefore a general compliance of these rules can only be presumed but not fully asserted. Moreover, certain regulative and administrative competences on social welfare, education, public supply and health care from the self-governments are moving to the government authorities (district or regional offices) in 2012-2014. In this way only a fragmented picture can be given.

The *family benefits* (FamA, Art. 2) covers on persons in ambit of FreeA that are residing lawfully in Hungary for more than three months and being registered in the address register (in possession of address card) with exception of maternity benefit for frontier workers and

\(^{105}\) Decree of the Minister of Culture and Education No. 17 of 2010, 30 March OKM.
person is eligible that is in ambit of social coordination regime (Dir.883/2004/EC) due to the last amendment (Act CCI of 2011). I have to add that the discriminative rules on maternity benefit from the act on the grounds of nationality were annulled by the Constitutional Court. The deadline for proper regulation (31 December 2010) was delayed a bit. The ombudsman initiated the constitutional review of the FamA requesting to annul its the unconstitutional provisions (Art. 7(1)a, 12(1)a. He argues that these provisions are not compatible with the Fundamental Law (Art. XV(2) on equal treatment and Art. XVI(1) on right to child’s protection and Art. B(1) on rule of law). Proving his statement he refers on his prior report (AJB 2293/2011) in which he explained that family benefits are not equally available for existing families if partners bringing up children of the partner in their common household. Many complaints to the ombudsman have drawn the attention to difference between marriage and partnership in families although they are living in similar conditions. Namely (registered) partnership and foster parent is discriminated to marriage of parents/foster parent in the sum of allowance. Yearly it means 180-360 € per family because the foster-child of a couple living in partnership cannot be accounted to members living under the same roof/household. Moreover, the new Act CCXI of 2011 on protection of families determines the notion of family in an autonomous way differing from the rules on family benefits. This act enters into force on 1st July 2012 but that can be considered as not compatible with the Fundamental Law, so in parallel he submitted a proposal to its constitutional review. This constitutional revision reflects on the incoherent term of family in FreeA (see the list of family members) and in other laws.

Concerning the social advantages those are hardly controlled whether equal treatment is provided for union citizens and family members in decentralised municipal regulation system. 3200 municipalities are entitled to regulate local social affairs, including parking tariff and benefits. For instance, a mixed-couple (German father and Hungarian mother) that were living and working in Sopron complained to the Ombudsman for discrimination on the ground of father’s nationality. The local municipal’s Decree (No.23 of 2006, 29 June) provides a newborn baby-support (150 €) to young parents if child is Hungarian national and parents are permanent residents and they have address in the town Sopron. The couple’s request was refused because of the father non-national status, and finally the clerk in municipal and mayor confessed that due to the economic recession and budget deficit there was no cover. The modification of the Decree was promised. Other local Decrees in Sopron (on housing subsidies, on car parking, on study grant, on implementation of SocialA, etc.) avoid nationality as precondition for social advantages but all of those are based on registered address and (permanent, regular or at least 5 years continuous) residence in the town.

The Advisory Board to the ETA issued a Decision on the interpretation on discrimination on the grounds of ‘other condition’ (Art. 8 of the Act EqualA). In accordance with the non-discrimination rule in the Fundamental Law (Art. XV) the Act prohibits discrimination on the grounds of exemplified reasons but without mentioning the citizenship. Thus the list of protected features of human beings is not exhausted, and at the end of the list of prohib-

106 123/2010.(VII.8.) AB határozat.
107 AJB-1041/2012.
108 AJB-2834/2012.
109 NEK723/2011, June 2011 OBH.
111 Egyenlő Bánásmód Tanácsadó Testület 288/2/2010.(IV.9.) TT.sz.Állásfoglalása.
HUNGARY

ited discriminative actions one can read ‘and for other reasons’. The Advisory Board’s Statement underlines that ‘nationality’ is a frequent reason for discrimination according to the complaints. ETA has to control whether the authority, public service suppliers in concern respect for international undertakings (human rights treaties) and EU law implementing also the proper transposing national laws. The size of protection against discriminatory actions is varying in branches of national law, and procedural rules in anti-discrimination cases shall be applied on the general provisions of evidence.

2.3. Tax advantages

Equal treatment in personal income taxation advantages is applicable for all persons whose domicile or centre of economic interests is in Hungary or whose income is coming from Hungary regardless of nationality pursuant to TaxA [Art. 2 (4)-(6), 3 (2)]. The taxation procedure also covers on all subjects of taxation including on-line service providers making taxable income from Hungary [TaxPA, Art. 3 (1)]. In cases of mixed situations where pArt. of the income comes from another Member State or tax deductions are foreseen adjustments are necessary and not only EC law but other international law commitments (agreements on the avoidance of double taxation, OECD norms) are applicable. Moreover, since the accession to the EU a Government Decree, and since 2009 the TaxPA (Art. 147) has regulated the execution and legal aid procedure of taxes between the Hungarian and other taxation authorities in Member States. The new act on co-operation in revenues legal aid with responsible authorities in other Member States (Act XXXVII of 2013) enters into force on 1 July 2013.

However, other issues as regards deductibility from income tax for resident or non/resident tax payers are worth mentioning. The TaxA provides for the possibility of tax refund in several cases (Art. 7). These exemptions are applicable to persons who are liable to submit their income-tax return in Hungary. In this sense no discrimination is foreseen between Hungarian and other union citizens. Issues relevant from the perspective of free movement are the deductibility of life insurance and voluntary retirement and sickness insurance fees. The general rule is that payments for and from the voluntary mutual insurance funds (sickness and pension) do not form the basis of personal income tax [Art. 7 (1) points e) and j)]. Consequently no personal income tax shall be payable after them. The core issue is what organisations can qualify as voluntary mutual insurance funds. The consolidated Act XCVI of 1993 on the Voluntary Mutual Insurance Funds defines that a fund can be established by its members only pursuant to the rules of the Act. It means that only funds formed under Hungarian law having a Hungarian seat can fall within its terms. Accordingly, funds formed under laws of other Member States do not fall within this category, namely the payments for and from these funds are out this exception mentioned above. Hence these payments are private and deal with supplementary sickness and pension benefits. It seems that they have a lot in common with the characteristics of the life insurance fees in terms of tax law.

In case of life insurance contracts deductibility is guaranteed if the contract was concluded with a Hungarian resident company. Hungarian law regulates the deductibility of life

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112 Inlander in personal income tax includes persons in ambit of FreeA with registered address in Hungary if they spend more than 183 days yearly in Hungary.
113 Prior to January 2007 several exemptions derived from payment of credits on immovable property (flat, house); these exemptions have been, however, erased and only ongoing loans may give rise to exemptions.
insurance contributions paid on the basis of a contract entered into with companies established in Hungary but it excludes the deductibility of life insurance contributions paid to companies not established in Hungary. For this reason not all taxpayers are entitled to tax refund on the basis of contracts. In this regard Hungarian tax law does not provide for tax advantages for every person falling within its jurisdiction thereby not placing them on equal footing. However, as the case Bachmann (C-204/90) shows justification may be given if the cohesion of the applicable tax system explains this discrimination. Taking into account the reasoning laid down in Bachmann (and the C-150/04 Commission v Denmark case) Hungarian law has several common features with Belgian law in terms of life insurance fees that is why it seems that Hungarian tax law safeguards its coherence when not granting the tax relief for life insurance fees paid to non-resident Hungarian companies. The compatibility of Hungarian law with EC law on free movement and taxation could, however, in the future would be assessed by the ECJ.

As regards the free movement of persons and companies, the TAO clarified its position on the question of Hungarian dividend tax on dividend received in Slovakia by a Hungarian person owning a company in Slovakia. According to the TaxA persons whose domicile or centre of economic interests is in Hungary shall be liable for tax in Hungary according to the Hungarian rules on taxation even if their revenue from their company (the dividend) is accrued on Slovakia. Domicile and centre of interest is measured on the basis of the 183 days rule [Art. 3 (2) b) of TaxA]. In effect it means that persons living in Hungary cannot fully enjoy the tax benefits existing in other Member States, e.g. in Slovakia. In their case the equal treatment means that they fall within the same rules as other Hungarians and they cannot even be positively discriminated.

Hence tax law is not a fully harmonised area of EC law the existence and scope of tax advantages is rather limited but the differing provisions of bilateral agreements are duly taken into account. Furthermore, the diverse practice and regulation of 3200 municipals also raises questions. For instance, the Ombudsman stated that a municipal (in Somogy county) and its taxation department violated the residing EU nationals because it prohibited to use the clients’ mother language in the taxation procedure, their translator was refused by the official, and their tax exemption was neglected although they were eligible to exemption as other similar but national proprietors in the village. Its investigation disclosed that abusive practice has been accomplished for years against other union citizens living in the village not only against the complaining German national. The Ombudsman noticed to stop this discriminative legal practice.

The European Commission brought an action against Hungary (case C-253/09, 8th of July 2009) on the differential treatment in Hungary of the purchase of residential property in Hungary on the sale of residential property in another State. Decision released on 1 December 2011 refers on De Cuyper judgement (C-406/04) but finally the Curia refused the Commission’s suit (par.93).

The Slovakian citizen was employed from September 2004 to July 2007 in Hungary. His old age pension scheme and health care contributions were deducted from the monthly salary

114 The bilateral co-operation and agreement between Slovakia and Hungary is mentioned in article as a rather negative appearance: the entrepreneur/owner has to pay the taxation on spare money (from lower tax rate) in the country of his/her habitual (regular) residence. Szlovákia, adóparadicsom. Dr. Bódiai Levente és Sebestyén Tibor a szlovákiai cégalapításról [Slovakia: a tax-paradise. How to establish companies – by attorney at law] Ügyvédvilág 2007/10:14-15.

115 MTI 30 June 2011 Elmarasztalt egy somogyi önkormányzatot az ombudsman.
by the employers. Submitting application for old age pension in May 2010 his claim was refused at the regional social insurance directorate saying that he was already a pensioner with reference on Art. 4 f/2 in Act LXXX of 1997 (Tbj.) because the Slovakian social insurance corroborated him a disability pension in 1996. For this reason he could not obtain insurance period to old-pension scheme in Hungary. However, the insurance directorate found that social insurance and health care contributions were deducted from his salary with numerous errors. The applicant requested the tax office how to receive the over-deducted contribution sum. In March 2011 he was informed that employers had to be requested. But his prior employers were liquidated or terminated without succession. He asked again the assistance of the tax office that finally reimbursed for him the over-deducted sum without legal ground because the Art. 24(4) in Tbj. excluded the implementation of secondary provisions in tax debates between the employer and employee. This case released the fragmented regulation if employer of worker ceased before the social contribution (tax) payment or reimbursement dispute. The ombudsman proposed the extension of the Tbj to receive back the wrongfully deducted social insurance contributions from the employee in case of terminated employer. He proposed to supplement the TaxPa how to request and receive back the over-deducted social insurance contribution from the employee.\footnote{AJB-486/2012.}

The applicability of the 259/68/EEC Regulation (Appendix VIII, Section 11) was established passing the Act CXII of 2012. It enters into force fully on 1 January 2013 providing the accountance, transferring and reimbursement of payed social insurance contributions between the national and Union social security scheme.

2.4. Specific issue: the situation of jobseekers

As it is written in other points, job-seekers are entitled to social advantages on the same basis as other union citizens and their family members.

In the Collins case the ECJ opened up the possibility of discretion for Member States by declaring that a genuine link with the labour market of the host state can be required if a union citizen claims jobseeker’s allowance. Hungarian law is not as much sophisticated as it would be allowed by the ECJ because it grants benefits for workers even if they have no real and sufficiently close links to Hungary.

The Ioannidis case declared that a tide-over allowance which is intended to facilitate the transition of young people from education to employment can not be linked to the fact that the applicant must have completed his/her studies in the respective Member State. In Hungary there is no such requirement, unemployment benefits are only dependant upon former insurance periods.

As regards the Vatsouras case, Hungarian law makes no distinction as regards the receipt of unemployment benefits on the basis of the legal status of the migrant. If the person had a legal employment and obtained the registration certificate, s/he is eligible for benefits. It is worth mentioning that in Hungary only insurance-based unemployment benefits are due. In the social assistance sphere the same rule applies, if the EEA national or the family member is in need, if they possess the registration certificate, they have to apply for social assistance benefits. However, this is not really used by EEA nationals in fact the number of EEA na-
tionals applying for social assistance benefits is so low that this is statistically simply not traceable.

2.5. Access to education

The PubedA entering gradually in September 2012-2014 determines that all resident nation-
als and non-national minors in age 3-16 must attend nursery, elementary and secondary school [Art. 45] in Hungary without fee as nationals if [Art. 92 (1)-(8)]
- s/he is an asylum seeker or recognised refugee;
- s/he is a Union citizen/family member (spouse, child) of a Union worker residing longer than three months in Hungary, or
- s/he is a TCN worker with residence permit that is valid more than three months, or with an open-ended residence permit (long-term migrant). The minister responsible for public education is entitled to define specific teaching programmes for these non-national pupils.

In all other cases non-nationals have to pay upkeep fee for studies unless the operator of school reduced or exempted it for his/her personal reasons. The executive ministerial decree regulates how to account and pay the fees.

The nursery school (attended by 92 percent of children in age of 3-6) will be obligatory for all children but poor and segregated families cannot manage it. They would be sanctioned (e.g. family care is withdrawn from parent, fine shall be paid). Until September 2012 the obligatory attendance nursery and elementary school was the age of 5-18. The other novelty is that responsibility for setting up and operating public education was moved from the local municipal (villages, districts, towns and cities) to the governmental office and its state-run agencies with the exception of nursery schools. This reform hinders the operation of multi-functional education institutes (e.g. grammar school and vocational training and special training for re-integration of teenagers with early leaving together under the same roof) because their clean profile is enforced. In parallel churches are undertaking to keep up and operate more and more public education institutions from the poor, small municipals due to preferential budget subventions since June 2010. In this way the neutral, secular public education is not available in all settlements.

The problematic teenagers (about 15-20 percent of the given age bracket) can be involved into the Bridge Programme (in age 14-16) until the end of obligatory school attendance that provides neither training to continue to secondary school studies, not obtaining a certificate of an occupation/craft. Reaching the age of 16 minor may continue his/her studies in adult education institute in the following schooling year [Art. 60(3)].

The Hungarian citizenship or an open-ended residence permit of the applicant is required to entry law enforcement and defence studies at secondary schools [Art. 36(2)].

The elementary school shall admit the local resident minors on the grounds of theri address registration living or residing inside the schooling-area that is designated by the governmental office. The border of schooling-areas shall be determined that the rate of disadvantaged minors would be proportional [Art. 50(6)].

Upon request the mandatory schooling of Hungarian nationals is ceased if minor in schooling age leaves the country. His/her leaving shall be noticed to the school or the governmental office proving his/her enrolment [Art. 53(11), Art. 91].
The consolidated Act CI of 2001 on adults’ education (over 16) is based on private education companies and public education institutes with accredited programmes on vocational training giving certificate on crafts, occupations. If the budget or EU funds finance the training or courses those are free for designated groups (e.g. handicapped persons, job-seekers) on the basis of a concluded contract with proper individuals. Admission to adult training is available for Hungarian nationals, persons in ambit of FreeA and TCN with open-ended residence permit, recognised refugees, protected migrants and stateless persons [Art. 21(7)]

The new VocA is effective since 1 January 2012 connecting to public and to the adults’ education. All nationals and persons in ambit of FreeA, settled migrants and recognised refugees are eligible to participate in vocational training in order to obtain one certificate on a craft or occupation. This ‘right to obtain the first craft certificate’ in age 15-23 may be provided in a regular course or an evening course. These students can conclude a student contract determining their duties and study demands, financial compensation for their work experience, student card and scholarship. The Government Decree No.328 of 2009 (VocD), December 29 determines the scholarship for enrolled regular students in vocational training regardless nationality if their study results is over the meridian. Its monthly amount (10 000 – 30 000 HUF) depends on study marks and it is paid by the labour office.

In July 2012 the ombudsman initiated the constitutional review of the Act CLXXXVII of 2011.117 The Act replacing the existing vocational training system introduces a new structure with limited right to free training because the vocational training in main form takes three years (after the elementary school) and certificate attending craft school will be eligible to get a job if student takes a qualification exam, dual training system (training at school and practice at employers) will be improved, responsibility for preparation to practical examination shall be based on the entrepreneurs/employers of student contract holder, and vocational training schools from municipal moved to the regional state-run training centres (nationalisation). In future the Government determines [Art. 84(5)(6)] the unlimited recruitment to certain crafts, occupations without budget grant, the maximal number of students can be trained in certain crafts, occupations requesting certain budget grant and how many students can be recruited at certain crafts, occupations obtaining budget subsidies. According to Art. 29 the first vocational training will be available free of charge for nationals and union citizens/family members if the training at schooling system takes 3 or 4 years for a student. If student fails to finish the courses within this mandatory period s/he has to pay regardless what was the reason of delay in his studies (e.g. health incapacity, changing health conditions, family reasons) endangering the right to education and vocational training.118

The new HighA replaced the prior act passed in 2005 that was reflecting the principles of the Bologna Process and relevant fundamental rights. The reform in education intends to spare budget and to fit better to the labour market demands. Accession to the state (fully or partially) financed tertiary education is available for resident

- Hungarian nationals,
- persons with right to free movement (persons in ambit of FreeA),
- recognised refugees, internationally protected migrants, long-term migrants, other third country nationals treated as national on the base of international treaty or reciprocity,
- EU Blue Card holders and

117 AJB-2883/2012.
- ethnic Hungarians coming from adjacent states if they are out of the mentioned categories (practically from Serbia and Ukraine).

All other – including frontier workers and their family members – can access to the tertiary education if they pay fee. Furthermore, admission requires entry procedure (results of secondary school, maturity exam and possible requirements of health conditions or examination of abilities of applicants that together mean up to 500 points determining a position in a ranking system). Without 240 points accession is denied for all plus candidates have to reach the quota if they want to attend the state financed BA/BSc course \(^{119}\) [Art. 39-40].

Enrolment of a student in a state financed course is valid if s/he has already concluded a ‘student contract’ with substance as the Government Decree defined. [Art. 39(3)] In order to study in tertiary education the option for student loan is available for all enrolled students as the Government Decree regulated \(^ {120}\) [Art. 46(2)]. Due to incompatibility to the constitutional principles the Decree was annulled and the HighA was modified.

Upon request of the Students’ Self-Government in March 2012 the ombudsman initiated a constitutional review on the Government Decree No.2 of 2012, January 20 on student contracts \(^ {121}\) because after degree young experts without their genuine consent would be employed in Hungary under the asymmetric state enforcement, while the state did not give guarantee them on accession jobs. This one-sided obligation violates the right to free movement and employment for union citizens although the Act CCIV of 2011 on higher education delegated this regulative power to the Government. The Constitutional Court annulled the delegation of regulative power to the Government in July 2012 \(^ {122}\) endangering the right to free movement and free employment. Thus the Government Decree was annulled on 1 August 2012. In parallel the Parliamentary Committee on Education and Culture submitted a motion to the ongoing negotiations on the Bill amending the Act CCIV of 2011. The motion inserted the whole text of the Government Decree to the text of the Bill. It was passed soon and the modified legal provisions of the act on higher education (Act CXXIII of 2012) entered into force on 1st August 2012.

Substantially the ombudsman’s critics remained, so he submitted the second initiative to the constitutional review on the student contract for the same reasons in August 30, 2012. The ombudsman extended the initiative with further argument why the Act was unconstitutional: right to culture was limited and discriminative on the grounds of financial position of students. Namely, poor students would request credit and become a worker only in Hungary for doubled time that would be the period of state financed education but self-financed students could move and work freely. This limitation is neither necessary nor proportional, because there is no other rival fundamental right as lawful reason to limitation, and the justified public opinion is not a constitutional excuse for unconstitutional limitation in legislation. Further, it is absurd that time of job seeking would be a part of employment in Hungary and

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119 Accession to the MA/MSc studies requires graduation of BA/BSc and a foreign language certificate (B2 level on the basis of the Council of Europe CERF). Moreover, the minimal points are lifted up to 300 until 2016.

120 The Government Decree No. 2 of 2012, 20 January, on the student contract regulated the contract as a precondition of obtaining fully or partial state financed tertiary education in Hungary regardless the citizenship of students (it was available for nationals, EEA nationals and family members in possession of right to free movement) if they undertook to be employed in Hungary for long years after diploma, and avoiding reimbursement of subventions and bank interests they have to work for years in Hungary.


length of voluntary military duty or work in adjacent state for ethnic Hungarians is accounted double in period of employment (in Hungary). These distinctions violate the requirement of equal treatment, right to free movement and employment for union citizens including the case law at CJEU. For these reasons the ombudsman proposed the revision of the Art. 39(3), 46(3), 48/A-48/S, 108(7) a, 110(1) 23, 110 (2)c, 111(7) and Appendix 5 as incompatible with the Constitution, in particular to its Articles XI (2)XII(1) and XVII(3).

Now a student may admitted to the state financed course if s/he undertakes in a declaration - that is mandatory – to be employed or to do remunerated work for the same period as the state financed studies within twenty years after obtaining the diploma in an entity belonging to the jurisdiction of the Hungarian labour and social insurance law, or to reimburse the state subsidies together with bank interests in a whole sum. Student must undertake to finish the graduation within up to 150 percent of standard study period of BA/BSc/MSc/MA studies. If diploma cannot be obtained within the upper mentioned period, s/he has to reimburse 50 percent of paid state subsidy. [Art. 48/A] Graduated student is exempted to study period and to reimburse the state subsidies if she gives birth three children. [Art. 48/M]

The state financed education means that 100 percent or 50 percent of the fee is paid by the budget. (Its quota in 2012 is about 47 000 new students, so one-fifth of potential entrée while the fees are upgraded, yearly in 1000-6500 EUR.123). This subsidy takes the standard time of graduation + 2 (e.g. in time of birth) but no more than 14 semesters, 6 semesters in PhD studies, and disabled students can consume plus 4 semesters in graduation – if students exceed the credit number and study score mean as required at the given faculty. If the study results are below this level, the subsidy is finished, and fee shall be paid at next enrolment. In the same time, within the quota, deleted student’s subsidy is applicable for a good scored student that has financed alone own studies (disqualified and recalculated students) [Art. 48/B.]

All non-nationals can access to the tertiary education [Art. 80]

a) have to register their address in Hungary,
b) must obtain residence authorisation,
c) scholarships and supports (for buying books, cost of accommodation) are available for them on the basis of international agreement, reciprocity or domestic regulation if they study at state (fully or partially) financed course,
d) preparatory course in Hungarian up to 2 semesters may be provided for them,
e) ethnic Hungarians across the borders has own ministerial quota in state (fully or partially) financed courses, they can participate on partial studies (e.g. attending a semester in Hungary and the others in the country of citizenship) or on preparatory Hungarian language course on 2 semesters.

Ethnic Hungarians as ex-student of state financed studies may opt to be employed in Hungary within the twenty years period or return to the country of origin (to the neighbouring states including some EU member states and non-EU states) to work the half of the required period [Art. 48/L] This extraterritorial effect of regulation cannot be implemented in absent of employment information abroad. Student in theology is also exempted the work and reimbursement requirements. Moreover, young mothers and multiple disadvantaged persons may prolong the time of graduation without paying back the subsidy. [Art. 48/O]

123 The lawful minimal monthly net salary is 215 EUR (Jan 2012) – so the fee can be compared to this.
The amount of state subsidy (see some examples in Table 3) fits to the fee in the given higher education institute directly but all subsidies are kept in a file by the the Education Office and TAO.

**Table 3: Examples of fees in HUF from Sept 2012**

<table>
<thead>
<tr>
<th>Branch of tertiary education</th>
<th>Fee per semester (min-max)*</th>
<th>Total amount of fees up to diploma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical doctor</td>
<td>950 000 – 1 020 000</td>
<td>11 400 000 – 12 240 000</td>
</tr>
<tr>
<td>Economist</td>
<td>150 000 – 350 000</td>
<td>1 830 000 – 4 050 000</td>
</tr>
<tr>
<td>Lawyer</td>
<td>165 000 – 237 000</td>
<td>1 650 000 – 2 370 000</td>
</tr>
<tr>
<td>Communication Bsc</td>
<td>130 000 – 300 000</td>
<td>1 660 000 – 3 312 000</td>
</tr>
<tr>
<td>Psychology Bsc</td>
<td>225 000 – 298 000</td>
<td>2 550 000 – 3 388 000</td>
</tr>
<tr>
<td>Electrical engineer Bsc</td>
<td>175 000 – 325 000</td>
<td>2 445 00 – 3 875 000</td>
</tr>
</tbody>
</table>

300 HUF = 1 €  
* Minimal – maximal means that each university has own tariff. One can compare it to the minimal lawful salary for a skilled person that is 102 000 HUF per month (2012).

The student credit aims to cover the fee on the non state-subsidied courses that is forwarded directly to the higher education institute from the Student Loan Centre. Its redemption is followed by the TAO and the Centre together taking into account the yearly personal income of ex-student. In case of delay or refusal in redemption or repayment the tax authority procedure is launched. (Art. 11 of TaxPA)

The LoanD determines who are eligible to student credit (Section 3). All enrolled students to the ongoing semester as resident in Hungary with a registered address (address card), if they are
- Hungarian nationals,
- recognised refugees,
- TCN with open-ended residence permit (settled migrants), or
- persons in ambit of FreeA residing longer than three months in Hungary including EEA nationals and family members with permanent residence right.

These students may submit electronically or in person a completed format in Hungarian attaching the documents of enrolment and entitlement to the Student Credit Centre to conclude the credit contract. The maximal credit flow takes 14 semesters (10 months yearly) and changing interest is determined per semester in by-law of the Centre. However the LoanD (Section 6) provides 2% interest to the fee-credit and the upper rate of the credit interest would be a state support for designated groups or in general to the Centre by the Treasury. Since September 2012 there are three forms of the credit:

a) free credit to the self-subsistence of the student (up to 170 € monthly, maximum 11 900 € during the whole studies);
b) credit to the fee (see examples on HUF amounts in Table 3) directly to the high education institute;
c) Hungarian national, recognised refugee and settled TCN migrant credit to study another EEA member state obtaining a degree at an accredited higher education institute. Upon request its amount depends on conditions and fee abroad (Section 5, 21-23). It means that portability of student credit is not available for Union citizens and family members. This provision is in harmony with HighA. Namely, students with Hungarian citizenship may apply for a state support if they want to attend an accredited course (partial study)
abroad (it is a ministerial decision in margin or appreciation), and Hungarian national student is eligible for student credit and student card if s/he wants to study in another EEA state at a recognised tertiary education institute. [Art. 79 in HighA]

Repay period starts with the employment of the graduated person but in latest in 4th month after his age of 35. The monthly redemption would be 4-6% from 1/12 part of his/her yearly income [Section 14(5)] In case of birth, maternity or in rehabilitation period repayment would be pending or pay back in greater a sum.

Recent literature
Hadi, Nikolett: *A fogyatékossággal élő személyek alapjogai* [Fundamental rights of handicapped persons]. *Közjogi Szemle* 2012/4:44-52

124 The rate of repayment would be 6-9% on the grounds of actual credit contracts concluded before September 2012 – determined in the temporary provisions.
Chapter V
Other Obstacles to Free Movement of Workers

1. **Driving Issues**

The *Hans van Lent* case, the *Commission v Denmark* case (together with the *Nadin and Nadin-Lux* case\(^{125}\)) declare that Member States cannot require the registration of company vehicles which are used by their residents in connection with their employment relationship *predominantly* in the other Member State if the vehicle is properly registered in the seat country of the employer. In so far the legislation and administrative practice do not allow employees who are employed in a neighbouring Member State and resident in another Member State to use for business or private purposes a company vehicle or motor vehicle registered in that neighbouring Member State where the undertaking of their employer is established the Member State infringes Article 45 of the Treaty of Rome.

The *Hans van Lent* case might be of importance for Hungary hence the law seems not to definitely preclude that residents shall *register their vehicles* even if the registration already occurred in another Member State. It seems also that the core of the issue is the interpretation of the concept of ‘predominant use’. Act I of 1988 on Road Traffic, Act LXXXIV of 1999 on the Register of Road Traffic, Act CX of 2003 on Motor Vehicle Registration Duty handle the issue of vehicle registration in Hungary. The Ministerial Decree of the Interior No. 35 of 2000 handles the status of number plates (that was replaced by the Government Decree No.326 of 2011, December 28 on 1 January 2012).

The main rule is that Hungarian law is applicable for vehicles registered abroad if the usage will occur in Hungary. Pursuant to Article 23 (6) of Act I of 1988 on Road Traffic, if the car has been registered abroad – it has a foreign number plate – and the car *is intended to be used in inland traffic*, the proprietor is obliged to apply for the putting into circulation within 30 days of bringing the car into Hungary. If the proprietor is an EEA national and s/he *intends to use the car in inland traffic*, the upper mentioned Decree of the Minister of the Interior No. 35 of 2000 lays down that the application for putting into circulation shall be submitted within 30 days of obtaining legal residence or of bringing the car into Hungary [Section 40(5)]. The putting into circulation means the award of a Hungarian number plate and the payment of the registration tax in accordance with the Act of 2003 on Motor Vehicle Registration Duty. (If seat, domicile or habitual residence of taxpayer is out of Hungary, s/he has to nominate a proprietor residing/seated in Hungary by the Art. 4(6) in the Act.) The law speaks, first, of the obligation of the *proprietor*, second, of cars intended to be used in inland traffic. This implicitly means that, if the EEA national living in Hungary is not the proprietor of the car, moreover, if the car is not intended for inland traffic only, the provisions shall not be applicable.

However, if the EEA national owns the car, lives temporarily in Hungary (but keeps another residence somewhere else) works also partially abroad (the intended use is *partially* in Hungary) s/he is required to register the car in Hungary instead of keeping it registered in another Member State. Hence *Hans van Lent* treats cases when the person only lived in the country and the *actual usage has occurred in another Member State* (that of registration), it might be that there is no contrast with EC law. In case the usage is intended to be *partly* in

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125 C-151-152/04.
Hungary, the law, however, might be in contrast with EC law hence than registration shall be effected by the proprietor.

In practice this rule is difficult to apply hence a wording of the law – ‘intended for inland usage’ – is unclear.

This saga has been complicated because proprietors keeping foreign plate number of registered car abroad are considered as tax swindlers that are avoiding the payment of the Hungarian registration tax for putting the car into the inland traffic.

The recent modification of – inter alia – the Act I of 1988 on the Road Traffic introduces fine that will be imposed if the proprietor (or operator) of vehicle with residence in Hungary is using the vehicle with plate number issued by foreign authority more than 30 days in Hungary. Exemption is available only for companies seated abroad if its regular activity are relating to Hungary, or the proprietor (operator) of the vehicle has regular residence abroad that are documented during the prompt authority (police) checking. During the ongoing procedure of changing number plate, registry and duty procedure the exemption is also available if it perfectly documented. The modification is aiming to force proprietors (operators) to apply the Hungarian tax and fee system in car registry and plate number requiring much hire amount of money than in adjacent states, plus the car parking fines will be successfully executed. However, the costs of these transactions are not reduced. Finally the traffic of these cars will be prohibited. These provisions would be problematic for frontier workers an all non-residents to prove easily their address and domicile abroad by proper documents. The amendments (Act XCI of 2011) entered into force on 1st September 2011 were connected to further modification (Act CLXVI of 2011).

The rules on change of driving license, number plate and registry of personal car in Hungary can hinder the free movement of workers and family members.

Upon numerous complaints the Ombudsman investigated in recent years the confusing rules of registry that has been required for used cars bought in another Member State. In order to put into traffic the car has to be certified its original, lawful property (avoiding the business with stolen cars) and fee of registry and number plate shall be paid. It means that the owner must attend three authorities participating on a long process and pay a high sum. Despite of certain changes in authorisation the Ombudsman second investigation confirmed the high fees, the absence of one-stop-shop procedure and e-registration practice but changes yet in vain.126

Some union citizen complainants requested the Ombudsman to stop violating the right to property, free movement and fair procedure. In order to avoid high fee of registry cars are bough and put into traffic in Slovakia or Romania and these cars are used in Hungary with Slovakian/Romanian number plate. The recent amendment tolerates it only for temporary usage (24 hours) or the proprietor has permanent residence out of Hungary or the operator uses the car to regular work abroad. In other cases residents in Hungary cannot use own car with foreign number plate. The tolerated exceptions shall be properly documented (e.g. authorisation for temporary usage from the owner/proprietor of the car or domicile or labour contract together with an authentic translation) and immediately show it to the police control in traffic. Subsequent evidences are neglected. In absence of in situ documents the policeman confiscates foreign number plate and traffic license of the car and he implies fine (up to 2700 €). These provisions may prevent abuses but exclude fair procedure, usage of family cars by non-proprieters (e.g. by family members) while sanction is not proportional. Thus the Om-

budsman initiated amendment requesting the Government to prepare the Bill. On behalf of the government the minister of economic development informed in February 2012 the Ombudsman that amendments were made how to use the foreign number plates in Hungary respecting for free movement and tax liability together.

The saga was going on the foreign number-plates in 2012-2013.

Further complaints on violation of right to property and free movement inspired a repetitive investigation in 2012. The Headquarters of the Police passed Guidelines on how to control the documents of drivers but provisions on drivers in vehicle with foreign number-plate were missing. The leader of the HQP informed the ombudsman that foreign number-plate would be implemented not only foreigners but Hungarian nationals that left Hungary settling down abroad without its notice the registry of address in people registration. Consequently, policeman checking the data in vehicle registration may suppose a disorder unless notice on leaving is proved in accordance with the Art. 25/B in the Act I of 1988. Disorder has to be clarified so immediate imposed fine and withdrawal of foreign number-plate and documents are not allowed for traffic controller.

- However, it was stated by a complainant that he borrowed the personal car from his German national friend, and driving the car returning home the traffic controller policeman confiscated the traffic certificate of the car and number-plate because he could not prove immediately the consent of usage given by the owner and he was imposed to pay 350 € administrative fine. His request for traffic permit to a one-way route and information was refused how the German owner would use the car and what would happen with the seized number-plate.

- In another case the owner of a personal car requested his address of residence deletion from the registry of people because he has been living in Germany under a given address. The Hungarian national submitted this request at the Hungarian consular office in Munich and issued a copy of this request with a reference on ongoing procedure. This document was refused in a public road control of the car with foreign number-plate saying that address card of user without his foreign address was irrelevant. Also the imposed 700 € fine and confiscated plate-number of the personal car was also the end of another case in Hungary.

- The car was in leasing from a company seated in Vienna and the lessee could not prove the consent of the owner to the usage in Hungary but policeman did not give a proper document on confiscation because it contained no identification data on the car. His request for information of how to obtain the number-plate was denied and his free movement was hindered during the prolonged proceedings.

- In other case complainant said that his wife was living and working in Hungary while he was employed in Germany with registered residence there. Consequently they had a personal car with German and one with Hungarian plate-number. However, the technical certificate of the vehicle with Hungarian plate-number was expired that was not observed

128 Miniszteri válasz a külföldi rendszám használata ügyében www.obh.hu/allahme/status/20120229_2.html.
129 AJB 313/2012 including the cases AJB 3635/2012, 3082/2012, 3098/2012.
130 AJB-313/2012.
131 AJB-3635/2012.
132 It was the same question in the case AJB-3635/2012.
133 AJB-3082/2012.
134 AJB-489/2012.
by the user so it was withdrawn from the traffic due to a traffic control by the police. Thus his wife had to use as worker and parent carrying children to the school the other car of the family with German plate-number. She notified this fact by phone to the local police on 31 August 2011 asking whether she could drive it lawfully without paying a fine. After some repeating calls and personal inquiry the local police could not give answer.

- A Slovakian citizen had a permanent residence in Slovakia and a temporary residence in Hungary. He complained\(^{135}\) that spending the majority of the calendar year out of Hungary as worker but his wife with Hungarian citizenship was admonished by the police more times after 31 August 2011 to stop the usage of the car with Slovakian number-plate in Hungary. She uses the car for carrying her daughter to the regular medical treatment or in other practical cases.

The ombudsman clarified that vehicle may operate in public traffic in possession of a signal and certificate issued by the traffic authority if:

a) user, proprietor of the vehicle (Halter) is considered as inlander user (owner or other person operating the car on the grounds of a contract or other lawful and consensual entitlement, see the Art. 2(9) in the Act LXXXIV of 1999) if his/her place of habitual residence is in Hungary, or its corporate seat is in Hungary;

b) driver of the vehicle has a place of residence in Hungary.

In accordance with Art. 25/B in Act I of 1988 the case in point a) shall not be implemented on proprietor if s/he makes regular activity in the country of the registered corporate seat or the owner of the vehicle has launched its putting to the traffic in Hungary at the responsible authority including the request to control the origin of the vehicle (not a stolen/wanted car). The case in point b) shall not be implemented if driver has no a habitual residence in Hungary but the owner has written consent to its usage for not exceeding 24 hours in Hungary, or vehicle is regularly applicable to work of the user out of Hungary. Until 31 December 2011 this 24 hours (one day) ceiling was 30 days but these facts shall be evidenced only with authentic documents with conclusive force – it has not changed. In absence of mentioned requirements driver shall be imposed a fine of 350-2700 € depending on the capacity of the motor and on corporate or natural personal ownership of the vehicle. (Art. 20(1) in Act I of 1988) If in site control the existence of facts and documents cannot be proved, the traffic certificate of vehicle and number-plate shall be immediately confiscated (Section 98 of the Government Decree No.326 of 2011, December 28). Paying out the fine the proprietor can receive back the number-plate: s/he requests to put the vehicle to the inland traffic or s/he provides within 15 days the authentic documents with conclusive force attesting the conditions of lawful usage together with its also authentic translation in Hungarian. In practice accession these documents take longer time in which driver cannot use the car hindering his/her leaving the country or free movement. This not proportional limitation of property and free movement by law violates the requirement of rule of law, too.

The HQP confirmed that the issued Guidelines was supplemented with detailed instruction in case of documentation and its controlling method but the family status of user (e.g. partner, spouse, guardian of the owner) could not excuse for violated rules. The logic of legislation was that users of car wanted to avoid high registration fee putting the vehicle to the

\(^{135}\) AJB-490/2012.
domestic or inland traffic in Hungary. The police must prevent these cases through the tight control of users in vehicles with foreign number-plate. In brief, the ombudsman suggested
a) to modify the Act I of 1988, in particular its Art. 25/B respecting for the right to fair procedure of actors in traffic, their right to free movement and property;
b) to modify the Government Decree setting up proportional procedure for users of vehicle with foreign number-plate including receiving back the confiscated documents and to issue proper information for users on entitlement of traffic controllers and to determine the mandatory content of records made in the controlling procedure.

Finally, the criticised provisions were modified after 21 November 2012 (Art. 25/B and 47 in the Act I of 1988) and proprietor of vehicle with foreign number-plate can use the car in Hungary for 30 days within 6 months with written consent of the owner. Its simple translation is acceptable. However the ombudsman is not satisfied because the rules have not been defined how the user of vehicle can leave the country if the foreign number-plate of the vehicle is seized by the authority.136

2. REGISTRATION OF ADDRESS

Address of all residing persons regardless nationality shall be registered in Hungary (Act LXVI of 1992) including persons in ambit of FreeA (within 93 days of their entry). This registration belongs to the local municipal clerk office connected to the central address and personal data basis. This registered address establishes the competence of local municipal to provide certain public services for address card holders (schooling, housing, health care, social benefit, child care, sanity etc.) Avoiding the settlement of poor, segregated new inhabitants more and more municipals determine in a local decree the minimal criteria of ‘human residence conditions’ for address registration with reference on environment protection, hygienic or tourism interests. If newcomer cannot demonstrate to meet these requirements, the local clerk refuses registration. Although neither the Act on people registry nor the Act on Local Municipals (Act CLXXXIX of 2011) entitles municipals to regulate address registration this ‘exclusionary technique’ has been spread. Complaints are forwarded to the Ombudsman (mainly from Roma) but judicial review is also appearing.

One example relates to labour migrants from Romania. Alsónémedi is locating to the agglomeration of the capital attracting numerous seasonal workers to agriculture, logistic and stocking bases in its environment for years. Its municipals passed a decree on residence address registration137 in 2010 that was declared as unlawful by the County Public Administration (Governmental) Office requiring the modification within 30 days in 2011138. The proposal of the decree139 refers on (good) practices in Sátoraljáůjhely and Miskolc on how to prohibit registration of individuals into invalid address, or to illegal mass hostels and labourers’ rented residence, lodgings. Without mention foreign workers public opinion is in aware of targets. Decree says that registration shall be refused if the place as defined in the address

139 Előterjesztés és általános indoklás a a lakcímbejelentés helyi szabályairól szóló 1/2010,(II.01.) sz. rendelethez.
in concern has less than minimal 12 square-meter living room per capita, 4 square-meter cooking room, and there is no tap-water, WC and heating. If the place of residence is an emergency residence the size of living room would be smaller (10 square-meter per capita) and kitchen is not required. Furthermore, the clerk is entitled to control conditions through documents and in situ before registration. The decree allows the clerk to revise the existing registration on the grounds of these criteria within a month after publication of the decree.

This *indirect discrimination* is hard to release in countryside but risk of municipals to pass an unlawful decree was low because the governmental offices could force to amendment or annul slowly. The Act on Local Municipals entitles the municipals to regulate local deviant behaviour implying fines for threaten public order (e.g. owner of real estate does not cut grass, trees or bushes in the front of the house or garden). Beyond the hidden anti-Roma sentiments these sanctions may endanger all inhabitants that have no regular, continuous usage of real estate (e.g. it is a second home, the owner is abroad, etc.)

Many complaints on address registration were detected by the ombudsman in 2010-2012, so he had to launch an investigation.140

- The temporary place of residence could not be registered without the permanent address of residence of the same person that is unacceptable for some complainants. In many cases the owner of the apartment/flat refuses to sign the registration format of the tenant (because s/he is afraid of never-ending residence of tenant or paying personal income tax from the rental fee, etc.), so his/her signature is forged unless tenant becomes homeless legally while the rate of lessee has been growing.

- On the other side, an owner complained that data of each member of a prior tenant family remained in the address registry, so all letters and official notes were arriving at his address but they had moved out years ago. Requesting the correction of data at local registrar it was said that address of left family would be deleted as fictive address but it would be an additive data on the non-permanent residence of the family in concern and the owner as applicant had to pay fee in administrative procedure that would be exempted for applicant below the social mean. He said that receiving non-residing persons’ letters would be considered as a daily harassment due to the fact that state-run registry was untrue, incorrect and fragmented.

- Another complaint refers on how the local registrar office made his registered address as fictive saying that he is commuting to the capital and does not live permanently in the house (only on weekends and in free times) as tenant but in absent of permanent address he cannot be registered in the capital as temporary residence. In other case the healthcare card of a claimant was controlled by the panel doctor that indicated as a pending payment. He went to the social insurance office for information on health insurance because he as a student was insured. It was proved that he had a temporary address attending school and living in dormitory meaning a risk in finance. He refused this explanation mixing up registry of residence and accession to health-care.

The ombudsman acquired information from the Central Office for Administrative and Electronic Public Services (KEKKH), Public Education Office, Social and Guardian Office of Budapest, Ministry of Economy and National Health Insurance (OEP). According to their answer it is clear, that abode, registered address of habitual residence or registered address of domicile is relevant in all entitlement for public services, such as health care and public edu-

140 AJB 267/2012.
cation. However, these legal rules are not consistent forming three variations with reference on temporary/habitual/permanent residence of Union citizens with right to free movement, for instance in the Act on pension scheme. These registers are maintained by KEKKH, local municipals and governmental offices in counties. If a national is leaving Hungary without intention to return or a Union citizen giving up to practice his right to residence in Hungary without return to Hungary he has to request to preserve personal data in registry of people but all of issues documents proving his temporary/permanent residence here (identity card, registration card, address card) shall be given back to the authority. But it is rare, people are moving without notice the registry so the whole registry of population has been incomplete. This fact is compensated by different guarantees of control, entitlement in different rules on accession to public services.

For this reason the KEKKH issues Guidelines (March 2009) on connection of registration of people whereabouts to their mandatory social/health insurance contributions. Since 1st January 2009 the notion of ‘inland citizen’ has changed, and it means that this person shall be a Hungarian national, a recognised refugee, settled migrant with a registered place of residence in Hungary as determined the Act LXVI of 1992 on registration of people. Consequently all entitlements for accession to various allowances and obligations are eligible or relevant only for registered inlanders. The Ministry of Public Administration and Justice detected that there were 39,000 resident persons had temporary place of living without registered place of residence while 1200 persons had both due to inconsistent practice in registration. The place of residence is the address of individual’s living place where he is residing temporarily without intention to leave the permanent place of his residence, i.e. longer than three months, consequently a person has a place of temporary residence in possession of his permanent residence, thus registration of temporary residence in absent of permanent residence is a mistake of the authority causing problems in health care contribution payment. The Ministry ordered the KEKKH to issue Guidelines explaining the municipal registrars the correction of address registration. If individuals are reluctant to clarify what is his/her temporary and permanent place of residence a fine up to 150 € can be imposed (inside the minor offence procedure that was applicable up to 14 April 2012).

Furthermore, the Art. 39(3) in the Act on social insurance contribution scheme (Act LXXX of 1997, hereinafter: Tbj) was modified determining the personal scope of health care contribution payers from 1st July 2009. Accordingly, full accession to health care is eligible for inlanders if they have at least one year continuous registered address in Hungary as determined the Act LXVI of 1992 before their registry at tax office. The continuous local inland citizen status is evaluated by the tax office. In this way the fixed benefited tariff per month in health care contribution is payable only for Hungarian nationals living continuously in the country under the registered permanent address and insured. In other cases individual has to conclude a contract with OEP if he wants to access to health care but its contribution is the half of lawful monthly minimal salary that is much higher than the mentioned fixed benefited tariff. The Art. 16(1) and (3) in Tbj determines who is eligible for health care services that is also based on the notion of inlanders as major requirement. The data and registry of eligible persons in OEP are based on forwarded data on people/inlanders from the KEKKH. Art. 4 u) of Tbj defines who is eligible as inland to the health care services:

a) Hungarian national, settled third country national ad recognised refugee living under registered address of residence as determined in the Act LXVI of 1992;
b) Persons in ambit of FreeA if they practice their right to free movement in Hungary residing longer than three months in the country and they have a registered address of residence as determined in the Act LXVI of 1992;

c) Stateless persons.

The aim of legislation connecting the *inlander status* to the registered residence and benefited tariff in health care contribution is to protect the Health Care Fund avoiding full accession to the health care services paying benefited tariff in Hungary for newly arrived migrants without prior residence and payment period here (Art. 39(3) in Tbj).

The new Act I of 2010 on procedure of personal registry entered into force on 1st January 2013. Beyond the electronic modernisation it regulates that the owner of apartment or rental shall be present together with tenant in residence registration procedure at authority or the owner/rental shall approve on-line the notice of registry from the tenant to become the registration valid. In absence of present or approval the registration of address is acceptable but a written notification on registration the address of a person concerning his/her property may be required. The address of residence shall be checked by the authority whether it is a place for human living and existing place (e.g. never existing street or house).

The ombudsman states that Act LXVI of 1992 on registry of people address and personal data has inconsistent and vague terms violating the requirement in rule of law. It has been accompanied with arbitrary legal practice together with the new uncertainties from the rule on inlanders in Tbj. The responsible ministers were requested to review the whole system of registration of address and people in order to access the health care services for contribution payers and to meet the requirements of personal data (e.g. only completed and true data can be processed).
Chapter VI
Specific Issues

Regulation in force:
- 1998.évi LXXXIV. törvény a családok támogatásáról [the consolidated Act LXXXIV of 1988 on Family Benefits] (FamA)
- 2004.évi I. törvény a sportról [the consolidated Act I of 2004 on the sport] (SportA)
- 2005.évi CXX. törvény az egyszerűsített közteherviselési hozzájárulásról [the consolidated Act CXX of 2005 on Simplified Public Contributions] (EkhoA)
- 2011.évi CCIV. törvény a nemzeti felsőoktatásról [the consolidated Act CCIV of 2011 on the National Tertiary Education] (HighA)
- 51/2007. (III. 26.) Korm. rendelet a felsőoktatásban részt vevő hallgatók juttatásairól és az általuk fizetendő egyes térítésekről [the consolidated Government Decree No.51 of 2007, 26 March on Benefits and Fees of Students in High-level Education] (StudD)
- 86/2006. (IV.12.) Korm. rendelet a Diákhitel Központról [Government Decree No. 86 of 2006, 12 April on study loans and on the Study Loan Centre] (LoanD) was in force until 1st September 2012 due to the Government Decree No.1 of 2012, 20 January

1. FRONTIER WORKERS

From the HU-LFS data it can be seen that (potential) frontier workers, commuters are concentrated to the Austrian-Hungarian border zone, and their growing rate is correlated to the unemployment ratio. Hence the unemployed Hungarian workers in neighbouring area do not seek jobs inside the country but much more in next Austrian provinces, but Austria as destination is less been targeted farer from the border zones. The Slovak and the Romanian border zone would play certain role according to the experiences of EURES agents. However, the regional trans-border cooperating consortium involving the labour offices, municipalities, economic chambers and vocational training centres was only established for SK-HU and AT-HU relations. The recently initiated RO – HU consortium has been postponed. Accordingly, the direction of movement is from Romania to Hungary basically by seasonal workers and low-skilled persons, Only 10-15 percent of commuting job-seekers means skilled and missing labour force in the region in concern (such as nurse, doctor, baker or biologist). The periphery of Slovak-Hungarian border zone has been revitalised and re-evaluated since accession. Villages in border region attract Slovak citizens to cheap purchase real estates in Hungarian side while they are working in Slovakia. The price level of real

142 Presentation of Bíró, Timea on the 27-28 April 2011, FMOW seminar in Szeged.
estate here determines the absence of employment (e.g. smashed agricultural co-operatives in 1990s, poorly paid community jobs instead of market jobs).\textsuperscript{144}

It is worth mentioning that the word ‘frontier worker’ construed in terms of free movement of persons appears only in social law. The family benefits covers on persons under the FreeA that are residing lawfully in Hungary for more than three months and being registered in the address register (in possession of address card) with exception of maternity benefit for frontier workers (FamA, Art. 2). Moreover, persons are eligible for family benefits that are in ambit of social coordination regime (Dir.883/2004/EC) due to a recent amendment (Act CCI of 2011). The discriminative rules on maternity benefit from the act on the grounds of nationality were annulled by the Constitutional Court.\textsuperscript{145}

Before 2012 the FamA (Article 2 d) defined clearly that the residence condition was waived in all family benefits for frontier workers. If a union citizen working in Hungary - irrespective of the duration of the work – in a legal employment relationship, s/he was falling within the ambit of Reg. 1408/71/EEC and if s/he resided in another Member State was exempted from evidencing his/her Hungarian residence. The person was entitled to claim family benefits as a Community worker for himself and for his family. In this regard, Hungarian law differentiates but not as it would be allowed by the ECJ (\textit{Hartmann and Geven, C-212/05 and C-213/05}) because it grants benefits for the workers even if they have no real and sufficiently close links to Hungary. The volume of frontier workers claiming family benefits has been rather marginal.

2. \textbf{SPORTSMEN/SPORTSWOMEN}

The sport law consists of the following strata:

- SportA determines the status of professional and amateur players, the competence and operation of sport organisations (clubs, associations, foundation for bringing up new supplies, federations and National Olympic Committee), sponsorship and sport administration;
- Due to the fact that NOC and federations are public bodies, the SportA delegates them regulative power and authority to pass by-laws (e.g. on transferring rules, on ethical procedure) championship/racing rules, to issue certificates setting up registries on athletes and racing;
- International agreements and codes in sport branches passed by international federations;
- Ministerial decrees and documents by the ministerial sport administration on subsidies, sport strategy;
- Contract of professional athlete as worker with club/sport entity as employer determines the remuneration and expiry of racing right transferred to the employer, too.
- Case law of the Sport Arbitrage.

Putting the free movement of athletes into the centre the SportA and by-laws are the most important guarantees to this right or to the economic activity of sport. The recent amendments\textsuperscript{146} in SportA partly support to this freedom:

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\textsuperscript{144} Vannak még csodák. Népszava 15 October 2011.
\textsuperscript{145} 123/2010.(VII.8.) AB határozat.
\textsuperscript{146} In recent three years the SportA has been in average bimonthly modified and without impact assessment, upon proposals of MPs.
Since 2012 professional athletes can pursue sport either on the grounds of employment (as determined in the Labour Code) or assignment contract (Civil Code) by the sport entity. Before this change the labour law was the legal basis performing private and public guarantees in sport economy in 2004-2011. It is probable that civil law inspires not to respect for cogent provisions, such as a ban of any financial support for athlete that is out of the remuneration as determined in the assignment contract concluded with him/her (Art. 8(4) in SportA). In possession of a valid racing certificate issued by the sport federation s/he has to conclude on fix-time (close-ended) written *employment/assignment contract* with a sport club or association as a labourer with certain specific exceptions from the Labour Code as determined by the SportA. The athlete’s participation on sport event is lawful only in possession of racing permit issued by the responsible sport federation;

- the transposition of the Directive 2006/123/EC requires some amendments for service providers in sport sector;
- the Government intends to provide extra benefits through the corporation tax and asset fee for the football, handball, basketball, water polo and ice-hockey. In a gathering term of ‘spectacle sport branches’ corporation and dividend tax-payers may opt to pay a certain part of yearly tax to these clubs instead of the Treasury (Act LXXXI of 1996 on the Corporation and Dividend Tax, Art. 22/C). The sum of these deflected tax forwarded to these five sport branches was at least 45 billion HUF (156 million EUR) only in 2012. Accordingly, the financial supports given by the sponsors to each (professional or amateur) club playing in the first lines of the national championship in ‘spectacle sport branches’ as member of the given sport federation are exempted from the corporation tax contributing to the reinforcement and new supplies of young talents, development of these sport branches or to extend the co-operation with municipals and universities in sport. This exemption is available if the aim of the support and the co-operation contract is approved by the sport federation (Art. 22(2)f in SportA), and the support is transposed through a specific public fund set up in this scheme that will control the aims of payments and the lawful operation of the sponsor (for instance, it has no revenue deficit). In case of investment to the capacity building of ‘spectacle sport branches’ the real estate transfer is also exempted from the statutory fee (Act XCIII of 1990 on Fees and Duties), thus a sport club does not pay fee, e.g. for obtaining a new sport stadium financed by sponsors if it will be operated for 15 years at least. These rules entered into force upon approval by the European Commission accepting this new scheme of subvention partly to professionals – beyond the existing state sport subventions as defined in the SportA – exclusively to the ‘spectacle sport branches’. The Act LXXXVII of 2011 entering into force on 1 July 2011 delegating the technical regulation to the Government and to the responsible minister determining the provisions on accountance, control, sponsorship certificate and its fee; The reformed sport administration and NOB cannot establish a legally transparent and effective monitoring system avoiding state aid to the professional

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147 There are different figures in press, e.g. Muszbek, Mihály, Népszabav, 4 July 2013, Sárközy Tamás, June 2013, Mozgó Világ.

148 Betting duties and bookmakers’ tax provide the basis to the sport subventions [Art. 56 of SportA] and direct budget contribution to the National Olympic Committee. However the deflected corporate tax scheme to the sport is accepted by the EU until 2017.

149 See the Government Decree No.107 of 2011, 30 June and Ministerial Decree (NEFMI) No.39 of 2011, 30 June. For instance, supports to sport investment project (e.g. building a stadium) over 500 million HUF requires the permission from the responsible minister of economy.
sport. Moreover, local municipals and state budget (government, state-property corporates) directly contributes with billions to the sport clubs regardless bans in the EU law;150

- through the extended EkhoA to the qualified sport experts and athletes – including EEA nationals - optionally would become self-employed persons since 2011. EkhoA exempts sport experts and professional sportsmen from the general rules on taxation and payment of social security contributions and gives them the opportunity to opt for the payment of a fixed-rate public contribution that is less and financially more beneficial than the general system (15% from their total personal income that is reduced with the VAT). Implicitly, the reduced rate of public contributions results at the same time in reduced level of social security benefits. They sport expert falls within the ambit of the EkhoA if they realize an income reaching the yearly minimum wage but not exceeding HUF 50 million (180 000 €) and the first class athletes qualified by the national sport federation if his/her yearly income is below HUF 100 million (360 000 €) without VAT from the sport activities. A person meeting the requirements of the Act is entitled but not obliged to make a declaration and register as an ekho-payer (Art. 3-4 in EchoA). Due to this optional tax paying scheme, professional athletes accomplish sport activity for regular income either as entrepreneur (self-employed, free-lance professional) or as employee (Art. 1(4) and Art.8 of SportA).

By-laws of sport federations shall determine the requirements for racing certificate and racing permit including the amount of fee to be paid [Art. 3(1),(3)]. Although the nationality of athlete (e.g. directly or indirectly through a quota) is not mentioned among the criteria of issuing, it is not restricted, it belongs to the margin of appreciation of each sport federation taking into account the internal efforts and the international federations’ guidelines or rules. (In practice of football the notion of ‘national player’ includes Union citizens today151.) However, issuing the racing permit for ‘Hungarian athletes’ participation on foreign sport event and for foreign athlete’s participation on Hungarian race’ as well as to regulate the transfer of athletes also belongs to the competence of sport federations [Art. 22(2)b, 23(1)b] Responsibility for and finance of national teams, national eleven is part of sport federation tasks [Art. 22(1)d, 26(3)] Appeal to the presidency of the responsible sport federation within 8 days from refusal and withdrawal of certificate or permit is ensured, and judicial review is available within 30 days against the final refusal and withdrawal of the sport federation.[Art. 3 (6)] Moreover, the lawful operation and business of sport federations is controlled by the Public Prosecutor [Art. 27]

The sport club obtaining this racing right temporarily or permanently may transfer it to another sport club with consent of the athlete who is entitled to get compensation from the transferring sport organisation that can obtain a fee from the hosting sport organisation.

Financial compensation and fee is consensual [Art. 10] but its final sum shall be announced to the sport federation, moreover its 1 percent shall be paid to the sport federation and 4 percent to the fund supporting the training of supplies [Art. 11(3)]. If this transfer is not temporarily, a new labour/assignment contract shall be concluded. During validity of

150 Török Ferenc Népszava, 26 January 2012, Világgazdaság, June 6, 2013, Népszava April 7, 2012.
151 Oral information from Hrutka, János and Nagy, Antal ex-member of national assorted team, sport agents and trainer, 28 June 2013. They said that fans for a long time have required the restrictive interpretation of the nationality. In practice the component of the team is relevant in the international broadcasting and its sharing.
employment contract it includes the fixed-time transfer of right for racing to another sport club/association according to a contract. In this case athlete is considered as a posted worker. The SportA provides athletes’ free movement. Transfer of racing right can be prepared and managed by commercial agents as a lucrative activity if agent obtaining a licence from the international sport federation is registered at the national sport federation. The sport manager agent’s role in transfer is outlined in the (inter)national sport federation by-laws. Any other share in transaction costs (beyond the athlete’s compensation, commission, fee and sport federation) is invalid. [Art. 11(1)] On the other side, the sport manager agent is excluded from the transfer management concerning amateur sportsman below the age 18. [Art. 7(5)]

The by-laws in sport federations frequently preserve the old dichotomy ‘national’ and ‘foreign player’ without reference on equal/national treatment and preferential treatment taking into account the EU law. See some examples below.

The Hungarian Handball Federation’s Rules on registration and transfer of players entered into force on 1 August 2010. Accordingly,

- The authorisation of transfer of athletes belongs to the HHF if the athlete is non-national or s/he is playing in the first class of the national championship. The ‘handball Hungarian covers on third country national in possession of long-term migrant position or valid residence or labour permit and of continuous racing authorisation for at least 36 months in the national championship; in transfer s/he is considered as a national.’ Hence the ‘handball genuine Hungarian is a foreign, third country national player in possession of a residence permit with at least one year validity or a long-term migrant status (proved by identity card).’
- The registration document of professional player who is Hungarian national is white and in case of non-nationals it is yellow.
- Applicant for international transfer authorisation shall attach own international racing permit and the contract made between the transferring and hosting clubs. The non-Hungarian citizen player transferring to Hungary shall respect for the rules of the International Handball Federation and the European Handball Federation together with the national statute. The legal contact of non-citizen player with the hosting club is terminated within 12 months after the expired HHF authorisation in transfer. After 3 years in continuous playing in a Hungarian club the athlete shall be considered as national in the implementation of rules on transfer.
- Until the payment of the fee and duty in transfer authorisation is not accomplished, the application is pending, and its amount is growing in the official rate of inflation/6 month.

Appeal for refusal in the international transferring authorisation may be submitted within maximal 6 months to the special committee of HHF.

The Hungarian Boxing Federation adopted in August 2009 the Statute on registration, racing right and transfer in 2010 that defines

- the period of transfer. Out of that transfer is authorised by the HBF upon consent of all stakeholders.
- how the national athlete can race in foreign club. Upon joint request of the athlete, the sending and hosting clubs the HBF can issue a racing permit and ‘it can determine conditions for member in the national team taking into account the interests of the national team and sending club’.
- how the non-national athlete can race in a Hungarian club. In authorisation of his race the yearly racing rules shall be implemented. The dual or multiple nationality is irrelevant in transferring procedure if he is also a Hungarian citizen.
- fees in authorisation that are partly determined in the Appendix regardless nationality of the athlete, while the other components belong to the consent of the clubs in concern. In absent
of consent in costs of reinforcement of young talents the special committee of the HBF defines the duty in transfer authorisation. Legal remedy against refusal and amount of duty is ensured by the presidency of the HBF.

The Hungarian Wrestling Federation passed own Statute on Transfer and Registration (16 August 2005) contains some outdating rules because it is also speaking on national and foreign players.

- The non-national player in racing authorisation shall be documented by valid residence permit or labour permit. Furthermore, he can participate on the national team championship only as guest athlete in possession of the permit issued by the HWF if the yearly racing rules allow it. The non-national player in possession of racing right in a Hungarian club can participate in the national individual championship.

- The international transfer of national athlete’s racing right for a season is allowed with the authorisation of the HWF. The fee depends on the country of hosting club and the class of championship, e.g. 500 €/season to the German 1st class, 100 €/season to the Austrian 2nd class.

There is another example of outdated rules can be cited from the Rules on racing and transferring passed by the Presidency of the National Swimming Federation (April 2009). It also differentiates between national and foreign player.

- Hence athletes representing Hungary, a Hungarian club or region in a sport event can participate without authorisation of the NSF but member of the national team shall obtain the authorisation from the team’s captain to race and training abroad. The racing permit shall be issued for other professional players if they meet the requirements determined in the Rules and ‘not interfering the interests of the national assorted team’.

- With exception for athletes from the club in membership of FINA federation, each non-national needs racing permit issued by the NSF to participate in Hungarian sport race. It shall be issued if s/he is in possession of approval from own national federation. Non-national with long-term migrant status after 30 days from issuing his/her open-ended residence permit is eligible for a racing permit, however the participation in the yearly national championship can be conditional determined in the NSF.

According to the Hungarian Football Federation’s Statute of registration, racing right and transfer of athletes:152

- In case of international transfer of athlete the FIFA Regulation on the Status and Transfer of Players (e.g. transfer in possession of International Transfer Certificate, action managed in Transfer Matching System) shall be applied together with HFF by-laws. It includes that hosting or transferring club shall respect for the ‘direct and indirect interests of the HFF and the national football’.

- In case of international transfer of non-national player to a Hungarian club – including the lending of athlete - the official translation of the contract shall be attached, and the fee paid by the hosting club must be clearly defined in the contract. Under the full age of non-national player’s transfer shall be refused if his/her movement is out of family reasons.

152 Adopted by the HFF Presidency decision No.58 of 2009, 16 April and amended recently by No.27 of 2013 and 116 of 2013 entering into force on 1 July 2013.
- Player’s transfer to abroad – including the lending of the athlete - is authorised by the HFF upon request of the clubs in concern with submission of the international transferring format completed with required data from the contract and racing right. All disputes in transferring action belong to the FIFA Players’ Status Committee.
- In case of national athlete’s return to Hungary – including the terminated lending contract - the racing certificate from the HFF shall be obtained, and all rules on transferring are applicable.
- Fee for the authorisation of (national and international) transfer shall be paid either the hosting or the lending/sending club to the regional unit of the HFF but fee from transaction of non-national player is paid directly to the HFF. The compensation duty, the payment for agent and the transferring fee are also determined in the Appendix (without VAT that is changing yearly) regardless the nationality of players: the main determinant is the playing class (championship score of the club and the athlete). Complaint and appeal for unlawful decision is ensured inside the HFF (Presidency).
- international transfer is allowed for adult player (over 18) with three exemptions: he is in age of 16-18 and moves together with his family abroad, or he is in age of 16-18 moving within the EEA and the club can provide the necessary training conditions; or he is a frontier worker (commuter) living in one state and racing another within the border zone (50 km from the border so the maximal distance between the home and the club is not exceeding 100 km) and both national federations in concerned approve it (Section 15/B)
- application for authorisation of racing right and transfer of non-national player shall contain the ‘document of lawful residence and labour permit – unless s/he is exempted by law’ (Section 15/A)
- compensation shall be paid for transferred player in age 5-21 contributing to the education new suppliers to the sending club, and compensation in age 21-23 for his further transferring contract (Section 19). The appendix determines the sum but transferring fee is consensual and VAT shall be paid.

The transfer of athletes shall be administered by sport agent in possession of licence. The HFF adopted a by-law on operation, rights and obligations of sport agent:153

- sport agent can operate with licence unless s/he manages the transfer of own spouse, child, brother or sister as professional athlete, and attorney of law registered in Hungary is also exempted if s/he represents the sport club [1§(3)],
- obtaining permission (licence) that is valid until withdrawal a registry is required at HHF taking exam, and a bank guarantee or liability insurance contract shall be documented,
- agent shall be a Hungarian national or non-national has residing here at least for two years in possession of a residence permit [3.§]; however the agent may operate as entrepreneur or as a corporate entity (with own employee);
- agent has to use own homepage and a sample contract on transfer issued by the FIFA, e.g. the transfer fee shall be defined in the contract in concern determining his/her commission for the transaction (x percentage of athlete’s yearly income and lump-sum paid by the sport club),
- athletes may be sanctioned if transfer was managed without sport agent without proper license [18.§],
- and a Code of Ethic for agents is attached to the by-law.

153 MLSZ Elnökség 152/2012.(08.23.) szerinti határozatával elfogadott Játékos-ügynöki licence szabályzat.
The relevance of nationality in national eleven/assorted team\textsuperscript{154} and free transfer would be surveyed including the TMS coordinator of the HFF\textsuperscript{155} that can provide figures or data on free movement or its obstacles.

3. **THE MARITIME SECTOR**

The National Traffic Authority (its Road, Railway and Shipping Office) is entitled to decide at first instance, for example on recognition of qualification in shipping, issuing the certificate for navigator and sailor, their renewal, authentication and registration. The NTA or the responsible minister is the appealing organ.\textsuperscript{156}

Neither the nationality nor the residence of seafarers, navigators, sailors is required in shipping employment of EU26 and EEA nationals in Hungary (or on vessels under the Hungarian flag). The shipping qualification of seafarer, navigator issued in a member state of EU/EEA automatically is recognised to the shipping in internal waters and under the Hungarian flag if the owner of the vessel is in possess of certificate required to the given water line. The NTA is entitled to withdraw or invalidate the issued shipping qualification if requirements are not met.

4. **RESEARCHERS/ARTISTS**

The EkhoA also covers on EEA nationals under the ambit of Dir.883/2004/EC, and its provisions benefit EEA nationals paying their social insurance contributions in other EEA member states. The popularity of the EkhoA is explained that it exempts artists from the general rules on taxation and payment of social security contributions (9.5 percent personal income tax and 3.9 percent of pension while 1.6 percent of health care social insurance contributions) and gives them the opportunity to opt for the payment of a fixed-rate public contribution that is less and financially more beneficial than the general system. Implicitly, the reduced rate of public contributions (payment of the private person is 15% of the total income that is reduced by the VAT) results at the same time in reduced level of social security benefits. The payment of the ekho entitles the artist to obtain in kind health care and accidental health care services (excluding cash benefits like sick-pay or maternity benefits), accident annuity and pension (Art. 12 in EchoA). The ekho does not cover unemployment benefits.

This EkhoA (Art. 3) covers inter alia the following categories of persons: editor, literary translator, journalist, writer, actor, artist in fine arts, handicrafts and circus, puppet artist, musician and folk-musician, composer, director, camera-man, photographer, dancer, singer, choreographer, designer and decorator. They fall within the ambit of the Act if they realize an income reaching the yearly minimum wage but not exceeding HUF 25 million (90 000 €) from the enumerated artistic/creative activities. A person meeting the requirements of the Act is entitled but not obliged to make a declaration and register as an ekho-payer. The basis

\textsuperscript{154} Six nationals/Union citizens shall be on the grass if national eleven are playing. The compensation in foreign transfer of the player depends on his age. Below 16 he is considered as amateur requiring only the costs of education of new supplier. Over 21 the compensation is at least 50 000 EUR. Oral information from Hrutka, János and Nagy, Antal ex-member of national assorted team, sport agents and trainer, 28 June 2013.

\textsuperscript{155} This database was set up in 2011 providing all information of players with racing certificate in football including the citizenship and age of athletes.

\textsuperscript{156} Government Decree No.263 of 2006, 20 December.
of the pension amounts to 50 percent of the yearly income. In 2008 the taxation authority in a circular clarified the scope of the EkhoA: the beneficial taxation cannot be coupled with other taxation benefits. It also published a simplified registration form for echo-payers.

The nationals of the EEA are entitled to opt for the ekho on the same footing as Hungarian nationals if they work in Hungary. EEA nationals are entitled to choose the payment of ekho also in those cases when their social insurance obligations arose in other EEA Member States. It means that an EEA national can pay the beneficial 9.5 percent tax in Hungary even if s/he is not insured in Hungary in terms of social security. However, only EEA nationals are eligible to apply for the Ekho and their family members are excluded.

As a main rule artists of EEA nationality and their family members are granted free access to the Hungarian labour market. Hence artistic occupations are subject to a diploma. Pursuant to the general administrative rules employers are obliged to report the competent labour centre the employment of EEA nationals and their family members.

The researchers’ mobility is supported by the data and information basis, beyond the EURES. For instance, the homepage and portal for researchers mobility provides contacts, information on actual tenders, competitions and data on accession to academic jobs, scholarships, etc. Hungarian Science and Technology Foundation and eight regional centres (universities) are forming a network. E-Care and Euraxess relating to the mobility and carrier-development of Hungarian academics, scholars and researchers are relevant. This comparative basis would be also ensured by international conferences and exchange of information.

5. ACCESS TO STUDY GRANTS

Students attending the vocational school (14-21) are eligible for scholarship regardless their nationality or legal status if they participate as enrolled (practically resident) in study of missing craft. The list of crafts, occupations in shortage is determined by the regional Vocational Training Centre with consultation of chambers and employment agencies. According to the VocD the scholarship is financed from the Labour Force Public Foundation through the administration of the National Vocational and Adult Education Institution on the grounds of contributions of employers. The monthly 10-30 000 HUF (37-110 €) is available for each student whose study result in average is reaching the medium quality from his/her enrolment up to the time of the designated first professional examination. The VocD provides the grant for the student independently from other financial support that s/he is obtained.

The ministerial decree (No.1 of 2006, 17 February OM) determines the occupations and crafts that are chronically absent in certain regions or in the whole country. If a trainee undertakes to be trained in missing trade or occupation he is eligible for an additional scholarship (about 28 000 HUF monthly).

For instance, the Zala City Council established scholarship for students in vocational training (pupils attending 9-11 courses) if they are studying in ten missing crafts as the re-

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160 See http://www.tetalap.hu/eumobility/.
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gional Training and Development Centre determined (e.g. mason, electrician, Maschinen-
schlosser) providing them maximal 45 000 HUF monthly per capita if the study results are
good or excellent. All students are eligible for scholarship attending the vocational training
schools in the county. In Győr the same municipally established scholarship means 16 000
HUH monthly for local resident.  

Without repetition how the EEA nationals and family members access to student card
(IV/2.2.) and to higher education and student credit (see in IV/2.5.) here it is emphasised that
only students attending (fully or partially) state financed courses are eligible to study grants
in higher education on the grounds of StudD regardless nationality. State financed students
EEA nationals and their family members can be entitled to social maintenance payments and
other study grants, contribution to their books and accommodation as students taking pArt. in
education financed by the state residing in Hungary [Art. 80 (2) b in HighA]. This rule is in
full compliance with Art. 24 (2) of Directive 2004/38/EC which confirms that Member
States are not obliged to provide for social maintenance payments for student before they
obtain long-term resident status. It means that for a certain period of time the Member State
is exempted. However, after obtaining the long-term resident status this obligation comes
into force. Hungarian law benefits in general EEA nationals and their family members irre-
respect of the duration of their stay. Hungarian law also takes account of the Grzelczyk
case, according to which in certain cases a Member State is obliged to endure that a le-
gally resident student faces financial difficulties.

The sources of student supports for state financed students are coming from the budget
(Art. 85/C in HighA) but certain study grants are covered in pArt. by municipals [e.g. Bursa
Hungarica Scholarship in Art. 107(4)] Moreover, the HighA expressly delegates the power
to the Government to regulate the conditions of foreign students’ studies in Hungary. [Arti-
cle 80 (7)]

StudD regulates the following allowances:
- exemption from the fee for accommodation in the dormitory (e.g. student has own family
  or s/he is orphan) [Section 4(4)];
- scholarship if marks and results are over the average;
- regular or occasional social benefit;
- contribution to foreign studies or workshop practice,
- contribution buying textbooks, e-book,
- contribution to supporting instruments for handicapped students, and
- contribution to students’ sport and cultural activities (Section 7).

Applicant for the Bursa Hungarica Scholarship shall be a permanent resident in the terri-
itory of the municipal that finances it in pArt. (Section 18). Applicant for study grant to ob-
tain degree or to participate in a course in another EEA state in accredited higher education
institute shall be a Hungarian citizen (Section 25). Moreover, StudD stipulates that persons
falling within the scope of the FreeA (EEA nationals and their family members included)
shall be treated on an equal footing with Hungarian nationals as regards rights and obliga-
tions in terms of fees and benefits. [Section 28(2)]

161 http://www.moraferenciskola.hu/moraweb/index.php?option=com_content&view=article&id=58:az-
162 C-184/99 Rudy Grzelczyk v Centre Public d’Aide Sociale d’Ottignies Louvain-la Neuve eset (2001) ECR I-
6193.

89
The other grants financed by ministries, municipals, NGOs or churches are aiming to support PhD students, segregated but busy, talent students, religious students, kin-minority youngsters or Roma pupils and students. Their common character is that nationality or/and residence condition is directly or indirectly is required. The grants for young/experienced academics and professionals may be provided by applications and its procedure is evaluated, administered by the National Scholarship Body (MÔB – Balassi Institute). Table 4 illustrates diversity of public financed scholarships and grants in 2012. Naturally bilateral agreements can specify eligibility of grants (e.g. only for Hungarian and Italian citizens) while in other cases basically state financed PhD/undergraduate students can apply for scholarships regardless citizenship.

### Table 4: Examples of scholarships and grants

<table>
<thead>
<tr>
<th>Name of the grant</th>
<th>Purpose and eligibility</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Endowment (Útravaló)</td>
<td>Supporting Programme (by Wekerle Sándor Alapkezelő)</td>
<td>Government Decree No. 152 of 2005, 2 August</td>
</tr>
<tr>
<td>Bursa Hungariaca</td>
<td>Supporting poor students in high-level education - in practice only for Hungarian citizens</td>
<td>Government Decree No. 51 of 2007, 26 March</td>
</tr>
<tr>
<td>Republic Scholarship</td>
<td>Given by the senate of the tercier education institution for the best students regardless nationality</td>
<td>Government Decree No. 51 of 2007, 26 March in 2012 monthly 126 € per capita for 10 month</td>
</tr>
<tr>
<td>Kibelsberg Kunó Study Grant</td>
<td>Supporting the publicity of the Hungarian cultural heritage abroad</td>
<td>Government Decree No. 15 of 2010, 14 December</td>
</tr>
<tr>
<td>Minority Students’ Study Grant</td>
<td>Only for Hungarian citizens</td>
<td>Ministerial Decree No. 8 of 2012, 22 February (KIM)</td>
</tr>
<tr>
<td>Eötvös Grant</td>
<td>Supporting postgraduate studies abroad only for Hungarian citizens</td>
<td>Government Decree No. 54 of 1994, 13 April</td>
</tr>
<tr>
<td>Bolyai János Grant (Hungarian Academy of Sciences)</td>
<td>Supporting postdoctoral employment of young academics – only for Hungarian citizens or others dealing with Hungarian research</td>
<td>Government Decree No. 156 of 1997, 19 September</td>
</tr>
<tr>
<td>Deák Ferenc Grant</td>
<td>Supporting PhD students and young academics</td>
<td>Government Decree No. 101 of 2007, 8 May</td>
</tr>
<tr>
<td>Lippai Balázs Scholarship</td>
<td>Supporting poor but talent Roma students attending military and law enforcement schools only for Hungarian citizens</td>
<td>Order of the Minister of Defence No. 68 of 2012, 1 October</td>
</tr>
<tr>
<td>Béri Balog Ádám Scholarship</td>
<td>Supporting the best pupils attending the military courses at secondary schools only for Hungarian citizens</td>
<td>Order of the Minister of Defence No. 61 of 2011, 2 June</td>
</tr>
<tr>
<td>Hungarian Public Administrators Grant</td>
<td>Supporting the training of young professionals in other EU member state – only for Hungarian citizens (public officials)</td>
<td>Government Decree No. 228 of 2011, 28 October The programme contains salary as employee (stagier 360 €/month) in ministries and training abroad (210-240)</td>
</tr>
</tbody>
</table>

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**165** [http://www.scholarship.hu/](http://www.scholarship.hu/).

**166** Government Decree No.147 of 2002, 29 June.
6. YOUNG WORKERS

The Fundamental Law (25 April 2011) intends to give guarantees for young persons in labour:
- employee has right to be respected for his/her health, security and dignity [Art. XVII(3)];
- employment of minors – with exceptions as determined in act without endangering their physical, mental and moral development – is prohibited [Art. XVIII(1)];
- state takes protective measures for youngsters in labour [Art. XVIII(2)].

The Labour Code entered into force on 1st July 2012 transposes the Dir. 94/33/EC on protection of young workers in employment (Art. 299d). The most relevant rules are as follows:
- The age limit in labour is 16 years old with exception of regular students over 15 who can be employed during the summer holidays. Furthermore, minor below the age of 16 can be employed in the field of culture, arts, sport or advertising activity if guardian authority permits it. [Art. 34 (2)(3)] These rules are cogent and not dispositive (Art. 35). However, the Fundamentel Law delegates the power to define exceptional cases of employment of young persons below the labour age limit. The Labour Code only designates the files of work but the genuine criteria of ‘endangering physically, mentally or ethically’ in remunerated work have not been outlined. Instead of this hard work the competence of permission is moved to the guardian authority. This entire power of discretion is far from the rule of law. On the other side, the mandatory schooling age is limited to 16 in the PubedA while there is not available qualification up to this age (the minimal period of secondary school giving a certificate on a craft or occupation is three years, so below 17 the labourer is unqualified). How does it fit to the cited constitutional protection for youngsters?

- Labourers below the age of 18 in employment shall be considered as young workers as a special group in ambit of specific provisions of the Labour Code. [Art. 294 (1)a, Art. 4]
- The other vulnerable group of incapable workers (minors up to 14 or mentally ill persons) are protected the same provisions as young workers with exception of liability rules of labourer and there are further specificities in favour of them (employment must not endanger their detected health and physical conditions, labour instruction shall be determined in details, supervision on labour and threats shall be managed continuously) [Art. 212].
- Young workers are specially protected in the labour time (no at night, no extraordinary work, the working period maximal 8 hours within 24 hours, weekly working period frame), working break, extra paid holidays (5 days per annum), in workforce lending re-
The ministerial decree No. 7 of 2001, 4 October (ISM) shall be implemented on the employment or working with assignment contract by youngsters in schooling age (below 16) in sport sector. Accordingly, these young worker is allowed to be employed/worked as professional athlete only in sport branches in which professional racing system exists. Employment relationship/working contract requires the authorization by the city guardianship authority and parental consent. The following documents shall be attached to the application to the authority: the draft of the employment/labour contract, the certificate of the responsible sport federation on exiting racing system; the official note issued by the sport federation on his/her lawful and possible employment as professional athlete; and medical certificate on his/her physical conditions issued by the sport doctor. However, these documents are not required in transferring actions because by-laws have no reference on it. Moreover, the Fundamental Law (2011) determines that minors can be employed if act allows it – but ministerial decree is different from a mandatory act.

In order to support young holders of diploma, certificate or qualification the Act CXXIII of 2004 introduced a ‘programme getting labour experiences’ through fixed-time employment or as stagier paying reduced social insurance contributions by the employer. This programme contains no nationality requirement. There is no data on success of this form but these persons are in practice out of the age of ‘young workers’ defined in the Labour Code. (The START- card preferences are applicable until the end of 2013.)

Since January 2010 the Act on Labour Inspection has been applicable on investigation of the age of employee in the employment relations and all guarantees related to young workers (Act CXXVI of 2009). The number of young workers with EEA nationalities in Hungary has been almost invisible. In absence of specific check on EEA or young workers by the responsible labour authority, their obstacles in free movement cannot be identified. The National Labour Authority disclosed 10 cases of children below 14 in employment in 2010-2012 in agriculture, in building industry. The authority had no specific actions investigating child labour but in the frame of labour inspection they introduced a Guideline on checking methods of child labour in October 2012 (preventing also the labour accidents of minors). From the mentioned cases seven Union citizens were concerning. The ombudsman requested the inspectors to establish the institutional co-operation with child protection network taking into account mandatory obligations coming from the UN Convention on Children Rights and schooling age up to 16, and he offered to extent the Guidelines with these points of views.

Recent literature
Sárközy, Tamás: A sport mint nemzetstratégiai ágazat [Sport in governmental strategy]. Mozgó Világ, 2012/6:60-79
A munka méltósága. AJB Projektfüzete [The dignity of workers in the ombudsman experiences], 2013/4, Budapest, Január 2013

168 In 2010-2012 87 labour accidents of labourers below 18 were registered and from those 3 minors injured seriously and 1 minor died, www.nmh.hu.
Chapter VII
Application of Transitional Measures

Regulation in force:
- Act of Accession, Annex X.
- 2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról [the consolidated Act I of 2007 on entry and residence rights of persons being entitled to free movement and right to residence] (FreeA)
- 1991.évi IV. törvény a foglalkoztatás elősegítéséről és egy munkanélküliek ellátásáról [the consolidated Act IV of 1991 on Job Assistance and Unemployment Benefits] (UnemplA)
- 2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról [Act on Simplified Employment] partly inserted to the Labour Code
- 16/2010. (V. 13.) SZMM rendelet a harmadik országbeli állampolgárok magyarországi foglalkoztatásának engedélyezéséről [Decree No. 16 of 2010, 13 May of the Social and Labour Affairs Minister on Work Permits Issued to third-country Nationals in Hungary]

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

Since 1st January 2010 the Hungarian labour market has been fully opened, the formerly existing rather complicated system was annulled. The UnemplA has been changed also in its spirit by emphasising that all EEA nationals and their family members are treated as Hungarian nationals and their family members.

The UnemplA now clearly lays down (Article 2 (2)) that ‘refugees, asylum seekers, displaced persons, immigrants possessing permanent residence permits and persons falling within the personal scope of the FreeA shall enjoy the same rights and obligations as Hungarian nationals’.

The term ‘persons falling within the personal scope of the FreeA’ encompasses the family members of EEA nationals and the family members of Hungarian nationals as well. The definition of family member derives from the FreeA (Article 2 (b)), the UnemplA does not have an independent term for family member.

Albeit there is a general clause that in an Act or a Government decree the legislator can pass differing rules, at present this possibility is not applied, no diverse rules are existent.

The Labour Code and the new Act on Simplified Employment treat EEA nationals and their family members on an equal footing with Hungarian nationals.

Article 7 (1) in UnemplA in force stresses that the necessity of applying for a work permit to enter the labour market is essentially imposed only on third-country nationals. The wording is clear: ‘third-country nationals falling within the ambit of Act II of 2007 on the entry and residence of third-country nationals can enter the Hungarian labour market only with a work permit’. However, due to the obligations flowing from EC law special exemptions are granted to several categories. The exemptions are enumerated in Government Decree No. 355 of 2009, 30 December, while the ministerial decree on work permits (Ministerial Decree No. 8 of 1999) is now solely applicable to third-country nationals.

The National Tax and Customs Authority (TAO) needs to be notified by the employer at least one day before the employment of every single worker in Hungary (irrespective of the nationality of the worker). However, the employment office shall only be notified if the workers’ nationality is one of the EEA member states (or s/he is a family member). I still think that this is an administrative burden hence the TAO is a state organ and has the data already. It is a double checking to impose on the employer the obligation to notify the worker to another state organ as well. The employer still has to make a special record, submit it to the authorities and keep the record for 3 years. Obviously it embodies an additional obligation requiring time, energy and thereby also bears financial consequences.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA, ROMANIA AND CROATIA

Due to the liberalisation there are no specific rules on A2 workers in the Hungarian labour market.

The Government announced that temporary measures are not necessary imposed for Croatian labourers in Hungary. Due to the traditionally good relations between the two states, the labour market disturbances are not probable. According to expectations and analysis from 1 July 2013 the free access of Croatian citizens to the Hungarian labour market is ensured on the basis of the Accession Treaty.170

3. STATISTICS

The central registration of the EU workers and family members noticed by the employers including the simplified employment (Government Decree No.255 of 2007, 23 December) contains data and figures of all freely employed non-nationals in Hungary.171 Accordingly, the yearly number of registration noticed by the employers was 7 835 persons in 2012172 that means a decrease (-34%) within one year (2011: 11 847). Since 2009 the declination of EU migrant workers has been detected.

The component of migrant workers is almost stable: 4521 Romanian, 790 Slovakian, 305 German, 261 from UK and 238 Polish, so workers from the EU 15 (1 306) are marginal to

170 Nemzetgazdasági Minisztérium, 26 June 2013.
171 See the homepage of the National Employment Office www.munka.hu.
the labourers from EU12 (5 789). These labourers were employed mainly in agriculture, trade, processing industry and IT/communication. However, almost the half of these registered workers (3 367) was employed in simple (not qualified) work and only 18.3% of them were employed in highly qualified jobs. The total number of residing registered workers on 31 Dec 2012 was 51 191 persons with right to free movement. From them 49 488 were EU citizens (EU15: 5 145 and EU12: 44 343 persons).

This falling trend was going on: in January-March 2013 the notice on newly hired workers with right to free movement was sent to the central registry by employers, their number was 1 497 (in the 1st quarter of 2012: 1 428). Romanian nationals (656 persons), and workers from UK (251) and Slovakia (96) formed their main groups. In the first quarter of 2012 (Romanian 777, Slovakian 186, German 106, British 106) the component of labourers was similar than one year later when the dominance of EU12 (821) can be observed to EU15 (553). They were employed in IT/communication, agriculture, processing industry and administrative services, while 28.4% of registered new labourers were hired in jobs requiring diploma, and 23.7% in not qualified, simple work but 43.8% of labourers had a diploma.

On 31 March 2013 the total number of residing registered workers with right to free movement was 51 813 persons and from them 50 049 had Union citizenship. Inside this group the number of Romanian citizens was over 30 000 persons and Slovakian citizens over 9 000 persons while a declination of Polish and German nationals (below 1 500) was demonstrated. Thus the rate of EU15 (5 412 and in the same period of 2012: 5 409) is standard to the EU27 (50 049 and in the same period of 2012: 50 260). In the labour statistics Turkish labourers were inserted into the statistics on TCN workers with labour permission (e.g. in the first quarter of 2013 the permit holders meant 342 persons).

The Swiss Government on 1st May 2012 introduced the yearly quota for settlement (permanent) residence permit (2000 permits) only for workers from the EU8. Although these workers mean only ten percent of all union workers but this quota will reduce the actually issued permits of 6500 to 2000 that would be more than symbolic message on the grounds of recent referenda on immigration. The minister Simonetta Sommarunga referred on political consensus how to set at ease the anti-migration voters in this way. The V4 states refused this transitional, unfriendly political measure. Moreover the final closure in the agreement concluded between the Switzerland and the EU (2004) allows implementation of temporary restrictions against the EU workers but not selectively. 174

Recent literature

Chapter VIII
Miscellaneous

1. **Relationship between Regulation 1408/71-883/04 and Art. 45 TFUE and Regulation 1612/68**

In prior reports it was already highlighted that there has been a problem between Romania and Hungary as regards the denial of Romania to supervise pension claims. This situation still exists and no development can be traced.\(^{175}\)

There is a concrete set of cases in which the relationship between Regulation 883/2004/EC and Regulation 1612/68/EC together with union citizenship plays an outstanding role. The essence of the cases is as follows. Until 31st of October 2006 there has been a bilateral agreement between the two countries. Pursuant to this agreement the country where the person resided when s/he reached pensionable age was responsible for the payment of benefits. In fact it meant that Hungary was (and still is) responsible for the payment of pensions where no payment of contributions at all took place in Hungary but only in Romania if the person has finally chosen Hungarian residence. This is contrary to the principles of Regulation 883/2004/EC that is based on the *lex loci laboris* principle.

Both Regulation 1408/71/EEC and Regulation 883/2004/EC provides for the possibility of supervision of pensions for these cases. However, Romania opposes to effectuate the supervision stating that the Regulation does not apply hence these persons only belonged to the legislation of one Member State (Romania). In their view there is a lack of cross-border element. In a number of cases supervision would result in a higher pension for the person so the denial of supervision is equivalent to loss of rights.

The responsible ministry in Hungary cannot share this view. In its view persons who worked only in Romania but receive pension from Hungary fall within the personal scope of the Regulation. Moreover, these persons as migrant union citizens are entitled to receive the highest possible pensions.

Romanian authorities do not pass any decisions on the applications for supervision and therefore no legal remedies are available. Persons do not have the right to appeal, consequently they are deprived from their rights under Regulation 883/2004/EC and union citizenship. This approach rules out the effectuation of rights.

In would be contrary to the principle of free movement of workers.

2. **Relationship between the rules of Directive 2004/38 and Regulation 1612/68 for frontier workers**

*What is the relationship between residence and entitlement to health care for migrants?*

The Act on Social Insurance (Act LXXX of 1997) distinguishes basically four categories from the point of view of eligibility to health care benefits:

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\(^{175}\) Thanks to the information given by Ágoston, Erzsébet (a chair of a civil organisation of pensioners from Romania) and Conference on social rights of migrants (October 2009) financed by the EIF.
- The insured persons fall within the first category, who, based on their economic activity and the related payment of contributions, are entitled to all sickness insurance benefits, including both in kind (medical) and cash benefits.

- The so-called ‘entitled persons’ belong to the second category, who, based on their former insurance (e.g. pensioners) or on their actual status (e.g. minors or students), are entitled to in kind benefits, without being obliged to pay the health service contribution.

- The persons who are obliged to pay the health service contribution and who can only have access to in kind benefits, based on individual contribution payment, fall within the third category; they pay 5,100 HUF (19 €) per month (6,390 HUF in 2012)

- Persons who enter into agreement with the Health Insurance Fund, based on their discretionary decision, belong to the fourth category are entitled to in kind benefits – with the parallel application of some restrictive rules. The rage of benefits provided by the contract is narrower.

i. In the first six month of entitlement the beneficiary is limited to the emergency ones, unless the person concerned pays the six month contribution in one sum. There are three further restrictions for people in contractual relationship.

ii. The person concerned is only entitled to emergency dental services.

iii. The person in question is not entitled to reimbursement of cost for medical attendance which became necessary in the territory of a third state (outside the territory of EEA) in case of life-threatening danger or a danger against physical integrity, or if the process of requiring a benefit in an EEA State infringed the community law. In the contractual relation the person concerned cannot be beneficiary to such benefits that are not accessible in Hungary on the expense of the Hungarian insurance fund in a different country.

iv. The person concerned is not entitled to medical treatments abroad. This sum is the 50 percent of the minimum wage for adults (36,750 HUF = 133 € in 2010 and 39,000 HUF = 142 € for 2011, 46,750 HUF = 154 € in 2012), 30 percent for children.

The precondition for the entitlements in point b-c is that the person in question – according to Act LVI of 1992 on the registry of citizens’ data and residence – must be a resident in Hungary. Usually EEA nationals do not fall within category b (hence they are not family members or minors) but can fall under point c or d. Point c is more favourable hence the person is required only 6,500 HUF (23 €) per month, not 50 percent of the minimum monthly wage. That is why several EEA nationals urge to be included in point III.

To be more specific and to counterattack social dumping, the Hungarian legislator decided to set as a pre-condition for group III that the person has been residing in Hungary for at least one year prior to the request [Article 39 (3)]. If special conditions are met, a 90 day period can be included even if the person did not have registered place of stay. This article was inserted to the Act on Social Insurance in 2009 (by Article 27 of Act XXXV of 2009) on the modifications of tax rules and the related legislation, with effect from 1 July 2009.

In this case the TAO examines the existence of the minimum one year residence. If sufficient data is not in the disposition of the TAO, it will contact the Central Office for Administrative and Electronic Public Services (henceforward: COE) in order to get more information on residence. Concerning the documents (09T1011) submitted after 1st July 2009, the TAO must supervise whether the person has a registered residence for the previous one year period (a maximum 90 day period can be included when the person did not have any
registered place of stay). The TAO is informed from the COE on addresses. However, the information can be inaccurate due to the fact that the COE examines only the current place of residence at first. If the one year criterion is not fulfilled, - in order to aggregate periods - it should be examined whether previously a different place of residence was registered. This information is given upon the request of the TAO.

In light of the social security coordination rules, any residence in an EEA Member State is aggregated when calculating this one year period. As a certificate, a special document (formerly E 104) has to be presented. If the one year period can not be evidenced the person can only be entitled to enter into a contract with the Health Insurance Fund to receive benefits.

According to the rules of EU law a person can only be affiliated to one Member State’s legislation. It means that if a person affiliates to another Member State’s social security system, it will automatically lose its ties to the previously competent Member State. However, in case of bilateral agreements with third countries, double insurance is not prohibited. That is indeed the practice of Hungary that persons who work in a third country can retain their affiliation in Hungary.\(^{177}\)

In 1962 Hungary and Russia (Soviet Union) concluded an agreement on social security. The principal rule of the agreement on application reads as follows: when a citizen moves to the other state in order to take up employment, the rules of the place of employment will be applicable. Thus, if an employee takes an unpaid leave (insured, pending legal relationship) in Hungary, then contributions must be paid exclusively in Russia.

It is noteworthy that however the social security relationship in Hungary is pending, there is another category (insured resident) according to which the Hungarian citizen is obliged to pay social security contributions, irrespective for his/her leave abroad, if s/he has a residence in Hungary. In principle this means a leave for over 3 month. In case of the abandonment of this obligation, the person can be sanctioned for maximum 30 000 HUF (105 €). The person is entitled to keep his/her residence status, because of repeating returns. This is possible, provided that s/he submits a declaration to the TAO and pays the monthly 6500 HUF (23 €) contribution. If this is not the case, then s/he has to report the move abroad to the notary of the concerned local municipal or to the concerned embassy/consulate abroad. In this case the 6500 HUF contribution is not due. In practise, the TAO recovers the due contributions, which is 88 000 HUF (300 €) per 12 month.

3. **EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS**

The most important issue among ‘Miscellaneous’ has been definitely the emigration of health care professionals (doctors, nurses) in the recent years while incoming migration in this field is non-existent. On the contrary, the emigration of health care professionals reaches high numbers that is, indeed a huge problem for the country. In 2010 already 1777 health care professionals asked for the so-called ‘professional certificate’ that is the pre-requisite for them to leave the country with the aim of taking up employment in another country.\(^{178}\) In 2009 this number amounted to 1614. In 2010 578 persons left for the UK, 354 persons for

\(^{177}\) [http://www.oep.hu/portal/page?_pageid=34,35207&_dad=portal&_schema=PORTAL](http://www.oep.hu/portal/page?_pageid=34,35207&_dad=portal&_schema=PORTAL).

Germany, 94 for Sweden, 66-65 persons to France and Italy. This is a very sensitive loss for Hungary hence the education of these persons requires huge financial and professional investment, and it goes in vain and even the high level health care services can not be maintained in the long-term planning. According to the data of the Central Statistical Office the absence of medical doctors in the health care system in Hungary was 1634 and 3433 other health care professionals in 2011.

The Health Manager Centre at University of Semmelweis has made research on migration potential and immigration of health staff for years. Table 5 represents the marginal inflow and potential outflow of medical doctors. Naturally the number of requested professional certificate from the authority (EEKH) is below the realised migratory movement. Its surveys since 2003 on migration plan of young doctors and dentists without professional exam would reflect better the outflow. According to last results from 2011 the 54.2% of respondent doctors (N=365) and 43.3% of respondent (N=67) dentists are planning labour migration, mainly to UK and Germany. Taking into account the rate of professional fields with strong preparatory to leave is really high among anaestesiologists, surgeons, internists, radiologists, gynaecologists and paediatricians.

<table>
<thead>
<tr>
<th>Year</th>
<th>Issued professional certificate for doctors in Hungary</th>
<th>Recognition of foreign diploma of doctors</th>
<th>Doctors obtained diploma in Hungary</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>906</td>
<td>n.d.</td>
<td>1124</td>
</tr>
<tr>
<td>2005</td>
<td>899</td>
<td>n.d.</td>
<td>1151</td>
</tr>
<tr>
<td>2006</td>
<td>721</td>
<td>40</td>
<td>1069</td>
</tr>
<tr>
<td>2007</td>
<td>695</td>
<td>106</td>
<td>1005</td>
</tr>
<tr>
<td>2008</td>
<td>803</td>
<td>64</td>
<td>960</td>
</tr>
<tr>
<td>2009</td>
<td>887</td>
<td>49</td>
<td>923</td>
</tr>
<tr>
<td>2010</td>
<td>1111</td>
<td>41</td>
<td>1040</td>
</tr>
<tr>
<td>2011</td>
<td>1200</td>
<td>49</td>
<td>1148</td>
</tr>
<tr>
<td>2012</td>
<td>1108</td>
<td>n.d.</td>
<td>n.d.</td>
</tr>
</tbody>
</table>

The Alliance of Young Doctors, Trade Union of Health Professionals, Chamber of Doctors alone and together has required consolidated employment and financial conditions in heath care for years. The government adopted the Semmelweis Plan on health care reform including the institutional and human resource modernisation. In springtime 2012 the responsible state secretary agreed the Alliance of Young Doctors on a prompt severe salary raise. The Resolution of the Government determines how this finance is manageable from the Health Care Fund (30.5 billion HUF) until July 2012. In practice it means about 10-60 000 HUF monthly for doctors and 3-5000 HUF monthly for nurses and other health workers. However there are critical voices saying that this action is drop to dry desert and without plus other resource the human resource crisis is going on. However, the budget cut, the nationalisation of 67 private corporate hospitals, sending doctors in public sector to the old-age pension, change in local municipals’ competence in health care as employer of many doctors, instead

179 1071/2012.(III.22.) Kormányhatározat.
of the promised increase of regular salary for doctors in public sector their changing comple-
ments were raised in 2012, panel doctors were left from reassign remuneration – so there 
are many conflicts in health care.\footnote{See the statement of Bélteczki, János (MOSZ), Éger, István (MOK), Rácz, Jenő (MKSZ) 22 October 2012, 16 August 2012, April 4, 2013.}

The Semmelweis Plan, announced by the health sector and supported by the Gover-
ment, dedicates a separate chapter to the issue of human resources in health care. The sector 

is making every effort, using the available means, to improve the working conditions for 

health workers and to move their financial circumstances in a positive direction, for these are 

the factors which are most decisive in influencing the decision of professionals to move 

abroad.

A key objective of the measures (utilising the acquired expertise in Hungary, making the 

most of national state funds invested in high quality training, maintaining skilled labour) 

contributes to the more effective operations in the sector and the economy and to providing 

health care services to the public at a high level. To this end, the following measures were 

taken:

• Deleting the resident doctors’ ‘stay-at-home’ status (2010) A rule introduced earlier and 

  providing the following has been deleted: those attending state subsidised resident medi-

  cal training would have been obliged to perform health care activities at a public fi-

  nanced health care provider in Hungary for 4 years after passing their technical examina-

  tion.

• The state subsidy granted on the grounds of a high-demand vocation was first paid to 

  those starting their training in 2010. In accordance with this measure, employers may ap-

  ply for a state subsidy amounting to 50% of diploma holders' minimum wage (HUF 64,750/month) for residents who work in a vocation that the minister has determined to 

  be high in demand, and who attend state financed training.

• Simplifying the system of specialist training The rules in effect from 1 May 2011 loos-

  ened the once rigid system of specialist training in a number of criteria. These modifica-

  tions improved the transparency of the specialist training process for health care provid-

  ers, specialist candidates and tertiary health care institutions alike. Key components:

  - creating continuity in entering specialist training (earlier, the possibility was granted 

    once a year);

  - ensuring the possibility of change in speciality during training;

  - ensuring the possibility of change in healthcare provider during training;

  - subsidy to reimburse specialist candidates for the material costs of training: HUF 

    100,000/year net amount.

• Launch of Scholarship-type Resident Support Programmes (Lajos Markusovszky Schol-

  arship, Károly Than Scholarship). In the frames of the Scholarship Programme, the spe-

  cialist or special pharmacist candidate is expected to agree to work in Hungary after re-

  ceiving his or her special qualification, for at least as long as the scholarship was paid to 

  him or her, to perform a specialist's/special pharmacist's activity at a health care provider 

  financed by social insurance, in full-time (or proportionately lengthened part-time) em-

 loyment and not to accept parasolvency in any form in connection with the health care 

  service provided by him or her. In return, the candidate is entitled to a HUF 100,000 

  monthly net scholarship during the special training period. As an outcome of the Resi-

  dent Support Programme, 600 successful applicants were announced in the Mar-
kusovszky Scholarship and all the scholarship positions were occupied. 16 successful applications were announced in the Károly Than Scholarship.

In 2011, a benefit equal to nearly three months' sum of bonus (job supplement) was paid, in connection with the statutory job supplement due to those working in positions subject to high risk and major workload at health care providers. This one-time benefit applied to each health care professional, irrespective of the employer. According to the December 2011 data, from among those employed in full-time or part-time jobs in health care institutions operating in various economic forms, 68 100 persons received the wage supplement.\(^{182}\)

### 3.1. Integration measures

It was explained from a research\(^{183}\) that acquisition of Hungarian citizenship and political rights or participation in social dialogue has not belonged to the major motivation of Union migrants. Consequently the political integration is less motivated for Union labour migrants urging the municipals or governmental efforts.

Instead of a developed integration policy that has been promised by the responsible ministry for years an accelerated naturalisation regulation is offered for co-ethnics and ethnic migrants. The amendment of Act on Hungarian Nationality (Act LV of 1993) in 2010 has produced about 400 000 newly naturalised nationals mainly from Romania, Slovakia, Serbia and Ukraine and Diaspora within 30 months.

### 3.2. Immigration policies for third-country nationals and the Union preference principle

The prime minister evaluating the first pArt. of the governmental coalition ruling\(^{184}\) stated that cultural homogeneity would become our precious value in future. Although there is no threat of clashes between religious or civilization circles in Hungary but all immigration, acceptance, integration initiatives and issues would be approached with great wariness. This cultural homogeneity is coming from our history and not from nationalism or racism – as he stressed.

The ECJ and the Council Decision 2008/157/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC have not been transposed to the Hungarian rules.

Although the appearance of Turkish workers has been limited, the entry, residence and labour authorisation cannot ensure their preferential treatment in accordance with Ankara Agreement, Association Council’s Decision (1/80) or the referred Decision.

There were 176 new work permits issued for Turkish nationals in 2011 and 193 in 2012. 413 Turkish persons were employed in Hungary on 31 March 2011 and only 347 persons on

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182 Government Decree 256 of 2013, July 5.
31 December 2012. Their number as employee is marginal\textsuperscript{185} From surveys we know that Turklish nationals are private or family entrepenerus in majority of cases than employee.

What are the applicable rules on Turkish workers?

- According to the UnemplA each TCN worker is employed lawfully in possession of valid labour permit (and visa) unless the UnemplA or the Government Decree provides exemptions without reference on international commitments and EU law obligations.
- The exemptions are determined in the Government Decree No.355 of 2009, 30 December. However among the 24 exempted reasons there is no direct reference on the gradually free accession of Turkish workers to the Hungarian labour market, and the abstract, closure of preferences is also missing.
- Finally, the Ministerial Decree issued by the Social and Labour Ministry No.16 of 2010, 13 May determines the labour authorisation for TCN differentiating the general requirements, the conditions for seasonal workers permission, regime without labour market test (on the grounds of 17 reasons) and the rules applicable for family members – but without clean reference on Turkish workers.

In brief, there is a high risk that law practitioners in Hungary neglect the implementation of the gradual preference system for entry, residence and employment of Turkish workers, and rights for family members (spouse and child).

3.3. Return of nationals to new EU Member States

The labour migration in rather circular in Hungary, and the world economic recession has been contributing to the identical growth of emigration and of return\textsuperscript{186} A significant part of returnees is registered as unemployed but they can hardly find a convenient job and they are unemployed during the transition period while they are looking for a good job at home or return abroad.

Hungary (Mid-Pannon Region involving labour offices, innovation agency, a vocational training centre in Székesfehérvár together with the organisations of labourers and employers) joined to a project (2010-2014) concerning the return migration. The Re-Turn project partnership consists of 12 partners from 7 CE countries (DE\textsuperscript{187}, AT, IT, PL, CZ, SI, HU) representing regional and sub-regional public and not-for-profit bodies (3 public authorities, 1 association of public authorities, 3 qualification and training organizations), research organizations (2 universities and 2 research institutes) and 1 international organization lobbying for migration issues. The project consortium is strengthened by associated public authorities. It is implemented (3 million EUR) through the Central Europe programme, co-financed by the EU and ERDF. Its first counselling office was opened in November 2012 in Székesfehérvár providing free-toll information by phone or by five consultants personally for returned migrant workers. The project gathered information on-line questionnaire survey on migration movement, needs of labour market and practice on re-integration to the domestic

\textsuperscript{187} The project is led by the Leibniz Institute for Regional Geography.
Beyond the analysis the project intends to set up proposals on the amalgam of the regional development and labour migration policy because returnees possess valuable human capital resources. However, they show a comparatively high tendency not to enter the local labour markets. Whether this is because returnees lack important social ties and networks in the origin country or because returnees can just afford to search longer for a job due to savings from higher earnings or because foreign work experience is a signal of being unsuccessful on local labour markets for employers, remains unclear. Data from the case study reports indicate that these regions are predominantly characterised by traditional economy and an oversupply on the labour market with little chances of increased demand in the near future. This offers only limited employment perspectives for returning migrants even though their skills and their experiences and probably also their formal education and vocational training will be higher than average giving them a competitive advantage. A factor in their favour though is the aging of most of the regions, which should generally shorten the current excess labour supply.

The EUROFOUND published own research result in August 2012 on labour mobility within the EU: The impact of return migration. As a relatively new mobility pattern within the EU, the post-accession return migration of workers from Central and Eastern European (CEE) countries has recently begun to generate increasing interest among academics, experts and practitioners. The return migration of these workers grew in importance in the context of the global economic crisis as it was believed that economic fluctuations across Europe might induce return migration of CEE nationals from the EU15 countries. This research aimed to contribute to a better understanding of return migration to CEE countries by generating new empirical evidence through an analysis of statistical data and literature and also through interviews with returnees, policymakers and experts on migration in the following four CEE countries: Hungary, Latvia, Poland and Romania. The research found that emigrants from these countries did not return home en masse; many either stayed in the host country, adopting a wait-and-see stance, or migrated onward to other destination countries. Due to this diversity they propose to improve data collection on the outflow and return migration including statistical data gathering and a common definition of „return migration” as a precondition to proper labour market measures.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

The Ombudsman and Equal Treatment Body (ETA) are receiving complaints from Union citizens and family members that would relate to the free movement of workers. Their reports, investigations and initiatives are inserted to the Chapter IV and Chapter V reflects on the most important issues, such as
- foreign number-plates of vehicle,
- social advantages for Union citizens,
- notion of the family;
- registration of address;
- discrimination on the grounds of ‘other condition’ instead of nationality.

The picture of transposed rules to the municipal decrees is fragmented. Some examples may draw the attention to further investigations. A mixed-couple (German father and Hungarian mother) that were living and working in Sopron complained to the Ombudsman for discrimination on the ground of father’s nationality. The local municipal’s Decree (No. 23 of 2006, 29 June) provides a newborn baby-support (150 €) to young parents if child is Hungarian national and parents are permanent residents and they have address in the town Sopron. The couple’s request was refused because of the father non-national status, and finally the clerk in municipal and mayor confessed that due to the economic recession and budget deficit there was no cover. The modification of the Decree was promised. The investigation has not finished yet. However, the other local Decrees in Sopron (on housing subsidies, on car parking, on study grant, on implementation of SocialA, etc.) avoid nationality as pre-condition for social advantages but all of those are based on registered address and (permanent, regular or at least 5 years continuous) residence in the town.

The Ombudsman stated that a municipal (in Somogy county) and its taxation department violated the residing EU nationals because it prohibited to use the clients’ mother language in the taxation procedure, their translator was refused by the official, and their tax exemption was neglected although they were eligible to exemption as other similar but national proprietors in the village. Its investigation disclosed that abusive practice has been accomplished for years against other union citizens living in the village not only against the complaining German national. The Ombudsman noticed to stop this discriminative legal practice.

5. SEMINARS, REPORTS AND ARTICLES

Last December the Government designated what strategic plans have to prepare or renew. Among others the minister of the interior has to design new migration strategy and priorities to the national programmes supported by the Refugee and Migration Funds within the financial period 2014-2020 in the EU. It will be ready and submitted to the government approval until 31 August 2013. Perhaps it will fit to the fresh four years strategy of combating human trafficking in the nexus to the European Strategy (2008-2012) that was made in May 2013. The minister of national economy also has to set up priorities to the employment policy including its instruments and governmental measures that would serve as basis for the implementation of the vocational and adult training programmes supported by the European Social Fund in 2014-2020. Its deadline is 30 September 2013.

The strategy making work of the ministries includes an exchange of views (9 April 2013) with the Hungarian Academy of Sciences, Hungarian Helsinki Committee, the Ombudsman and the representatives of UNHCR. Its summary was published in Fundamentum and Földrész joint publication 2013 June. Moreover, the Magyar Tudomány as monthly periodical of the Hungarian Academy of Sciences also contributed to this effort with a thematic issue on Migration in Contemporary Hungary (2013/3:242-298) The guest editor (Prof.Sik, Endre) selected the most relevant components of the movements and its ramifications:

190 NEK723/2011, June 2011 OBH.
192 MTI 30 June 2011 Elmarasztalt egy somogyi önkormányzatot az ombudsman.
• main pillars of migration law in Hungary (Tóth, Judit);
• xenophoby and discrimination (Simonovits, Bori and Szalai, Boglárka);
• migration with ethnic, linguistic boundaries, immigrants and new citizens from the adja-
cent states – changing trends (Gödri, Irén);
• transnational aspects of migratory movements (Várhalmi, Zoltán);
• the trend of migration potential in Hungary (Nyíró, Zsuzsa);
• Hungarians abroad: notes on workforce migration (Hárs, Ágnes); and
• migration from health care (Girasek et al.).

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Vita a szabad költözködéshez visszavezető útról. Tóth Judit és Szalayné Sándor Erzsébet
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