REPORT
on the Free Movement of Workers
in Hungary in 2011-2012

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Introduction

The trend of decreasing number of union workers in Hungary was going on in 2011. While the number of registered labourers by the labour market centres was 18,500 in 2009, 13,200 in 2010 it was only 11,847 in 2011. It means a 10 percent decrease within a year. The share of 11,847 union workers was different from the previous year: 54 percent of them were Romanians (-7.6 percent to 2010), 14 percent were Slovaks (-51 percent to 2010) while 10.4 percent was coming from the UK (+140 percent to 2010). The capital has been their main destination area, its rate was 41 percent in 2011. Looking for their presence in various fields of economy it can be said that

- they were employed mainly in agriculture, IT, communication, service supporting activities, trade and processing industry,
- they were employed in jobs without specific qualification (35 percent), with medium qualification (20 percent) and high qualification (23 percent).

Since April 2010 the legislative power has been operating in upgraded speed. The number of passed acts is over 300 within 25 months. These rules provoke an accelerated executive decree making procedure at governmental, ministerial and municipal level. Regardless disputes in preparatory and unconstitutional results (such as violation of vacatio legis and prohibition of ex post facto law) the applicable law has been hardly determined while the legal certainty has been contravened.

The Basic Law (25 April 2011) was altered with dispatch in last days of December (Addendum to the Basic Law, 31 December 2011) in a form of transitory rules. In fact numerous provisions from other acts are transposed to the Basic Law entering into force on 1st January 2012. Its most disputed provision says (Art 29) that an extra tax may be levied if legislative error of Hungary would be released by the decisions of the Constitutional Court, the European Court of Justice or other legal forum and paying the compensation requires the financial contribution to the state budget (treasury) due to the high state debt. This blank entitlement will cover on all taxpayers regardless their citizenship.

The full list of passed acts cannot be specified, so I mention some legal sources that would be relevant for Union workers residing in Hungary:

- The Act on Municipals (Act CLXXXIX of 2011) replaces the system of local self-governments setting up in 1990. Schooling, health and social care or cultural services are moving out from municipalities’ competence to the centralised state public administration, so schools, hospitals, museums keeping up by municipals are nationalised (together with their buildings, properties and assets). Thus integration of residing migrants is hardly addressed to the local communities when the Act enters into force in 2012-2013.
- The Act on Public Education (Act CXC of 2011) determines the age and personal scope of obligatory schooling. It will cover on Union workers/family members residing in Hungary.

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2 Papp, Imre, The twins of ratione temporis in the light of the Constitutional Court’s case-law, PhD dissertation, ELTE Faculty of Law, Doctoral School, Budapest 2012.
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 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 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 but the daily child care on equal foot is not supported.

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 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.


There are some social tensions because of fast restructured public services without proper reconciliation with stakeholders and required time for adaptation to changes (e.g. in tercier education, public education and pedagogical services, vocational training, medical care system, public servant and officials, publicly financed media, municipal system, voting regime). In this context labour migration to Hungary has been fully neglected in discourses while potential outflow, commuters and returned Hungarian migrants appear in press.

Two examples:

- news and publications dealing with migrants in the Hungarian press radiate a one-sided picture. 18% of information belong to criminality, 8% to anti-migration tendencies while
only 5% of information on how to support migrants, 4% to individual stories and 2% to foreigners’ culture;⁴

- due to changes in tercier education the secondary school children taking maturity exam in growing rate (one-third of them) intend to choose tercier education in Austria, Germany, UK, Slovakia or Romania.⁵

The European Commission is in a dialogue with the government on the Labour Code, the cafeteria management, public and tercier education, too in springtime of 2012.

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⁴ Külföldiek Magyarországon. Segédlet újságíróknak a migráció és a menekültügy témájának bemutatásához. Gyalai Gábor, 2011 [Foreigners in Hungary. Guide on migration to journalists by the Hungarian Helsinki Committee, 2011 – supported by the EIF], Migránsok a magyar médiában, avagy a bevándorlás és a külföldiek 2011-ben a sajtó szemével, MHB kutatása [Migrants in the Hungarian press in 2011 – how immigration is reflected in the media, 2011 – Hungarian Helsinki Committee survey was supported by the EIF].

⁵ Survey made by HVG. Fel, búcsúcsókra. Felvételizők kényszerpályán HVG 28 April 2012.
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 [Act I of 2007 on entry and residence rights of persons being entitled to free movement and right to residence] amended recently by the Act CV of 2011 and Act CCI of 2011 (FreeA)
- 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 [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] modified recently by the Ministerial Decree (NEFMI) No.10 of 2011, 30 March (SanitD)
- 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 [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] amended recently by the Ministerial Decree of Internal Affairs No. 1 of 2011, 18 February and No.27 of 2011, 24 August (FeeD)

1. Transposition of Provisions Specific for Workers

 Preconditions of entry are regulated by FreeA (Art. 3, 5)

6 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.
EEA citizens with a valid travel document or personal identity card 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) shall also apply to entry. If entry is denied because the entry conditions have not been fulfilled, the border traffic authority 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. Moreover, an EEA national with a valid travel document or identity card and 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 PublicA and HighA 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 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.

On ceasing paid employment, an EEA national shall retain 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 the Republic of Hungary for five years without interruption. 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 the Republic 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 the Republic 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.

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 7 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, entrepre-

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7 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)
neurship card or other proper way. The minimal monthly income must exceed the lawful monthly minimal pension\(^8\) 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. 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. 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 shall be obliged to report this to the competent authority.

Departure refers on the following issues (Art. 15(2)-(4), 33-34, 38-48, 64 of FreeA).\(^9\)

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.

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\(^8\) It is decided by the Government Decree, so yearly its amount is changing, however since January 2008 it has unchanged: 28 500 HUF.

\(^9\) Ministerial Decree of Justice and Law Enforcement No. 27 of 2007, 31 May contains procedural provisions, e.g. claim for compensation of unlawful detention.
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 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.

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

- 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;
- 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 10 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 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.

An EEA national prohibited from entry and residence at the same time as his/her expulsion as an alien may, after one year has 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.

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) regular social allowance, regular 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 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,
• Lues,
• Typhoid or paratyphoid in pathogen condition, or
• hepatitis B.

10 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.
11 Section 25 of FreeMD.
12 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.
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. The same interpretation was issued in another trial against a Romanian offender that was sentenced additionally to expulsion but it was annulated in the final judgement because he committed a simple theft, so he could not be expelled.

2. SITUATION OF JOB-SEEKERS

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 an-

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13 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 compliant term for smuggling of human being is up to 8 years.
other 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 (Art 20 (1), 28 (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 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 is not known conflicts with Roma labourers or job-seekers coming from other Member States to Hungary.

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 newly 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 in May 2012. He inserts the Roma strategy into the human resources context in future in Hungary.

**Recent literature**


Chapter II

Members of the family

Regulation in force:

- 2007. évi I. törvény a szabad mozgás és tartózkodás jogával rendelkező személyek beutazásáról és tartózkodásáról [Act I of 2007 on entry and residence rights of persons being entitled to free movement and right to residence] amended recently by the Act CV of 2011 and Act CCI of 2011 (FreeA)


- 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 [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] modified recently by the Ministerial Decree (NEFMI) No.10 of 2011, 30 March (SanitD)


- 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 [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] amended recently by the Ministerial Decree of Internal Affairs No. 1 of 2011, 18 February and No.27 of 2011, 24 August (FeeD)


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 descendant below 21 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.

- TCN partner of EEA or Hungarian national if the partnership is registered by the Hungarian or other authority in a member state.

It shall be emphasised that 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.

2. **Entry and Residence Rights**

*Entry and residence not exceeding three months [Art 3-5, 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 Hun-
garian/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 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 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) 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**. A court case interpreted the bilateral agreement with

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15 In accordance with the Reg. 1931/2006/EC and bilateral treaties.
16 Tight conditions entered into force on 24 December 2010.
Ukraine determining that period of residence (for economic, cultural or family reasons) within six months is not allowed to exceed the uninterrupted three months.\footnote{Bírósági Határozatok 2011/265 with reference on the bilateral agreement published in Act CLIII of 2007.}

Residence \textit{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 household 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 \textit{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.
- 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 the Republic 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 the Republic 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 six months 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.

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 maxi-
mum 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 10 working days by the consular office, if the purpose of travel is certified (FreeD Section 9(4) and 11). 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.

- **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 unit, 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 40 € and for EEA national’s family member is 6€ 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\(^\text{18}\). 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\(^\text{19}\) 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. (FreeD, 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

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\(^{18}\) Government Decree No. 182 of 2009, 10 September.

\(^{19}\) It is decided by the Government Decree, so yearly its amount is changing, however in 2008-2010 was fixed in 28 500 HUF.
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 unit 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. Fee is the same as for residence card (6 €) 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.20 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).

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 3 years in the first instance, which may be extended by a maximum of 3 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.

The competent authority may expel an EEA national or 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;

- has legally in the country for less than 10 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.

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 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.

Family member prohibited from entry and residence at the same time as his/her expulsion as an alien may, after one year has 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 3 months. If the competent authority ends the prohibition of entry and residence, it shall see to its repeal.

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 3 months (continuously or in parts within a calendar year)²¹

- regular social allowance,

- regular age benefit, or

- nursing benefit on the grounds of SocialA.

²¹ 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.
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 (Section 25 of FreeMD) 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 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\textsuperscript{22}, 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.

3. IMPPLICATIONS 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 discretional 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 3 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 that is replaced by the government office on the same 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 residence 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 appli-

\textsuperscript{22} 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. See \url{www.tasz.hu}.
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 inconvenience 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 address format or there is no a formal contract concluded) but foreigners have to manage this hardship.

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’.

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.

23 Eladó a menyasszony, Heti Válasz - 2 February 2012.
24 Information thanks to dr.Parragi Mária, OIN - March 2012.
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) and (3) of the UnemplA expressly confirms the obligation of equal treatment. It states that for matters falling within the ambit of the Act (the registry as a job-seeker, and for the grant of cash benefits) the rules of EC law shall be applied to any union citizen and his/her family member. In this regard union citizens’ family member is put on the same footing as Hungarian nationals.

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.

PuboA deals with the family members of EEA nationals. Art. 7 (1) states that public officials shall be only Hungarian nationals. As an exception, Art. 7 (8), however, declares 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 that entered into force on 1 March 2012 preserves this exception for union citizens and their family members 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.

Recent literature
Töttős Ágnes, Az Európai Bíróság legújabb ítélkezési gyakorlatának hatása az idegenrendészeti jogalkalmazásra, [Effect of the newest case-law of the ECJ on the application of aliens’ law], Pécsi Határőr Tudományos Közlemények XII. száma, Tanulmányok a
Chapter III:
Access to employment

Regulation in force:

- 2011. évi XXIII. törvény az egészségügyben működő szakmai kamarákról szóló 2006. évi XCVII. törvény módosításáról [Act XXIII of 2011 amending Act XCVII of 2006 on professional chambers functioning in the health care sector] with effect from 1 April 2011
- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] (EqualA) that was amended by Act LXXVII of 2010, with effect from 1 May 2010.
- 2001. évi C. törvény a külföldi bizonyítványok és oklevelek elismeréséről [Act C of 2001 on Recognition of Foreign Diplomas and Qualifications] that was recently amended by Act CCI of 2011 (QualA)
- The new Act CXCIX on public officials that entered into force on 1 March 2012 preserves this exception for union citizens and their family members as lower ranked officials (file-keeper) in public administration at central/governmental and municipal level
1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

1.1. Equal treatment in access to employment (e.g. assistance of employment agencies).

Access to employment in the private sector is free for union nationals 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 entitled to register. Due to recent changes (with effect from 1 April 2011) the health care professionals (doctors, pharmacists etc.) are again required to be affiliated to their respective chamber as a pre-condition of their lawful exercise of activity. The mandatory affiliation was terminated in 2006 and was criticised continuously, that is why one of the first actions of the new government was to restore the mandatory membership which contributes to professional supervision and credibility.

Equal treatment in private employment services is ensured by law and authority control. According to UnemplA (Art 6) 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 entrepreneurs. Accordingly, the number of private employment agencies dealing with workforce lending was 950 at the end of 2011. From them 78 percent is dealing with manpower lending inland, 2.3 percent (about 200 economic entities) only abroad and the others are lending to both directions. From the borrowed manpower (182 000) 80 percent were employed in physical and 17 percent in higher qualified work, and interestingly, 65 000 persons were lent to unskilled labour that proves the spatial imbalance of manpower in stock. The activity and number of companies managing manpower intermediary for migrant workers in 2011 is not known due to the changed statistical system.

The new Labour Code and other connecting rules on employment regulate guarantees in respect for human dignity of workers. Furthermore, 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 2011 there was no complain for discrimination on the grounds of nationality at ETA.


28 Government Decree No.171 of 2011, 24 July introduced the on-line registry of manpower intermediary.
1.2. Assistance of employment agencies

UnemplA regulates the eligibility conditions for labour market services and job assistance subsidies. 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.

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 employ incapacitated workers, or to employ workers in unconventional employment relationship (part-time, temporary work book). Employers can not any more apply for general social security contribution exemptions (from 1 January 2011, due to Act CLXXI of 2010 amending the UnemplA), only the so-called START benefits of the individual workers can be taken into account.

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, and the public dues payable are 10 percent in the first year and 20 percent in the second year. Those having higher level qualification can request the START card for one year, and public dues are 10 percent in the first nine months and 20 percent in the last three months. Persons returning to work from childcare or caring for a family member may claim the benefit for two years, the rate of the benefit being 10 percent in the first year and 20 percent in the second year. In the case of employers taking on long-term jobseekers above 50 years old, public dues are 0 percent in the first year and 10 percent in the second year. In the case of persons employed part time, returning to employment from childcare leave it is 20 percent for a period of three years as a maximum (from this, one year of employment is mandatory in order to be entitled to the benefit). 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. In the case of ‘ekho’ (simplified contribution to public dues), the beneficial tax payable by artists, 15 percent of the gross wages is payable as a contribution. All the benefits are valid for union citizens residing in Hungary.

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.
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.29

1.3. Simplified 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’. It was modified by the Act CXXXIX of 2011 and the whole is replaced by the new Labour Code (Act I of 2012) since 1 July 2012. The new Labour Code (Art 201-203) determines numerous exceptions from the general requirement of labour relationship in simplified or occasional work.

At present 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 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.

Due to the recent change (Act LXXV of 2010) the simplified employment is open for START card holder, and registration of employment is allowed by phone.

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).30 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

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29 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 Pu-lay, Gyula, A hazai felnőttképzési rendszer hatékonysága európai kitekintésben, Munkaügyi Szemle 2010/2: 72-81.

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. Moreover, pursuant to Art 38 on the rules applicable in case of free provision of services, the competent authority may require the applicant to evidence that she/he obtained the necessary information on Hungarian laws and ethical rules.

Section 8 of Ministerial Decree No.31 of 2004 on the recognition of health care diplomas regulates the language requirement in the same spirit. It declares that the competent authority informs 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.

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).

Otherwise, the private sectors’ practice is unknown and 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. 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 11 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.

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 (consolidated Act CXXXIII of 2005) 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 the amending Ministerial Decree (55 of 2011, 21 December 2011).

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

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 officials,
5. Public officials;
6. Administrators of justice (court, public prosecutor office) has own regulation on employment;
7. 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), (5) and (6) 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 (7) 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 employment31. At the same time auctioneer as leader of mart32 or executive director in publicly financed media33 shall be a Hungarian citizen.

31 Ministerial Decree on guards of natural protection No.33 of 1997, 20 November (KTM) modified in 2010 (KvVM).
32 Ministerial Decree No.16 of 2001, 26 October (IM) Section 65.
33 Act CLXXXV of 2010 on market and publicly financed media services, Art 103 (1).
The Basic 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 Basic 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 member of the Monetary Council and Inspector Board shall be a Hungarian national.

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 precondition 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.

The Constitutional Court annulled pro futuro the provision of the Act that bans on recruitment dual nationals to the army as incompatible with the Constitution. 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, secret services) are regulated in the Act XLIII of 1996 that was amended more times. This Act covers on members of police, national security services, border-guard, catastrophe-management, emergency-management, customs, fire brigades and officers in penology institutes. 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. Further requirement is determined of applicants joining the police and civil security services.

Ad (4) The government official as a new status was introduced by the new government (Act LVIII of 2010 amended by the Act LII of 2011) providing wide manoeuvring room for the employers (Prime Minister Office, ministries, central and regional offices, agencies or law enforcement units) to remove and dismissal of their skilled workers (previously public officials that were re-labelled by the Act as government officials in great extent) and 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
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additional, physical, administrative or technical worker. The Act CXCIX of 2011 on Public Officials re-established the legal standing of public administrators inserting this category to the public officials.

Ad (5) 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.39 Preventing the further annulment the Parliament modified (Act LII of 2011) the PuboA and the Act on government officials determining at least formal criteria and reasoning of employment termination by the employer.

It is important that non-nationals are exempted from the entry exam (introduced in January 2009) that was deleted in September 2011 for all.

PuboA [Art. 7 (1)] states that public officials shall be only Hungarian nationals. As an exception, Art. 7 (8), however, declares 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 that entered into force on 1 March 2012 preserves this exception for union citizens and their family members as lower ranked officials (file-keeper) in public administration at central/governmental and municipal level [Art 207(2), Art 241(2)] The Act CXCIX of 2011 on Public Officials re-established the legal standing of public administrators.

Ad (6) Administrators of justice (court, public prosecutor office) has own regulation on employment: Accession to employment in administration of justice (judge, 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 work in the given position, has a clean criminal record. This exception cannot be implemented for a leading and confidential position.40 Moreover, only a Hungarian national may be appointed to judge at court,41 public prosecutor, drafter, secretary and investigator at prosecutor office.42 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 court – at court administration, if s/he in possession of a proper Hungarian language knowledge that is

39 29/2011. (IV.7.) AB határozat.
40 Act LXXX of 1994 on public prosecutors’ legal status and data protection in Public Prosecutor Office, Art.82 (2) as amended by the FreeA in Art. 82.
41 Act LXVII of 1997 on legal standing and remuneration of judges, Art. 3.
necessary to 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 (7) 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 PubA and executive decrees on branches. The Hungarian national and residing EEA nationals (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 require nationality and Hungarian/foreign language knowledge, or to liberalise the general conditions in jobs. The Government is entitled (Art 85(3) to regulate on the public health sector, on public education, on high-level education, on the academic researchers, in national defence, in law enforcement and in artist, culture and public collections in this respect determining working positions in which applicant is to be a Hungarian national with clean criminal record in full age, or proper Hungarian language knowledge. Without definition of specific task or protected public interest this delegated legislative power is not compatible with constitutional rule-of-law. Moreover, all public servants determined by law shall take regularly declaration on assets since 2007. The consequence of appointment in absent of pre-conditions means invalidity of contract on employment [Art.10 (1)]. According to the recent modification public servant’s position shall be fulfilled by a competition procedure with certain exceptions. The purpose of this modification was 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 discreional, 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 proper Hungarian language knowledge depending on the given task. Before amendment upon request of local leader of the unit the minister could issue an acceptance. However, the Ministerial Decree (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

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43 Act LXVIII of 1997 on legal standing of workers in administration of justice, Art 11 (3) amended by the FreeA.
and telephone-technician at National Catastrophe-Management Directorate and its all units including its Training Centre.

- Only Hungarian nationals are eligible for public servants 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, cook, cleaner, hostess and kitchen helper – only Hungarian nationals must be employed as public servant at Penology Institutions and refugee centres. This modification\textsuperscript{49} extended the 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{50}

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 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{51} Previously the ‘proper level of Hungarian language knowledge that is needed to his/her working task’ was enough. 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.

Public officials shall be Hungarian national which inherently presumes the knowledge of Hungarian language. It is indirectly evidenced by Art.7 (2) of PuboA which says that career starters must possess foreign language skills – English, German or French – which also presumes that Hungarian language skills are present. As an exception, Art. 7 (8) declares that a public official might be a person in terms of the scope of FreeA, but only if the (clerk’s) work at issue is not confidential and the person possesses the Hungarian language skills necessary to perform the tasks. In case of public officials the knowledge of Hungarian language is not expressly required, either. However, Art. 74 declares that the public official is entitled to wage-supplement if he regularly uses a foreign language besides Hungarian. This means that the knowledge of Hungarian language is evident, while neither formally, nor informally the Hungarian language competences of foreigners and the testing method has 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 ‘necessary knowledge’ to the given task.

The new Act CXCIX of 2011 on public officials that entered into force partly on 1 March 2012 preserves the requirement of necessity of Hungarian language knowledge to

\textsuperscript{49} Ministerial Decree of the Justice and Law Enforcement No.10 of 2009, 17 April replacing the Ministerial Decree of the Justice No.7 of 1993, 9 March.

\textsuperscript{50} 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{51} Ministerial Decree of the Justice and Law Enforcement No.10 of 2009, 17 April, Section 2(1)a.
perform the given tasks in public administration at central/governmental and municipal level (Art 207(2), Art 241(2)).

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.

The new Act CXCIX of 2011 on public officials that entered into force on 1 March 2012 preserves the application, competitive procedure in certain jobs and leading positions but non-nationals will be exempted due to the available low ranked file-keeper positions in public administration at central/governmental and municipal level (Art 207(2), Art 241(2). The list of applicants to recruitment upon request of non-national workers may contain their data. The passage from one branch to another in the public sector is encouraged in the Act.

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

Importance of manpower lending has been growing in recent years because new jobs have been established only in this framework in order to maximise the flexibility of employment in a changing economic climate in Hungary. However the equal treatment of labourers at manpower lending and borrowing contract is not the same as ‘traditional employment’.

• The rights and duties of employer towards labourer are shared between the lending and borrowing parties. This legal situation is hardly controlled by less qualified or experi-

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52 Network on the Free Movement of Workers in the EU in 2002-2003, page 17.
53 The number of labourers in manpower lending is 130 000 persons (2011). Népszava, 9 February 2012
enced workers. Moreover, the obligatory compensation of tax increase\textsuperscript{54} is hardly applicable in this joint relationship.

- The Labour Code does not contain specific rules on collective rights thus applicability of rights of the trade union in favour of lending and borrowing manpower is limited. The mentioned shared rights and duties of employer make illusionary the effective operation of trade unions. The transposing deadline of Dir.2008/104/EC (until 2012) urges to set up adequate provisions.

- The Salary Insurance Fund covers on wage and salary requests of regular workers at economic entity in bankruptcy procedure. The Fund’s maximal guarantee per worker is 999 000 HUF (3400 €) but workers in lending contact are not eligible.

- The collapse of Malév raises the question of manpower lending because it could not pay the contractual demand to the manpower Trenkwalder Co. (200 million HUF) in early 2012\textsuperscript{55}. Consequently hundreds of borrowed labourers (including non-nationals) could not get salary for labour. Beyond the financial incapacity the legal rules on liquidation procedure consider demand of a manpower company as other dept regardless purposes. While salary of own workers has a priority among demand the dept from service contracts have not in the liquidation process.

For this reason the discriminative provisions would have modified – as the representatives of manpower companies required during the preparatory of Labour Code.

Due to the fact that manpower lending would cover on union workers the case of discrimination would be important in this context. The ETA got a public complaint from a trade union because a manpower borrowing company violated the requirement of \textit{equal salary for equal values of work}. The launched investigation released that charged company made difference in salary and benefit system (in cafeteria tickets) between own labourers and workers in lending. The Labour Code (Art 142/A, 193/G and H) requires equal treatment in salary (including personal salary, overwork and duty fee) if the length of employment is exceeding 183 days continuously or within two calendar years at the borrowing company. In order to prevent further discrimination the company must prepare a new salary system and the passed measures have to be noticed to the ETA within 68 days\textsuperscript{56}.

The Labour (Inspection) Authority was controlling the labour conditions at 20 000 companies in 2011. According to its report, the checking actions released 60% of the controlled about 200 000 workers irregular or unlawful employment conditions\textsuperscript{57}. Employment without registration at labour office was proved in case of 14 216 labourers that means 14% of all labour abuses. This \textit{black work} – regardless nationality of labourers - was frequent in building industry (20%), property protection services (30%), catering (11%), trade and processing industry (15%). The highest fine (17 000 €) was imposed to Busch-Hungaria Ltd Co\textsuperscript{58}. It means – inter alia - that multinational, big companies are much more checked than medium or micro-entrepreneurs that are decentralised and hardly informal.

\textsuperscript{54} Government Decree No.299 of 2011, 22 December requires all employers to lift up salaries of all workers in order to compensate the growth of tax unless economic entities face fines implied by the labour authority.

\textsuperscript{55} A sor végén hiába remélnek? Népszabadság, 13 February 2012.

\textsuperscript{56} EBH 273/2011, January 2012.

\textsuperscript{57} www. feketelista. hu 10 April 2012.

\textsuperscript{58} Népszava 20 April 2012.
Recent literature
Chapter IV
Equality of Treatment on the Basis of Nationality

Regulation in force:

- 1992.évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code] that has been amended many times and will be replaced by the Act I of 2012 entering into force on 1st July 2012 (Labour Code)
- 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities] that was recently amended by the Act CLXXV of 2011 and Act XXI of 2012 (EqualA)
- 1993. évi III. törvény a szociális igazgatásról és a szociális ellátásokról [Act on Social Administration and Social Benefits] amended recently by the Act CCI of 2011 with effect from 1 January 2012 (SocialA)
- 17/2005. (II. 8.) Korm. rendelet a diákokkal való Útravaló Ösztöndíjprogramról [Government Decree No. 17 of 2005, 8 February on the Student Card] amended recently by Government Decree No. 180 of 2011, 2 September and the whole was replaced by the Government Decree on cards in public and tertiary education No.362 of 2011, 30 December with effect from 1 January 2012 (CardD),
- 51/2007. (III. 26.) Korm. rendelet a felsőoktatásban részt vevő hallgatók juttatásairól és az általuk fizetendő egyes térítésekről [Government Decree No.51 of 2007, 26 March on Benefits and Fees of Students in High-level Education] that was amended by the Government Decree No.172 of 2011, 24 July (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) it remains in force until 1st September 2012 due to the Government Decree No.1 of 2012, 20 January
- 1998.évi LXXXIV.törvény a családok támogatásáról [Act LXXXIV of 1988 on family benefits] amended by recently the Act CCI of 2011 (FamA)
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 therefrom.

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 or Penal Code as well as other provisions, action plans together intending to provide equal access to remunerating work.

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.

The principle of equal treatment enshrines expressis verbis in the Labour Code in two main areas. First, the principle of equal treatment is laid down in general terms, Section 5 of the Code states that in connection with employment relations the principle of equal treatment must be strictly observed and any consequences of the breach of the principle of equal treatment shall be properly remedied; the remedy shall not result in any violation of or harm to the rights of another worker.

The Labour Code expressly deals with the equal treatment principle in terms of remuneration for work. Already the Constitution – Art.70/B – required equality in work until 31 December 2011\(^59\). Art. 142/A (1) of the Labour Code states the principle of equal pay by determining that in respect of the remuneration of employees for the same work or for work to which equal value is attributed the principle of equal treatment must be observed.\(^60\) Paragraph (2) states that ‘The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of work, its quality and quantity, working conditions, vocational training, physical and intellectual efforts, experience and responsibilities’\(^61\). Pursuant to paragraph (4) the wages of employees - whether based on the nature

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59 (1) In the Republic of Hungary everyone has the right to work and to freely choose his job and profession.
(2) Everyone has the right to equal compensation for equal work, without any discrimination whatsoever.
(3) All persons who work have the right to an income that corresponds to the amount and quality of work they carry out.

60 This section can be regarded as the implementation of Dir. 75/117/EEC.

61 For the purposes of Subsection (1) ‘wage’ shall mean any remuneration provided to the employee directly or indirectly in cash or kind based on his/her employment.
or category of the work or on performance - shall be determined in compliance with the principle of equal treatment as enshrined in Art 5.

The importance of working conditions is highlighted also with respect to special groups of workers. Art 75 of the Labour Code lays down that women and young persons shall not be employed in work which may result in detrimental effects with a view to their physical condition or development. The particular jobs for which women or young persons may not be employed, or may only perform if specific working conditions are provided or on the basis of a preliminary medical examination, shall be determined by legal regulation. Article 85 of the Labour Code provides that a woman, from the time her pregnancy is diagnosed until her child reaches one year of age, shall be temporarily reassigned to a position suitable for her condition from a medical standpoint, or the working conditions in her existing position shall be modified as appropriate, on the basis of a medical report pertaining to employment. The new position shall be designated upon the employee's approval.

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.

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 23 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 EqualA 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 2011 contains no cases on the grounds of nationality.

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 non-equal labour conditions can be observed only through the Labour Inspectors’ report because the legal rules require the same treatment for all employee. Due to limited capacity of National Labour Safety and Inspecting Authority (OMMF) that was inserted to the county governmental offices in 2011, had to select the most endangered industries or fields of employment.

The Basic 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 new Labour Code (Act I of 2012, Art 12) refers on equal treatment that is word by word is the same as the paragraph in the new Act on public officials. The latter (Act CXCIX of 2011) prohibits 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?
The principle of equal treatment shall be observed also in the public sector. The main rules applicable on public servants, officials, officers, government officials, staff in administration of justice prohibit discrimination and unequal treatment as the Constitution (Art 70/A and 70/B) EqualA and Labour Code requires.

63 http://www.egyenlobanasmod.hu.
64 Government Decree No.314 of 2010, 27 December.
However it is important to mention 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 is very restrictive for all workers regardless nationality.65
• 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.66

The new Act on Public Officials (Act CXCIX of 2011) 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.

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 dependant 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 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.

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.67 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.

65 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)
66 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 PuboA
67 Most prominently Act CXXI of 2007 on social laws.
Most importantly, union citizens (including Hungarian citizens)\textsuperscript{68} 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. 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 can not 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) 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{69} According to Article 35 (1) of FreeD

\begin{quote}
’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.’
\end{quote}

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 has to report this fact to the immigration authorities. As 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

\textsuperscript{68} The personal scope has been extended to the family members of Hungarian nationals as well meaning that reverse discrimination in this regard was terminated.

\textsuperscript{69} Since 2008 it has been 28 500 HUF (100 €) per capita.
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.

The non-equal treatment concerning the social advantage was mentioned on the base of nationality in complaints to the ETA from the prior periods and not in 2012:

- the preferential price of Harkány spa is available only for resident pensioners with Hungarian citizenship\(^{70}\). 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 claimant 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\(^{71}\). 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\(^ {72}\). The claimant could not accept the shorter service hours for nationals and more convenient hours for non-nationals. 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.

2.2. Distinct sectors

Disabled\(^{A}\) 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 Disabled\(^{A}\) 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

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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 in active participation in social life’. [Art 4(a)]

The definition of disabled is determined without referring to nationality. Article 23 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.73 If the beneficiary leaves for another EU Member State the benefit is not withdrawn until benefit is granted in that other Member State. The last amendment (Act CCI of 2011) extends the benefit to persons under the scope of social coordination in Dir.883/2004/EC.

Act LV of 1994 on arable land74 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.75 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 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 2009.76 The residence in Hungary shall be proved by the OIN certificate.

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 Romania77 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,78 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 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. The

73  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.
74  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.
75  Act XXXVI of 2004 amended the LandA, Art. 88/A-88/D.
76  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.
new Act IV of 2009 on collateral assurance by the state concerning house loans also provides equal treatment. Art 1(10) 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 in public passenger transport. A general revision of benefits has been started in 2009 due to the economic crisis and to make the whole system more transparent. For instance, the long-distance free travel is available if passenger bought a ticket free of charge in order to register his travel. (Before this amendment pensioners got in the train without ticket and their right to benefit based on their age on the ground of identity card but without concrete registration of travel – causing a harsh dispute on state subsidy sum between the Treasury and the travelling company.) The last amendment ceased the registry from 1 January 2012 saying that collection of statistical data on travelling turnover in 2010-2011 was finished. 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 passenger transport, TransD grants benefits for certain groups of persons using the inland public transport facilities. The decree gives the following listing for the circles of beneficiaries of advantages in public transport:

- 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.

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 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 en-
joy 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 irrespective of their nationality. According to the CardD the Student Card must be applied for, and entitles the holder for travelling only together with the seasonal ticket. 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. The recent amendment orders to change the valid cards to a new National Card in Education as a set of cards for students, teachers and instructors in public and tertiary education in 2012-2014. all students after enrolment are eligible this smart card with a chip providing advantages in museums, public transports and in commerce.

Non-native family members of union citizens attending public education may obtain a special pedagogical programme for a year in order to catch up the Hungarian language curricula. The ministerial decree 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.

Government Decree No. 157 of 2010, 6 May regulates scholarship possibilities for students and their tutors who are qualified as being severely disadvantaged or lives in a child protection institution. There are four types scholarships for primary schools, secondary schools and also high-level educational establishments. Pursuant to Article 3 (1) the personal scope of the Decree encompasses both Hungarian and foreign nationals including third-country nationals as well for three types of scholarships. For the fourth type (Road to Science) Hungarians, permanent residents and EEA nationals and their family members 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 regardless the recent modification (Government Decree No. 328 of 2009, 29 December). In practice residence in Hungary is required from applicants.

MusD was amended 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. Article 2 (2) lays down the cases of free of charge entries and 50 percent reductions into 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 Government decree. Furthermore, the circle of advantages was cut.

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. Although 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 inhabitant’s address register (in possession of address card) and persons in ambit of social coordination regime (Dir.883/2004/EC) due to the last amendment (Act CCI of 2011) – the local self-governments are not necessary transposed.

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79 Decree of the Minister of Culture and Education No.15 of 2009, 2 April OKM rendelet.
these rules to own decrees. There are 3200 self-governments in Hungary and therefore a
general compliance of these rules can only be presumed but not fully asserted. Moreover, the
set of all local self-governments’ decrees does not exist, thus a regular survey is not possible.

The family benefits (FamA, Art 2) 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 and
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.

Concerning the social advantages those are hardly controlled whether equal treatment is
provided for union citizens and family members in decentralised municipal regulation sys-
tem. 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) pro-
vides 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 munici-
pal 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 precondition for social ad-
vantages 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 Statement on the interpretation on discrimina-
tion on the grounds of ‘other condition’ (Art 8 of the Act EqualA). In accordance with the
non-discrimination rule in the Constitution (Art.70/A) the Act prohibits discrimination on the
grounds of exemplified reasons but without mentioning the citizenship. Thus the list of pro-
tected features of human beings is not exhausted, and at the end of the list of prohibited dis-
criminative 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 com-
plaints. ETA has to control whether the authority, public service suppliers in concern respect
for international undertakings (human rights treaties) and EC 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.

80  123/2010.(VII.8.) AB határozat.
81  NEK723/2011, June 2011 OBH.
82  See the rules on the Sopron municipal homepage
&menubar=y&toolbar=y.
83  Egyenlő Bánásmód Tanácsadó Testület 288/2/2010.(IV.9.) TT.sz.Állásfoglalása.
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), 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 has regulated the execution and legal aid procedure of taxes between the Hungarian and other taxation authorities in Member States.\(^{84}\)

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.*\(^{85}\) 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. 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 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

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\(^{84}\) Government Decree No. 7 of 2004, 22 January.

\(^{85}\) 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.
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 can not 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 can not 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.

Finally it shall be noted that 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 to De Cuyper judgement (C-406/04) but finally the Curia refused the Commission’s suit (par.93)

2.4. Specific issue: the situation of job-seekers

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 Hun-

86 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. Bódi Levente és Sebestyén Tibor a szlovákiai cégalapításról [Slovakia: a tax-paradise. How to establish companies – by attorney at law] Ügyvédlilág 2007/10:14-15.

87 MTI 30 June 2011 Elmarasztalt egy somogyi önkormányzatot az ombudsman.
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 nationals applying for social assistance benefits is so low that this is statistically simply not traceable.

2.5. Changing regulation

The implementation of the provision on obligatory schooling age from the Act on Public Education (Act LXXIX of 1993) belongs to the responsibility of local municipals (self-governments). Due to announced reform in public education municipals have become restrictive to receive at first permanent resident students from the area under own administration and only vacancies are available for others. If a student has a temporary and a permanent residence (e.g. non-national, minor in a commuting family) the permanent residence of minor (in age 6-18) is decisive in school enrolment, reception.88

The new Act on Public Education (Act CXC of 2011) enters in September 2012 and certain provisions only in 2013-2014. The resident non-national minors in age 3-16 shall attend nursery and elementary school 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 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. However the executive decrees of the Act have not been issued until June 2012 while the reform of public education enters into force in September 2012.

I have to add that the nursery school (attended by 92 percent of children in age of 3-6) will be obligatory for all 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 is the age of 5-18. The other novelty is that public schools will be nationalised (keeping up responsibility is moved from the municipals to the governmental public administration and manager organs), and the multifunctional education institutes (e.g. grammar school and vocational training and special

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88 For instance, the official Note of the District 2nd in Budapest interpreted the notion of permanent residence on the grounds of address card or regular, permanent life of minor that is connecting to the District. See Tájékoztató az iskolai beiratásról, 6 April 2012.
training for re-integration of teenagers with early leaving together under the same roof) shall be split into clean profile institutes. 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 many villages.

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.

The Parliament passed a new Act CCIV of 2011 on the National Tertiary Education (30 December 2011) entering into force on January 2012 in part and in September 2012 in others. Although the Act on Higher Education was born in 2005 reflecting the principles of the Bologna Process and relevant fundamental rights, the Governmental reform was announced in this field in 2010.

Accession to the state (fully or partially) financed tertiary education is available for resident Hungarian nationals, persons with right to free movement, 89 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 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. Accession 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 400 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. 90 [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 defines. [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 regulates. [Art 46(2)]

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 EUR91). 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 47-48.]

All non-nationals acceding the tertiary education [Art 80]

a. have to register their address in Hungary,
b. must obtain residence authorisation,

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89 Act I of 2007 (FreeA) determines the union nationals, EEA nationals and family members.
90 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.
91 The lawful minimal monthly net salary is 215 EUR (Jan 2012) – so the fee can be compared to this.
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.

The Government Decree No.2 of 2012, 20 January on the student contract regulates the contract as a precondition of obtaining fully or partial state financed tertiary education in Hungary regardless the citizenship of students. It means that state financed courses will be available for nationals and non-nationals (EEA nationals and family members in possession of right to free movement) if they undertake 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. Accordingly,

a. the student must undertake to finish the graduation within up to 150 percent of standard study period of BA/BSc/MSc/MA studies, and

b. within 20 years after the graduation s/he is obliged to work for 200 percent of the total period – continuously or in more parts regardless his/her qualification - in which s/he was attending the fully or partially state financed studies in a job/entrepreneurship that belongs to the jurisdiction of the Hungarian labour and social insurance law. The employment period covers on the period of birth, motherhood benefit and unemployment benefit.

If diploma cannot be obtained within the upper mentioned period, s/he has to reimburse 50 percent of paid state subsidy. If ex-student does not meet the employment/entrepreneur requirements above, s/he must reimburse 100 percent of paid state subsidy together with actual rediscount rate of the Hungarian National Bank + 3 percent to the Treasury. [Section 3] However, this reimbursement is reduced proportionally if ex-student was employed within 20 years but it was shorter than 200 percent of the period in state financed studies. [Section 15(3)]

c. Ethnic Hungarians as ex-student of state financed studies may opt to be employed in Hungary (as in point b) 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 [Section 4 (3), (5)] This extraterritorial effect of regulation cannot be implemented in absent of employment information abroad.

d. Student in theology is exempted the work and reimbursement requirements. Moreover, young mothers and multiple disadvantaged persons may prolong the time of graduation without paying back the subsidy.

e. The amount of state subsidy fits to the fee in the given higher education institute. The contract is concluded with the Education Office before enrolment providing a lot of actual personal data and their changes. [Section 6(4), Section 7] These data refers on Hungarian data processing and storage rules until the validity of the contract that is undefined. The Education Office’s decisions (e.g. suspended or reduced reimbursement, exception in paying back for health or family reasons) may be appealed to the minister. The final decision shall be forwarded to the taxation authority in order to force it (e.g. real es-
tate registry takes a priority notice to stop alienate of ex-student’s property) In this way contract means euphemism because all conditions and procedure are regulated.

f. Employer of ex-student in state financed studies may undertake to pay back fully or in part the contractual sum of money. It would be relevant if labourer want to leave Hungary. [Section 18(3)]

It enters into force on 1st August 2012, thus newly accessed students must undertake to conclude the contract.

Table 6: 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).

Recent literature


Nemessányi Zoltán, A Legfelsőbb Bíróság ítélete a magyar termőföld tulajdonjogának más uniós tagállam állampolgára által megszerzése feltételeiről. Más uniós tagállam állampolgára által, gazdasági társaságon keresztül végzett mezőgazdasági tevékenység [Purchase and obtaining arable land in Hungary by EU citizen and corporate entity dealing with agricultural production] JeMa 2010/2: 62-68

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\(^{92}\)) declare that Member States can not 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.

The main rule is that Hungarian law is applicable for vehicles registered abroad if the usage will occur in Hungary. Pursuant to Art. 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. 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 Hungary, the law, however, might be in contrast with EC law hence than registration shall be effected by the proprietor.

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\(^{92}\) C-151-152/04.
In practice this rule is difficult to apply hence the 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 as 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.\(^93\)

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 bought 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-proprietors (e.g. by family members) while sanction is not proportional. Thus the Ombudsman initiated amendment requesting the Government to prepare the Bill.\(^94\)On behalf of

\(^94\) AJB 489/2012 www.ajbh.hu/allam/jelentes/201200489.rtf.
the government the minister of economic development informed the Ombudsman that amendments were made how to use the foreign number plates in Hungary respecting for free movement and tax liability together.95

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 Inhabitants’ Address Registry nor the Act on Local self-governments (Act LXV of 1990) 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 registration96 in 2010 that was declared as unlawful by the County Public Administration (Governmental) Office requiring the modification within 30 days in 2011.97 The proposal of the decree98 refers on (good) practices in Sátoraljaújhely 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 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. In future the court within a judicial review may upgrade the annulment due to the Basic Law rules. On the other side, the new Act on Municipals (Act CLXXXIX of 2011) 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

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95 Miniszteri válasz a külföldi rendszám használata ügyében
96 Alsónémedi Nagyközség Önkormányzat Képviselő-testületének 1/2010. (II.01.) sz. rendelete a lakcímbejelentés helyi szabályairól.
97 Pest Megyei Közigazgatási Hivatal törvényességi észrevételével 30/PM-631/1/2010.
98 Előterjesztés és általános indoklás a a lakcímbejelentés helyi szabályairól szóló 1/2010.(II.01.) sz. rendelethez.
HUNGARY

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.)
Chapter VI
Specific Issues

Regulation in force:

- 1998.évi LXXXIV. törvény a családok támogatásáról [Act LXXXIV of 1988 on family benefits] amended by recently the Act CCI of 2011 (FamA)
- 2004.évi L. törvény a sportról [consolidated Act I of 2004 on the sport] modified recently by the Act LXXXVII of 2011, Act CIV of 2011, Act LIV of 2011, and Act CLXXII of 2011 with effect from 1 January 2012 (SportA)
- 2005.évi CXX. törvény az egyszerűsített közteherviselési hozzájárulásról [consolidated Act on Simplified Public Contributions] (EkhoA)
- 2005. évi CXXXIX. törvény a felsőoktatásról [Act CXXXIX of 2005 on high-level education] (HighA) that is replaced by the 2011.évi CCIV.törvény a nemzeti felsőoktatásról [Act CCIV of 2011 on the National Tertiary Education] entering into force on January 2012 in part and in September 2012 in others
- 51/2007. (III. 26.) Korm. rendelet a felsőoktatásban részt vevő hallgatók juttatásairól és az általuk fizetendő egyes térítésekről [Government Decree No.51 of 2007, 26 March on Benefits and Fees of Students in High-level Education] that was amended by the Government Decree No.172 of 2011, 24 July (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) it remains in force until 1st September 2012 due to the Government Decree No.1 of 2012, 20 January
- 1992.évi XXII. törvény a Munka Törvénykönyvéről [Act XXII of 1992 on Labour Code] that has been amended many times and will be replaced by the Act I of 2012 entering into force on 1st July 2012 (Labour Code)

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 farther from the border zones.99 The Slovak and the Romanian border zone would play certain role according to the experiences of EURES agents.100 However, the regional trans-border cooperating consortium involving the labour offices, municipals, 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.101 Accordingly, the direction of movement is from Romania to Hungary basically by seasonal

100 Presentation of Bíró, Timea on the 27-28 April 2011, FMOW seminar in Szeged.
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 estates here determines the absence of employment (e.g. smashed agricultural co-operatives in 1990s, poorly paid community jobs instead of market jobs). 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 (FamA, Art 2) 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. Moreover, persons are eligible for family benefits that are 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.103 The deadline for proper regulation (31 December 2010) was delayed a bit.

Before 2012 the FamA (Art.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 (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. SPORTSMEN/SPORTSWOMEN

The SportA and relating applicable rules were modified for three reasons:

• the transposition of the Directive 2006/123/EC requires some amendments for service providers in sport sector;
• the Government intends to provide extra benefits in corporation taxation and asset fee only for football, handball, basketball, waterpolo and ice-hockey clubs as ‘spectacle sport branches’. 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 (Act LXXXI of 1996 on the Corporation and Dividend 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 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

103 123/2010.(VII.8.) AB határozat.
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\textsuperscript{104} 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.\textsuperscript{105}

\textsuperscript{104} Betting duties and bookmakers’ tax provide the basis to the sport subventions [Art 56 of SportA] and direct budget contribution to the National Olympic Comittee.

\textsuperscript{105} 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 - normally would become self-employed persons since 2011.

EkhoA exempt 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 then the general system. 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\textsuperscript{105}.

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).

In possession of a valid racing certificate issued by the sport federation s/he has to conclude on fix-time (close-ended) written employment 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.

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\textsuperscript{105}. 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 contract shall be concluded. During validity of 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 also regulated by (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(2)]

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).

In possession of a valid racing certificate issued by the sport federation s/he has to conclude on fix-time (close-ended) written employment 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. 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.105. 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 racing permit. 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Any other share in transaction costs (beyond the athlete’s compensation, commission, fee and sport federation) is invalid. [Art.11(2)] 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 belong to the 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 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. For instance, the Hungarian Wrestling Federation passed own Statute on Transfer and Registration (16 August 2005) contains some outdated rules because it is also speaking on national and foreign players.
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:106

- 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.

- 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

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.

106 Adopted by the HFF Presidency decision No.58 of 2009, 16 April and amended by No.125 of 2009, 26 June, No.67 of 2010, 14 April and No.2 of 2011, 19 January.
is the playing class (championship score of the club and the athlete). Complaint and appeal for unlawful decision is ensured inside the HFF (Presidency).

- 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’. Furthermore, ‘residence permit is not required for minor player (below the age of 18) if his/her home or the hosting club location is within 50 km zone from the state border and s/he is living at home, thus the distance between his/her home and the hosting club is not exceeding 100 km. The racing permit issued for non-national minor player is valid without residence permit until reaching the full age. These conditions are controlled by the HFF.’

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:

- 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 [Art 1(3)],
- obtaining permission (licence) that is valid for five years 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 [Art 3],
- agent has to use a sample contract on transfer issued by the FIFA, e.g. the transfer fee shall be defined in the contract in concern determing 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 [Art 18],
- and a Code of Ethic for agents is attached to the by-law.

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 belong to the 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 tranferring 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 con-

107 MLSZ Elnökség 54/2009.(04.16.) szerinti határozatával elfogadott Játékos-ügynöki licence szabályzat.
tinuous 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.

For instance, 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 abroad 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.

3. **THE MARITIME SECTOR**

The National Traffick 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.¹⁰⁸

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 then the general system. Implicitly, the reduced rate of public contributions 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. The ekho does not cover unemployment benefits.

This EkhoA covers inter alia the following categories of persons: editor, journalist, writer, actor, artist in fine arts, handicrafts and circus, puppet artist, musician and folk-musician, director, camera-man, photographer, dancer, singer, choreographer, designer. 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 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 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 bene-

ficial taxation can not be coupled with other taxation benefits.\textsuperscript{109} It also published a simplified registration form for echo-payers.\textsuperscript{110}

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 \textit{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 E-Care National Seminar (Hungarian Science and Technology Foundation) put on the agenda of actual results of the E-Care and Euraxess relating to the mobility and carrier-development of Hungarian academics, scholars and researchers.\textsuperscript{111} This comparative basis would be also ensured by an international conference held by the Euraxess, Hungarian Science and Technology Foundation, National Innovation Centre (28-29 June, 2011, Budapest, EPW5 5th General Assembly) debating the training, career and mobility of researchers in the Innovation Union.\textsuperscript{112}

5. \hspace{3cm} \textbf{ACCESS TO STUDY GRANTS}

\textit{Students attending the vocational school (15-18-21) 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 2.52 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.}

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 regional Training and Development Centre determined (e.g. mason, electrician, Maschinen-schlosser) providing them maximal 45 000 HUF (in 2011/2011) 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.

\textsuperscript{109} 2008/4. Adózási kérdés (ekho választása mellett nem alkalmazható a START-kártyás kedvezmény) [Ekho and START can not be applied for simultaneously], 14072/5/2007. AEÉ 2008/1.
\textsuperscript{110} APEH tájékoztató az egyszerűsített közteherviselési hozzájárulás választásához alkalmazandó nyilatkozat mintájáról. [Form for the notification of Ekho] 2008/3. Adó és Ellenőrzési Értesítő.
\textsuperscript{111} See the presentation of Szolenszky, Ágnes and Molnár, Ádám, 7 June 2011, Budapest.
\textsuperscript{112} See the programme and presentations \url{http://www.tétalap.hu/eumobility/}. 
High-level education encompasses universities and colleges founded or recognised by the state in the territory of Hungary. The list of which can be found in the Annex 1 of the HighA. Hungarian high-level education institutions shall be registered and approved by the Registration Authority and recognised by the Hungarian Parliament (Art. 12.), while foreign high-level education establishments can be operational in Hungary if they are registered including the free service provider’s operation in Hungary that is established in another member state [Art 116 (7)]. Only recognised/registered high-level educational institutions are entitled to normative financing from the state – among others – on the basis of the number of students who are qualified as ‘students taking part in education financed by the state’. Their yearly quota is determined by the Government but its maximal length takes 12 semesters and plus 4 semesters for handicapped students [Art 55 (2)] Hence studies beyond this period shall be financed by the student. However, foreign institutions operating also in Hungary can be entitled to normative financing only on the basis of international agreement. [Art 116 (4)]

Pursuant to the HighA EEA nationals and their family members are entitled to enter into Hungarian high-level education under the same conditions as Hungarian nationals [Article 39 (1) a)]. In fact the conditions of preferential entry are available basically for nationals (e.g. segregated student, young mother, handicapped person or outstanding talent with awards during the secondary schooling age) or native persons [Art 40, 42] Furthermore, only Hungarian citizens are eligible to support to studies abroad/at foreign institutions getting scholarship from the state (ministerial grant that would be provided upon application, grant for studies in mother language of minority in the kin-state). The student loan is portable only for Hungarian citizens if they study in another EEA member state. These students are eligible to student card. [Art 118]

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 [Art. 119 (2) b]. 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 irrespective 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 legally resident student faces financial difficulties. Moreover, the HighA expressly delegates the power to the Government to regulate the conditions of foreign students’ studies in Hungary. [Article 119 (3)] It regulates the issue in

- StudD (Section 7, 26-28) that enumerates the benefits which are generally available for students determining the system of supports payable to foreign nationals who study in Hungary. It 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 obligations in terms of fees and benefits. The education minister is entitled to provide grants for non-state financed foreign students [Section 27(1)]

LoanD aims at providing for long-term and subsidized study loan construction for students in high-level education. The Study Loan Centre is responsible for granting the loan to the student who meets the requirements laid down in the Decree. The following categories form the personal scope: Hungarian nationals, refugees, TCN persons with permanent residence permits, and in turn, pursuant to Article 3 (1) (b) ba) EEA nationals who exercise an economic activity are entitled to apply for the study loan. Furthermore, pursuant to Article 3 (1) (b) bb) family members of EEA nationals who exercise an economic activity can also apply. Finally, persons who are entitled to permanent residence in terms of the FreeA can apply (Art. 3 (1) (b) bd). Enrolment to the high-education institution (student relationship with the institution), residing registered address in Hungary are the main preconditions under the personal scope of the LoanD. The student loan is available for maximum 10 semesters up to his/her age of 40 monthly up to 60.000 HUF (220 €). In brief, the Hungarian rule is in compliance with Article 24 (2) of Directive 2004/38/EC. The loan shall be started to repay in monthly instalments after termination of the student relationship with the institution on the basis of his/her monthly income (about its 8 percent) and in case of unemployment the reimbursement amount fits to the lowest lawful salary. The rate of interest is solid due to state subvention and prudent operation of the SLC.

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 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 (MÖB – Balassi Institute). Table 7 below illustrates diversity of scholarships and grants. 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.

The Parliament passed a new Act CCIV of 2011 on the National Tertiary Education (30 December 2011) entering into force on January 2012 in part and in September 2012 in others. Loking at prior regulation the main changes can be defined as follows without repetition of above mentioned novelties (IV/2.5. point):
- in limited accession to the state financed studies,
- the higher fee for studies at tertiary education,
- the higher student credit sum for all students in order to cover higher fees and self-subsistence, and
- introduction of student contract as precondition to state financed studies.

114 Government Decree No.147 of 2002, 29 June.
Only Hungarian nationals are entitled to obtain grants in order to support their studies abroad in accredited tertiary education course including members of minorities if they want to study in mother language state (e.g. a Hungarian citizen belonging to the Slovak community intends to attend a university in SK). The minister defines the conditions of application. Only Hungarian nationals – if they attend accredited course of a tertiary education in an EEA state – are entitled to get student loan (credit) to cover own expenses as the Government regulates in a Decree.[Art 79 (1)-(6)] Consequently neither grants, nor student credit (loan) are available for non-nationals to cover own expended abroad. Government regulates special conditions of scholarship to Hungarian nationals’ study abroad and to non-nationals in Hungary.

Table 7: 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 (Utravaló)</td>
<td>Supporting Programme (by Wekerle Sándor Alapkezelő) It assists the poor, segregated pupils and students in age of 12-26 to get profession, maturity or decree by scholarship and tutoring system – eligible for EEA nationals and long-term TCN migrants with student relationship (residence) in Hungarian public education</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 and in 2010 monthly 126 € /er capita for 10 month</td>
</tr>
<tr>
<td>Kubelsberg Kunó Study Grant</td>
<td>Supporting the publicity of the Hungarian cultural herititage 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.11 of 2011, 28 March (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 and Government Resolution No.1083 of 2003, 15 August</td>
</tr>
<tr>
<td>Lippai Balázs Scholarship</td>
<td>Supporting poor but talent Roma students attending military and law enforcement schools – in practice only for Hungarian citizens</td>
<td>Order of the Minister of Defence No. 18 of 2011, 18 February</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.336 of 2010. 27 December</td>
</tr>
<tr>
<td>Béni Balog Ádám Scholarship</td>
<td>Supporting the best pupils attending the military courses at secondary schools</td>
<td>Order of the Minister of Defence No. 61 of 2011, 2 June</td>
</tr>
<tr>
<td>Visegrád Grant</td>
<td>Visegrád Fund (SK, CZ, HU and PL) pro-</td>
<td>Government Resolution</td>
</tr>
</tbody>
</table>
vides grants for students, young academics visiting courses mutually -- for own citizens No.2322 of 2002, 24 October

Ady Endre Scholarship Supporting the ethnic Hungarian students across the borders in adjacent states Government Resolution No.1082 of 2010, 31 March

The Government passed a Decree (No.1 of 2002, 20 January) on student credit (loan) system. It replaces on 1st September 2012 the rules on Student Credit Centre that perfectly has been operated on a non-profit basis since 2006. In 2006-2011 the fee in tertiary education was moderated and significant part of students enjoyed state financed studies, thus credit meant a contribution to self-subsistence of students and in limited extent to fees. Consequently, the amount of credit and commission was moderated, and the rate of reimbursement was affordable for young professionals.

Who are eligible for the student credit? (Section 3)

a. Hungarian citizen, persons with rights to free movement (union citizen, EEA national, family members in FreeA) spending more than three months in Hungary or persons with right to permanent residence (FreeA), in this way frontier workers and their families are excluded;
b. if they enrolled to the tertiary education institute and registered in the given semester, and
c. s/he has a registered address and bank-account in Hungary, and
d. s/he has no other credit contract or unpaid reimbursement, and
e. s/he is not over 35 starting the studies.

Portability of student credit is somehow endured: if s/he attends course that means an accredited, gradual education in any EEA state providing an accepted diploma in Hungary, and s/he has a registered address and bank account in Hungary, and s/he has no other credit contract or unpaid reimbursement, s/he is eligible. This credit can support to living cost (850 EUR per semester in one sum) if s/he can documented the enrolment and its translation. (Section 21-23) This portability is eligible for Hungarian nationals, recognised refugees and long-term migrants meeting the mentioned conditions. Consequently, EEA nationals are excluded. (Section 21(1))

6. YOUNG WORKERS

The Labour Code contains the most universal provisions on persons enter into an employment relationship, and other legal sources must respect for the Labour Code providing more guarantees or specific requirements in certain sectors (in public sector, such as for public servants, public officials, or for seasonal workers, athletes, etc.). Accordingly,

- all persons – regardless nationality - entering into an employment relationship as employees must be at least 16 years of age (valid age of employee). For the purposes of employment-related matters, employees under 18 years of age shall be construed as young workers [Art 72(3)]. In accordance with international treaties (e.g. ILO conventions) there are certain protective rules on young workers (16-18 years of age) in the Labour Code. However, the relevance of these protective rules is losing because the age of obligatory schooling reaches the age of 18 just in 2010 for all persons. The Act on Public School has gradually extended the schooling age from 6-14 to 5-18 , and all children
- Young workers shall be employed – in accordance with the Dir. 94/33/EC on protection of young employee
  - exclusively by way of means of employment contract; [Art 72/A].
  - in work which may not result in detrimental effects with a view to their physical condition or development;
  - on the basis of a preliminary medical examination in certain jobs requiring specific working conditions that is determined by legal regulation [Art 75(1)]
  - in working time not exceed 8 hours daily or – 40 hours weekly. The working time cycle of young persons shall not be longer than one week. For the purposes of working time limits, the time of work performed for several employees shall be accounted on the aggregate;
  - providing 30 minutes of break-time if working time is over four and half hours daily;
  - providing daily resting period at least 12 hours;
  - out of work night hours, out of extra work, special duty or on-call duty; [Art 129/A]
  - providing five extra days of vacation time each year, the last time such benefit applies shall be the year when the young worker reaches 18 years of age; [Art 132]
  - the amount of damages awarded to a young worker shall be reviewed upon his reaching 18 years of age or after one year following his graduation from vocational training, and the damages for the subsequent period shall be established in accordance with any changes in his capacity to work and in his qualifications. [Art 184(2)]
- Regardless the nationality of young workers, the employment relationship may be entered into by a person of at least 15 years of age pursuing elementary school, vocational
school or secondary school full-time studies during the school vacation period. Their lawful, valid employment requires the consent of their legal guardians (parent) up to the age of 16. Over 16 years of age this consent is not required. Young persons subject to compulsory full-time schooling may be employed by way of derogation from the provisions on the minimal age of employee (15 or 16 years of age) for the purposes of performance in artistic, sports, modelling or advertising activities upon prior authorization by the competent authority. [Art 72(7)] The responsible ministers are entitled to regulate these sectors [Art 203] but only the minister responsible for sport has used this entitlement.

The consolidated Act LXXIX of 1993 on public education requires how provisions of Labour Code shall be in harmony with the rules on students participating in vocational training. For instance, students in age of over 16 can be employed only on the grounds of a student contract implementing all rules on labour protection, equal treatment, working conditions determined in the Labour Code. The vocational training and employer shall conclude insurance contract in favour of each student. [Art 11(2)(5)]

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 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.

In order to support young holders of diploma, certificate or qualification the Act CXXIII of 2004 (modified in 2010) 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.

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 new Labour Code entering into force on 1st July 2012 transposes the Dir.94/33/EC on protection of young workers in employment. 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]

- 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 relationship, temporary employment in school cooperative with third party. [Art 114, 119, 219, 223] These requirements as cogent shall be implemented in employment of foreign employer if (service) contract is concluded with a third party and labour is made in Hungary while this foreign employer is entitled to opt other employment conditions in other cases.[Art 295]

**Recent literature**


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 [Act I of 2007 on entry and residence rights of persons being entitled to free movement and right to residence] amended recently by the Act CV of 2011 and Act CCI of 2011 (FreeA)
- 2010. évi LXXV. törvény az egyszerűsített foglalkoztatásról [Act on Simplified Employment] in effect from 1st August 2010 was replaced by the new Labour Code (1 of 2012) with effect 1st July 2012

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.115 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 AND ROMANIA

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

3. STATISTICS

The number of union citizen workers has decreased by 10 percent in the year of 2011, in absolute terms it amounted to 11,847 persons.116 Also, union citizen job-seekers do not frequently appear in the Hungarian labour market. The trend of diminishing amount of union workers in Hungary was going on in 2011.117 While the number of registered labourers by the labour market centres was 18,500 in 2009, 13,200 in 2010 it was only 11,847 in 2011. It means a 10 percent decrease within a year. The share of 11,847 union workers was different from the previous year: 54 percent of them were Romanians (~7.6 percent to 2010), 14 per-

cent were Slovaksians (-51 percent to 2010) while 10.4 percent was coming from the UK (+140 percent to 2010). The capital has been their main destination area, its rate was 41 percent in 2011. Looking for their presence in various fields of economy it can be said that

- they were employed mainly in agriculture, IT, communication, service supporting activities, trade and processing industry,
- they were employed in jobs without specific qualification (35 percent), with medium qualification (20 percent) and high qualification (23 percent).

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.  

Recent literature

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118 Magyarok helyett majd spanyolok szedik a salátát. Svájci kvóta - 23 April 2012, Népszabadság.
1. **RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFUE AND REGULATION 1612/68**

1.1. **Family benefits of self-employed Hungarians working in Germany**

In terms of relationship between social security and migration there have been some cases where, in the view of the Hungarian party, some discriminative rules were in force in Germany on the basis of Regulation 1408/71/EEC. Albeit this regulation has already been repealed by Regulation 883/2004/EC, in terms of legal consideration, some pending cases require attention. Especially where a Hungarian father who is a registered as self-employed in Germany, whilst the mother resides in Hungary with a child/children, without receiving salary or any similar remuneration, is not granted the same amount of family benefits as a German self-employed person.

Article 62 (1) of the Act on Taxation (Einkommensteuergesetz, hereinafter: EStG) defines three categories of natural persons who are entitled to ‘kindergeld’: (i) those who reside in Germany – in the cases concerning to Hungary the fathers are working in Germany but living together with their family in Hungary and therefore, they only stay in Germany for the purposes of work; (ii) those who are German citizens and *de jure* unlimitedly obliged to pay tax (Article 1 (2) of EStG); and (iii) those who are to be considered as taxpayers unlimitedly according to Article 1 (3) of the EStG upon request. The Hungarian self-employed persons without permanent residence in Germany qualify for this latter category *upon their request* and not by virtue of the law.

Germany takes the view that Regulation 1408/71/EEC covers only self-employed insured persons who are insured obligatory under the statutory scheme. For the definition of self-employed they refer to Article 2 of this Regulation and Annex I E. (b). Consequently, they argue, the Hungarian self-employed – as they are not obliged to pay but are insured upon request - does not fall under the scope of the Regulation. By this self-employed persons from another country whose family resides outside Germany are falling out of the scope of the social security coordination by referring to the German law. For the reason that, according to Annex I, the Regulation only applies to those who are under the statutory scheme, but –as mentioned above – the group of Hungarian workers in question is not obliged to pay contributions.

Hence, in parallel with the community social security coordination and irrespective of it under the Regulation, family benefits are granted to the German citizens and to those self-employed persons who reside in Germany. At the same time, to those self-employed persons who are not German citizens and their family resides in a different State benefits are not granted. This seems to be contrary to the community law and caused contradictory with regard to the initial sense and goals of the social security coordination.

Germany also states that according to Article 65 (1) of the EStG the German authorities must not pay ‘kindergeld’ for children who receive similar type of benefit in another country. They assume that Hungary is competent and grants family benefits, and that is why they do not deem themselves competent. However, not to pay benefits is contradictory to the will of
the legislator of the Regulation, therefore in light of a judgement of 2002\textsuperscript{119}, Germany pays half of the benefit for the claimants.

In conclusion, it is reckoned that Annex I (E) (b) contradicts to 1408/71/EEC, to Article 24 of Directive 2004/38 on non discrimination and free movement as well as to Article 8 and 14 of the ECHR. In my view the German legislation and Annex I (E) also opposes to Article 1 (a) (i) of the Regulation on defining employed and self-employed persons. In addition, it is contrary to the social security coordination and the said regulations, that - according to Article 65 (1) - the EStG applies to EU citizens in terms of comparability and granting benefits. Social security coordination rules apply to all benefits, without comparing the schemes. Thus, no authority is entitled to declare the benefit of the other state ‘similar’ and - by that - exclude its responsibility.

The number of cases is unknown but I can estimate hundreds. This is a general matter of the problem seeks for high level solution because there is a breach of fundamental principles here.

1.2. Supervision of pensions claims

Both in the 2008 and 2009 reports it was already highlighted that there was 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.\textsuperscript{120}

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 \textit{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 can not 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.

\textsuperscript{119} Bundesfinanzgerichtshof, 13 August 2002, VIII R 54/00
\textsuperscript{120} 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.
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:

1. 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.

2. 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.

3. 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).

4. 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.
   a. 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.
   b. The person concerned is only entitled to emergency dental services.
   c. 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 can not be beneficiary to such benefits that are not accessible in Hungary on the expense of the Hungarian insurance fund in a different country.
   d. The person concerned is not entitled to medical treatments abroad. This sum is the 50 percent of the minimum salary for adults (36,750 HUF = 133 € in 2010 and 39,000 HUF = 142 € for 2011), 30 percent for children (22,050 HUF = 80 € in 2010 and 23,400 HUF = 85 € for 2011).\(^{121}\)

The precondition for the entitlements in point 2 and 3 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 2 (hence they are not family members or minors) but can fall under point 3 or 4. Point 3 is more favourable hence the person is required only 5,100 HUF (19 €) per month, not 50 percent of the minimum wage (39,000 HUF = 142 € per month). That is why several EEA nationals urge to be included in point III.

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\(^{121}\) Tullius Kft. Social booklet, p. 6, Budapest 2010. [www.munkajogok.shp.hu](http://www.munkajogok.shp.hu)
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 National Tax and Customs Office (hereinafter: 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 loose 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.

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 5100 HUF (19 €) 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 5100 HUF contribution is not due. In practise, the TAO recovers the due contributions, which is 60000 HUF (220 €) per 12 month.

122 www.apeh.hu.
123 http://www.oep.hu/portal/page?_pageid=34,35207&_dad=portal&_schema=PORTAL.
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. In 2009 this number amounted to 1614. In 2010 578 persons left for the UK, 354 persons for 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.

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 Semmeweis Plan on health care reform including the institutional and human resource modernisation. Last spring 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.

3.1. Integration measures

It was explained from another publication 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 produces about 155 000 newly naturalised nationals mainly from Romania, Slovakia, Serbia and Ukraine within 18 months.

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125 1071/2012.(III.22.) Kormányhatározat.


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 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 413 Turkish persons were employed in Hungary on 31 March 2011. It is a bit reduction comparing to the same period in previous year. From surveys we know that Turkish nationals are private or family entrepeneurs 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 EmplA or the Government Decree provides exemptions. It is problematic that EmplA refers on neither international commitments widely as treaties in general, nor EU law and 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, closeup 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. A significant part of returnees is registered as unemployed but they can hardly find a convenient job and they are

129 A külföldi állampolgárok magyarországi munkavállalásának főbb jellemzői 2011, Nemzeti Munkaügyi Hivatal, Budapest (Székács Tamás).
unemployed during the transition period while they are looking for a good job at home or return abroad.

On the basis of HU-LFS data analysis made by Hárs the direction of labour migration (to Austria, Germany and UK together 70-76% of all) was unchanged during the recession (2007-2010) and its size was stable. Although there was a small drop of labourers in Germany but the general trend has been a continuous solid increase of Hungarian workers in EU15 before and even in crisis period overlapping with the start of economic restraints at home. In parallel of growth of emigration the process of return was also upgraded, the data are partially available. We have information only on registered returnees as unemployed persons. In 2010 their number meant one fourth of emigrants. The number of returnees in 2008 was 3 000 persons, in 2009 it was 5 000 persons and in 2010 it was 15 000 persons (mainly from the UK and Germany). Among the returnees (2007-2010)

- there were more female than among the emigrants differing from the migration strategy of male. Women were seeking job at home after a shorter working period abroad;
- there were more and more young persons;
- there were more semi-skilled or less qualified labourers also differing from the growth of qualified migrant workers. Inside the growing emigrating workers the rate of secondary and tercier educated persons is increasing.

On the databasis of E301 format (on facts and times for pension scheme) analysis made by Hárs in February 2011 can provide information also on returnees registered as unemployment (N=23503). Accordingly,

- majority or returnees from EU15 were employed in less and un-qualified work, in particular labourers from Austria;
- returnees from new member states were employed in medium-qualified work (mechanic, repair, industrial jobs),
- returnees from Mediterranean states were employed mainly as unqualified jobs in services,
- the number of returnees employed in highly qualified work was marginal;
- the average period of employment in EU26 is 2 years;
- the majority of returnees were migrating from the Austrian border zone, from the capital and cities.

There is neither special labour service, employment, social supports nor re-integration assistance for returnees.

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

The Ombudsman has received complaints for maladministration, discrimination and non-equal treatment in 2011-2012 that would be relevant to free movement of workers.

- Ombudsman launched an investigation on dignity of labourers in early 2012 looking at new restrictions in employment. The Alliance of Employers (MGYOSZ) also supports

131 See also http://epp.eurostat.ec.europa.eu/portal/.
the Ombudsman investigation in particular on practice of fundamental rights among young workers, the ban of child work, the right to free vocational training, employment of unskilled persons and right to work. As the representative of Alliance stressed the new Labour Code would be implemented in a completely changed environment together with new rules on Public Education Act (that reduces the obligatory education age from 18 to 16) and Vocational Training Act (that deleted the non-professional studies, such as literature, history, geography or languages from the curricula excluding the movement of students to grammar school and entry to higher education).  

- 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 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 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 discriminatory legal practice.  

- 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- proprietors (e.g. by family members) while

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132 [www.ajab.hu](http://www.ajab.hu) and Rolek Ferenc, MGYOSZ, Klubrádió, 29 May 2012.  
133 NEK723/2011, June 2011 OBH.  
135 MTI 30 June 2011 Elmarasztalt egy somogyi önkormányzatot az ombudsman.
sanction is not proportional. Thus the Ombudsman initiated amendment requesting the Government to prepare the Bill. On behalf of the government the minister of economic development informed the Ombudsman that amendments were made how to use the foreign number plates in Hungary respecting for free movement and tax liability together.

- The 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 Inhabitants’ Address Registry nor the Act on Local self-governments (Act LXV of 1990) entitles municipals to regulate address registration this ‘exclusionary technique’ has been spread. Complaints are forwarded to the Ombudsman (mainly from Roma) but the case of Romanians in Alsónémedi (V/2. point) may represent the attachment of union citizens, too.

5. SEMINARS, REPORTS AND ARTICLES

The following research relating to labour migration can be mentioned during the reporting period:

- A sociological survey on immigrants proves that strong anti-migration sentiments are independent from the low rate of migrant population (below 2 percent of total inhabitants). On the other side, immigrants have better economic situations (richer, better educated than nationals), their cultural parameters are over the average (their 70% can speak more languages, the penetration of internet is high) and they have more friends and social contacts than the local population. (Corvinus University)

- AMICALL international project is gathering good practices in dialogue between municipals and migrants’ communities in Hungary, UK and Germany. The ‘Attitudes to Migrants, Communication and Local Governments Initiatives’ were discussed together with research papers. (Central European University supported by the EIF)

- Survey on integration policy in capital districts 8th and 10th may test a proactive policy (Tárki).

- The project of immigrants’ experiences on integration in Budapest and in another European cities collected respondent answers on employment, languages, political and civil participation, family reunion, long-term residence and citizenship. The highest amount of Hungarian data can be compared to experiences in Spain, Germany, France, Belgium.

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139 Roundtable programme 17 February 2012.
Portugal and Italy. Although the target group was the non-union citizens family members could get to the samples. (Hungarian Association of Migrants and ICCR)\textsuperscript{140}

Recent literature


\textsuperscript{140} How immigrants experience integration in 15 European cities. Immigrant citizens survey. May 2012, \url{www.immigrantssurvey.org}