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

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Economic situation, demography and migration

There is still economic crisis in Latvia although with a view towards slow process of recovery. The rate of unemployment decreases. Statistics demonstrate that at the beginning of 2011 there were 17.6% of registered jobseekers and now this number has dropped to 16%. As reported in previous year, the fast decrease of unemployment from 17% at the beginning of 2010 till 15% at the end of 2010 was not precise, because it did not take into account number of factors which did not appear in statistics before Population Census carried out on 2011. Although official data of Population Census will be processed and published only at 3rd quarter of 2012 there are preliminary observations, including calculation of unemployment rate which has changed statistics considerably. Increase of unemployment rate on 2011 in comparison to 2010 is not factual but just a result of more precise data.

Preliminary data of Population Census carried out at the beginning of 2011 shows that instead of 2.3 million inhabitants (as it was presumed before) there are only 1.9 million inhabitants in Latvia. As emphasized by sociologists it simply proves and affirms their presumption that over 400 000 persons have left Latvia for employment and residence in Western Europe. Indeed Central Statistical Bureau of Latvia estimated that on 2011 around 13 000 persons have left Latvia for the purposes of employment in Western Europe and 10 000 more persons have deceased than born. Consequently it is estimated that during 2011 Latvia has lost at least 23 000 persons. Emigration rate on 2011 has grown by more than 30% in comparison to 2010. Unfortunately more and more persons leave Latvia together with their families. It means that they do not have an intention to return back in the nearest future. Consequently there is negative population rate originating from two factors – negative birth rate and negative migration rate.

Experts warn that with the growth of economy Latvia will suffer from shortage of workforce and thus this is the last moment to think on demographic and immigration policy. While politicians start working on measures to improve birth rate there are no steps taken on discussion on future immigration policy. It is on account of fact that Latvian society (electorate) is very negative towards giving ‘green light’ to any kind of immigration to any group of persons. Such resistance is due to Latvian painful heritage from Soviet occupation when many Latvians were either killed or sent to Siberia while mass immigration from other parts of Soviet Union took a place. Around 40% of population of Latvia forms persons who have immigrated from Soviet Union and their descendants. Only 56% of population constitute those living in Latvia for centuries. All these facts create serious obstacles for elaboration of long term policy of economy which cannot be possible without immigration of workforce from the third countries.

Structure of legal regulation and legislative changes


There have been no considerable changes during 2011/2012 in Latvian immigration law concerning rights to free movement under the EU law. The structure of legal regulation has remained the same. The umbrella law is Immigration Law which formally regulates to both immigration regimes – national and the EU. At the same time Immigration Law regulates the immigration regime for the EU citizens and their family members formally only. It is only Article 2 which relates to the EU immigration regime. Article 2(1) lists the provisions of the Immigration Law which are applicable to the EU citizens and their family members and Article 2(2) provides that in substance the rights of immigration and residence of such group of persons are to be regulates by a regulations issues by the Cabinet of Ministers. The Regulations currently implementing Directive 2004/38/EC are the Regulations No.675.

During 2011 there were amendments regarding implementation measure of Directive 2004/38/EC, however they were more of formal than substantial importance. On 29 March 2011 the Cabinet of Ministers adopted Regulations No.243 which replaced previous ones to implement Directive 2004/38/EC more precisely, but soon after that the Parliament adopted another legal base for adoption of such regulation. In particular Immigration Law was amended by Article 2 which is current legal base for the Cabinet of Ministers to adopt regulations on the free movement rights of the EU citizens and their family members. By the same amendments the previous legal base – Article 69 of Immigration Law was deleted, thus there was an urgent necessity to adopt other regulations instead of Regulations No.243 which would be issued on the basis of correct legal base – correct article of Immigration Law. This is why the Cabinet of Ministers on 30 August 2011 adopted another Regulation No.675 repealing Regulation No.243. In substance there is no difference between both.

As reported in previous reports such implementation structure may not be considered as complete, because the regulations are lower in the hierarchy of legal norms in Latvia than the laws. Such structure of implementation of the EU directives may make application of the EU law more complicated taking into account supremacy of the EU law. It may not be excluded that some persons in charge of application of the legal norms in Latvia may not be aware of the formal impact of Immigration Law to the EU immigration regime and in case of collision of the Regulations implementing Directive 2004/38/EC and Immigration Law may apply legal provisions which are of higher rank in national hierarchy of norms, i.e., Immigration Law instead of the Regulations No.675.

The Regulations No.675 has been amended once since the adoption. The amendments in general envisage more precise and clear implementation of the EU law. For example, Point 2.1 of the Regulations No.675 now clearly stipulates that the Regula-

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4 Procedure under which the Unions citizens and their family members enter and reside in Republic of Latvia (Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieeļoj un uzturas Latvijas Republikā), OG No.141, 7 September 2011, as amended until 8 May 2012.
5 OG No.58, 13 April 2011, has lost force.
6 Amendments OG No.93, 15 June 2011.
8 OG No.70, 8 May 2012.
tions apply to a Union citizen who arrives to reside in Latvia and his/her family members who arrive with him/her. Point 2.2 provides that the Regulation No.675 is also applicable to the family members of a Latvian citizen who returns to Latvia after being used his/her free movement rights (including service provision in other EU Member State). Previously Point 2 contained current Point 2.2. New Point 34 provides that permanent residency certificate has to be issued for period of 10 years.

In other fields of law concerning free movement rights there were no considerable changes during 2011 and 2012.

Migrant workers in Latvia
Statistics show that there were 2597 workers – Union citizens with valid registration certificates at the beginning on 2012 in Latvia. At the same time there were 1387 workers – third country nationals. However on 2011 there were only 1047 workers – Union citizens who have required registration certificate for a first time, in comparison to 3777 third country workers who on have required residency permit for the first time. During last years it has been and is a stable trend that there are more third country workers than workers – Union citizens.

Chapter I: The worker: Entry, residence, departure and remedies

There have been no considerable changes in legal regulation on entry, residency and departure of the EU citizens (including EEA citizens and citizens of Swiss Confederation) and their family members under Latvian law apart to minor amendments described in Introduction of current report. Formally such rights are provided by Immigration Law but in substance by the Regulations No.675.

1. Transposition of provisions specific for workers

Article 7(1)(a)
Point 25 of the Regulation No.675 provides that in case a Union citizen wishes to remain in Latvia for a longer period than three months he/she has an obligation to register at the Office of Citizenship and Migration Affairs (further – OCMA). Point 27 provides that a Union citizen has a right to obtain registration certificate if he/she is employed or self-employed in Latvia or he/she is a service provider in Latvia or an employee of a person registered in other Member State. Point 28 provides that mentioned group of the Union citizens for the purpose of acquisition of a registration certificate must present at OCMA valid travel document, submit proof on employment (self-employment) and filled application form (the latter condition apply only in case a Union citizen apply for residence right in Latvia for a first time).

It follows that in general Article 7(1)(a) of Directive 2004/38/EC is implemented correctly.

Article 7(3)(a-d)
Point 29 of the Regulation No.675 provides that a Union citizen retains the status of an employee or self-employed if he/she:

9 Data provided by OCMA on 11 June 2012 by a Head of Migration Department of OCMA, not published.
“29.1. is temporary unable to work due to an illness or accident;

29.2. is registered as unemployed or as a jobseeker at the State Employment Agency and has been employed before such registration for longer than a year and unemployment has occurred due to circumstances not dependent upon him/her;

29.3. is registered as unemployed or as a jobseeker at the State Employment Agency within first 12 months after commencement of employment. In such a case he/she retains status of an employee up to 6 months;

29.4. has started to obtain a professional education connected with previous professional activities at an establishment of professional education registered at the register of the Educational Establishments. Requirement on relation of education program with a pervious employment is inapplicable if unemployment has occurred due to circumstances not dependent upon him/her.”

It follows that Point 29 of the Regulations No.675 implements requirements of Article 7(3)(a-d) of Directive 2004/38 word by word.

**Article 8(3)(a)**
Point 27 of the Regulation No.675 provides that a Union citizen has a right to obtain registration certificate if he/she is employed or self-employed in Latvia or he/she is a service provider in Latvia or he/she is a person registered in other Member State. Point 28 provides that mentioned group of the Union citizens for the purpose of acquisition of a registration certificate must present at OCMA valid travel document, submit proof on employment (self-employment) and filled application form (the latter condition apply only in case a Union citizen apply for residence right in Latvia for a first time).

It follows that Article 8(3)(a) of Directive 2004/38/EC is implemented correctly and that a Union citizen may prove his/her status of employed or self-employed in Latvia by any means. According to Latvian law an employee in Latvia must have employment contract in written form (Article 40 of the Labour Law)\(^{10}\) and a self-employed person must register at the State Revenue Office (which issues certificate of resident income tax payer), but for some professions self-employed must obtain special certificate from municipalities. Consequently Latvian law ensures possession of documents for an employee or self-employed proving their status under Point 28 the Regulation No.675.

In previous reports there was described one practical obstacle. The problem was that there was uniform application form for the Union citizens and any third country nationals for acquisition of a registration card or residence permit. Such form required excessive personal data which may be not required with regard to a Union citizen.

\(^{10}\) OG No.105, 6 July 2001.
because such data are irrelevant in the context of their residency rights in the EU. The Regulation No.675 corrects this incompatibility with the EU law. The Regulation No.675 has (in annex) special application form for a Union citizens and their family members. New application form requires just a basic data of a person – name, surname, birth data, place of birth, reason of a stay and desired length of stay etc.

Article 14(4)(a-b)
The Regulation No.675 does not contain provisions directly implementing Article 14(4)(a-b). The only related provision of the Regulations No.675 is Point 56.1 which provides that a Union citizen may be refused registration certificate, however such provision is not applicable to employed Union citizen and his/her family members or a Unions citizen and his/her family members who have permanent registration certificate or permanent residency permit. With regard to other grounds of expulsion the Regulation does not distinguishing between employed Union citizens and those not carrying out economic activities. Point 58 of the Regulations No.675 allows issuing of expulsion order by the Minister of Interior only in case a Union citizen or his/her family member pose genuine threat to security or policy. Point 59 stresses that threat must be genuine, factually existing and sufficiently serious and that previous criminal record itself may not constitute grounds for expulsion.

Point 26.1 of the Regulations allows residence of a jobseeker and his/her family members in Latvia without registration obligation at OCMA up to six month and longer if there is a proof that there is a genuine chance of being engaged. The Regulation No.675 does not clearly provide protection against an expulsion of a jobseeker. However there is a doubt if such provision is necessary. First, jobseekers may be expelled on the general grounds only (Point 58 and 59) like employed and self-employed Union citizens. Second, jobseekers who have entered Latvia (who have not been resided and employed before in Latvia) according to national law provisions do not have a right to any social assistance. It is because Law on Social Services and Social Assistance explicitly provides that the right to social assistance have only Latvian citizens and Latvian non-citizens and ‘foreigners who has personal code, except those having fixed-term residency permits’ which means that a foreigner must have permanent residency permit to be entitled to claim social assistance.

Article 17
Article 17 of Directive 2004/38/EC is implemented almost word by word by Point 31 of the Regulation No.675. Point 31 provides:

‘A Union citizen who has resided in the territory of the Republic of Latvia in the status of an employee or self-employed person for a period of time shorter than five consecutive years shall have the right to receive a permanent residence certificate if he or she:
31.1. at the time of ceasing their professional activities has reached the age of retirement as specified in the regulatory enactments of the Republic of Lat-

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12 Article 3(1)
via or has ceased paid employment, to go into retirement prematurely if he or she has worked in the Republic of Latvia for at least the previous 12 months and has resided continuously in the Republic of Latvia for longer than three years. A continuous period of residence in the Republic of Latvia shall include a period of employment in another Member State;

31.2. has continuously resided in the Republic of Latvia for longer than two years and terminated employment in the Republic of Latvia due to irreversible incapacity for work. If such incapacity to work has resulted due to an accident occurring at work or occupational illness, for which a person has the right to receive a benefit in the Republic of Latvia, the conditions regarding the length of residence shall not be applicable. A continuous period of residence in the Republic of Latvia shall include a period of employment in another Member State;

31.3. after three years of continuous working relations and residence in the Republic of Latvia as an employee or self-employed person in another Member State, retaining his or her place of residence in the Republic of Latvia and returning to it every day or at least once a week.

Point 32 of the Regulation No.675 implements the right to include as employment period duly recorded involuntary unemployment, absences from work or cessation of work due to illness or accident.

Point 33 of Regulation No.675 implements requirements of Article 17(2) of Directive 2004/38/EC. It provides that requirement of the length of residence provided by Point 32 is inapplicable if a spouse of a Union citizen is or has been citizen of Latvia but has lost citizenship of Latvia due to the marriage with a Union citizen.

Article 17(3) of the Directive is implemented by Point 36.1 which provides that in order to obtain permanent residence right for a family member requirement of at least five year continuous residence does not apply if a Union citizen has obtained permanent residency right on the basis of Point 31 of the Regulation No.675 (Article 17(1) of Directive 2004/38).

Article 17(4) of Directive 2004/38/EC is implemented word by word by Point 41 of the Regulation No.675.

Article 24 (2)

Social assistance

The Social Assistance and Social Services Law\textsuperscript{13} regulates system of social assistance and social services in Latvia. Article 3(1) of the said law provides that the right to social assistance and social services have foreigners who have obtained Latvian personal code, except those foreigners who have temporal residence permit. It follows that even though all persons having either residence permit or registration card are given Latvian personal code, nevertheless only those having permanent residence permit are entitled to social assistance and social services. Besides to the require-

\textsuperscript{13} Sociālo pakalpojumu un sociālās palīdzības likums, OG No.168, 19 November 2002.
ment on permanent residence right person must be registered as inhabitant at one of municipalities. It is because social assistance allowances are provided by municipalities. The social assistance allowances which must be provided by municipalities are minimum subsistence (income guarantee) allowance and housing allowance. It follows that a Union citizen and his/her family members may claim social assistance allowances only after acquisition of permanent residence permit and registration of place of residence at one of the municipalities. Since Article 8(2) of the Directive 2004/38 requires provision of address on a registration certificate one could not obtain residency permit without being registered place of residence at one of the municipalities.

It follows with respect to the social assistance and social services that Latvian law does not implement correctly and completely Article 24(2) of the Directive 2004/38. It excludes employed and self-employed Union citizens and their family members having temporal residence permits (registration cards). Besides Point 47 of the Regulations No.675 obliges municipalities to inform OCMA within 10 days if social assistance has been claimed by a Union citizen or his/her family members. Such obligation with respect to the employed and self-employed Union citizens and their family members to the certain extent runs contrary Article 14(4)(a) of the Directive 2004/38 because they may not be expelled by such reason anyway.

**Social benefits**

Other social benefits falling outside the scope of Regulation 883/2004 (1408/71) but falling within the scope of Article 24(2) of Directive 2004/38 are provided by the Law on State Social Allowances. Article 4(1) of the Law on State Social Allowances provides that law is applicable to the foreigners who have obtained personal code and reside in Latvia permanently.

In practice it is true that not all state social allowances are available to the EU citizens and family members without possession of a permanent residence permit (registration certificate). State Social Insurance Agency informed that they provide only those state social allowances which fall under the concept of family allowances within the meaning of Regulation 883/2004. The rest of state social allowances, for example, child-birth allowance, state subsistence allowance, remuneration for the performance of duties of a guardian of a minor, are not available to the EU citizens and their family members who holds only temporary residence certificates (permits) irrespective of the fact if they are or not economically active. Thus the Law on State Social Allowances also does not correspond to the requirements of Article 24(2) of Directive 2004/38, because excludes explicitly economically active Union citizens and their family members having temporal residency permits (certificates) from the right to numerous types of state social allowances.

**Education**

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14 Article 35(1) of Social Assistance and Social Services law.
17 Telephone interview with Department of International Coordination of State Social Insurance Agency, 5 June 2012.
Education Law is umbrella law for whole education system of Latvia and concerns pre-school education, primary education, secondary, professional and higher education. Article 3(1)(3) of Education Law provides the right to education to a Union citizen without requirement on possession of residency permit. It follows the Education Law in general implements requirements of Article 24(2) of Directive 2004/38, but only with regard to Union citizens, not to their family members who are third country nationals. Family members may acquire right to the education under Article 3(1)(6) like any other third country national under condition they possess residency permit.

Also Law on Institutions of Higher Education which is one of the special laws regulating particular level of education provides that only Union citizens enjoy equal rights with Latvian citizens to study at the institutions of higher education in Latvia. Therefore family members who are third country nationals qualifies under Article 83 of Law on Institutions of Higher Education which explicitly requires payment of study fees which are not lower than actual expenses of the establishment of higher institution. At the same time Article 83 provide for an exemption from such requirements if international agreements provide other rights where TFEU and EU secondary law may be called into question. However such a complicated and unclear legal regulation may not be considered as adequate implementation measure of the rights of family members of a Union citizen employed in Latvia under free movement of worker rights.

The similar problem occurs with Regulation No.220 “Procedure for granting, returning and discharging study grants and student loans from a credit authority with State guarantees” providing for the right to receive study grants from commercial banks with the state as the guarantor. Point 3 of Regulation No.220 awards a right to grants and loans on equal footing with Latvian citizens and non-citizens to the Unions citizens only under condition they possess temporary or permanent residence rights. Thus Latvian law in the field of education implements requirements of the Article 24(2) of Directive 2004/38 incompletely - it grants the right to education on the equal footing to Unions citizens only and totally excludes family members – third country nationals of economically active Union citizens.

2. Situation of jobseekers

According to the Point 26.1 of Regulation No.675 jobseekers - Union citizens and their family members may reside in Latvia without registration up to six months and longer if a Union citizen could prove that he/she has a genuine chance to engage in employment relationship.

At the same time jobseeker and his/her family members may obtain residency certificate and permits under general conditions for economically inactive Unions citizens and their family members (Point 27.5).

18 OG No.343/344, 17 November 1998.
20 Article 45(2).
In practice Union citizen with his/her family members could reside in Latvia and seek employment without registration to OCMA for unlimited period because of Schengen agreement travel regime where no one could establish particular date of arrival and period of residence. OCMA however informed on cases where it has controlled job-seekers residing in Latvia for more than 3 months. In case a job-seeker does not has official status of a jobseeker at State Employment Agency OCMA accepts proof of job seeking by any documents proving such fact – interviews to any employer, invitation letters to job interviews etc.\textsuperscript{22}

The situation is different if a Union citizen wishes to use services provided by the State Employment Agency - Latvian administrative institution in charge of assistance to unemployed or jobseekers.\textsuperscript{23} Official registration is crucial if a Union citizen seeking employment wants to be entitled to unemployment benefit exportable from another Member State or/and wants to attend different kind of educational and vocational courses for unemployed or/and wants to be provided recruitment services provided by the State Employment Agency.

Latvian law does not require possession of registration certificate for the purposes of official registration as unemployed or self-employed. According to the Law on the Support of Unemployed and Jobseekers a Union citizen is entitled to the support services provided by the State Employment Agency without residency permit. Article 2(2)(2) of the said law requires expressly residence permit to the family member of a Union citizen, omitting such requirement with regard to a Union citizen. Right to obtain status of unemployed or jobseeker is regulated in more detailed by the Regulation No.891 of the Cabinet of Ministers “Procedure on award of status of unemployed person or jobseeker and documents necessary for the award of such status”.\textsuperscript{24} Point 3 of the said regulations provides for the list of documents which must be submitted for the award of status of unemployed and jobseeker. Those are:

\begin{quote}
\textbf{3.1. Identification document or travel document;}
\textbf{3.2. Residence permit, if person according to Latvian normative acts must possess it;}
\textbf{3.3. Form E 303 according to Regulation No.1408/71, if person wants to export unemployed allowance from another EU Member State.}
\end{quote}

Taking into account provisions of Point 25 of the Regulation No.675 allowing legal residence in Latvia without registration up to three months and Point 26.1 of the same Regulation allowing seeking employment even longer than six months, Point 3.2 of Regulation No.891 has to be inapplicable during periods and situations specified by the Regulation No.675. Consequently formally Latvian law does not require possession of registration card for the purposes of official registration as unemployed

\textsuperscript{22} Telephone interview with official of Migration Department of OCMA, 12 June 2012.
\textsuperscript{23} According to Articles 10 and 15 of Law on the Support of Unemployed and Jobseekers (\textit{Bezdarbnieku un darba meklētāju atbalsta likums}), OG No.80, 29 May 2002, unemployed person is person who is entitled to unemployment allowance, but jobseeker is a person who does not have a right to unemployment allowance.
\textsuperscript{24} \textit{Bezdarbnieku un darba meklētāja statusa piešķiršanas kāršiba un statusa piešķiršanai nepieciešamie dokumenti}, OG No.205, 21 December 2007.
or jobseeker at the State Employment Agency. However in practice requirements are different.

In practice the State Employment Agency in addition to valid travel document and Form U2 or E303 (where relevant) requires notice on award of Latvian personal code and officially registered place of residence in Latvia issued by OCMA. It is necessary for data collecting system of unemployed and jobseekers connected with Latvian Population Register. Until registration of a person in the Population Register he/she does not have any official ties with Latvia. However it is impossible to obtain Latvian personal code and official place of residence without registration card, because registration card (registration at OCMA) at the same time means official registration at the Population Register of Latvia which fixes official place of residence in Latvia and awards a Union citizen Latvian personal code. It follows that for the purposes of the official registration as unemployed or jobseeker in Latvia a Union citizen must obtain registration card. Such a requirement runs contrary both – Latvian law and Directive 2004/38.

Besides to that Regulation 883/2004 requires application of U2 or E303 form for the purposes of exporting unemployment allowance in the competent authority of a host state within 7 days after receiving it from the competent authority of a sending state. In reality it is impossible to comply with such a short term, because, first, travelling from one state to another may take few days and also OCMA might not be able providing registration certificate on the same day after application. So, in most cases it is impossible to comply with 7 days term under Regulation 883/2004 to submit U2 or E303 form at a competent authority of a host state. In practice the State Employment Agency tries to be flexible although there have been cases where a Union citizen had have miss 7 days term for registration, nevertheless no one so far has been refused right to exportable unemployment benefit in Latvia because of non-compliance with term.

3. Other issues of concern
Nothing to report

4. Free movement of Roma workers
There have been no significant changes with regard to substantial situation of Roma in Latvia and their use of the right to free movement of workers. Officially in Latvia reside 8582 persons of Roma origin but in reality they are at least twice as many. The experts estimate that there are around 15 000 Roma persons residing in Latvia. The difference between official number and reality is explained by

26 Telephone interview with EURES consultant of the State Employment Agency on 5 June 2012.
27 Point 48 of the Regulations No.675 provides that OCMA issues registration card immediately after application of all necessary documents by a Union citizen. In practice it may take few days because of automatic processing of data by system of Population Register. (Telephone interview with official of Migration Department of OCMA, 12 June 2012).
28 Telephone interview with Department of International Coordination of State Social Insurance Agency, 5 June 2012.
the fact of Roma discrimination in all spheres of social life in Latvia which leads to the situation where Roma persons change their official ethnic origin to either Latvian or Russian. However change of official ethnic origin cannot change likeness – Roma persons look differently from the rest of population of Latvia due to darker colour of skin, eyes and hair. Although experts considers that Latvian Roma are better integrated in society than Roma in other countries of Eastern Europe, because they know Latvian language and most of them are Latvian citizens, nevertheless (even after change of official ethnicity) Roma persons continue suffering from discrimination in many spheres of life\(^{30}\) on account of different race traits.

In all times Roma persons in Latvia have suffered from discrimination in labour market and economic crisis made their situation worse while opening of the EU labour market allowed them not only to get employment in the West but also live in friendly social environment free from everyday discrimination in social life. Roma persons claim that they feel free from discrimination, especially in the UK and Ireland. So, researchers estimate that 10 000 out of 15 000 Latvian Roma have made a use of their free movement and employment right and went to Western Europe.\(^{31}\) Representatives of Roma communities in Latvia approves the fact that more than half of their relatives are already in West and many more are preparing to leave Latvia in nearest future on account of discrimination in combination with unemployment.\(^ {32}\)

**Chapter II: Members of the family**

1. The definition of family members and the issue of reverse discrimination

Point 3 of the Regulation No.675 provides that a family member of a Union citizen is:

‘3.1. a spouse of a Union citizen;
2.2. direct descendent of a Union citizen or his/her spouse who has not attained age 21 or dependent relative of a Union citizen of his/her spouse;
3.3. dependent direct ascendant of a Union citizen or his/her spouse.’

Point 4 of the Regulation No.675 provides that a family member of an extended family of a Union citizen is:

‘4.1. a family member who is dependent of a Union citizen or his/her spouse or who had common household in a previous country of residence or who has serious health problems requiring personal care and a Union citizen confirms that may provide such care;
4.2. a partner, with whom a Union citizen has had at least two years long or registered partnership.’
In addition to Point 4.2 Point 37.5 does not require at least two years long unregistered partnership if partners have common child.

National immigration law provides more restrictive definition of family member than EU law. Immigration law\textsuperscript{33} recognizes as a family member of Latvian citizen or Latvian non-citizen spouse, minor children, minor children of a spouse, parents of Latvian citizen or of a spouse and spouses of parents. Listed family members may require residency permit with a view to permanent stay. However there are certain restrictions. Parents may obtain residency permit if they have attained pensionable age and do not require any social assistance.\textsuperscript{34} Children have residency right until attainment of majority, which is 18 years of age. In case of divorce or death of spouse – Latvian citizen or Latvian non-citizen, spouse of deceased person loses residency rights, unless he/she has minor child – Latvian citizen or Latvian non-citizen. Consequently national immigration law creates reverse discrimination against Latvian citizens in a pure internal situation.

2. Entry and residence rights

Entry and residency rights for family members are provided by the same Regulation No.675. In general the requirements of Directive 2004/38/EC with regard to the right to entry and residence of family members of a Union citizen are implemented correctly. However there might be some shortcomings.

First, Points 28.3, 34.3, 37.6 of Regulation No.675 require accept of both parents to acquire registration card or residence permit for a minor. Accept of either parent may be proved by written notice attested by sworn notary or if custody is awarded to one of the parents – by decision of a court or a competent authority. Such requirement runs contrary Directive 2004/38/EC, because it gives exhaustive list of documents which administrative institution may require for the purposes of getting residency permit. Directive does not require the consent of both parents to get residency permit for a child. Besides it is unclear how such norm could contribute to the better protection of the rights of a child taking into account that there are other legal documents dealing with child abduction.

Second, according to Point 39.2 OCMA issues permanent residency permit to a family member of a Union citizen, who has obtained permanent residence right, to 10 years only. Such provision may be contrary to Article 17(3) of Directive 2004/38/EC, because latter provision does not envisage granting permanent residency permit to a family member for a particular term.

Third, Point 37.2 of the Regulation No.675 according to Directive 2004/38 requires submission of documents testifying marriage or other kind of family ties (for example, birth certificate for a child). OCMA provided information that it does not require legalisation of official documents issued by authorities of the EU Member states. Officially OCMA accepts documents only in Latvia, Russian, English, German and

\textsuperscript{33} Article 24; OG No.169, 20 November 2002 as amended until 2011 OG No.93, 15 June 2011.

\textsuperscript{34} Article 30.
French. \(^{35}\) So, if a document is, for example, in Spanish, it is required to submit official translation (attested by sworn notary) in either of accepted languages which might be costly. At the same time OCMA informed that it does not require official translation of a document in other than those five listed languages if officials are able to understand information provided by particular document. \(^{36}\)

OCMA complies with requirements on terms for issuing residency permits for family members. Official term for taking decision on award of residency permit is 30 days. \(^{37}\) However after submission of all required documents OCMA issues notice that a family member - third country national has a right to stay legally in Latvia until decision on residency permit will be taken. \(^{38}\) OCMA states it usually provides residency permit for family member who is third-county national - within two weeks, even more OCMA tries providing residency permits to all family members together with a Union citizen. \(^{39}\)

3. Implications of the Metock judgment

There are no implications of the Metock judgement in Latvia, because Latvian legal regulation on residence rights of family members of the Union citizens has never contained condition on previous lawful residence in another EU Member State.

4. Abuse of rights, i.e marriages of conveniences and fraud

According to Article 15 of Civil Status Law \(^{40}\) a foreigner has a right to marry in Latvia with another foreigner if he/she has permanent residency permit. Such a requirement on a one hand may make more difficult to conclude marriages of convenience between a Union citizen of other Member State than Latvian and a third country national, but at the same time it may run contrary to the principle of equal treatment between EU citizens, because Latvian citizens are not required to have permanent residency in Latvia in order to marry a foreigner.

However Ministry of Justice provided information that currently there is new legal proposal – Civil Status Act Registration Law which intends to remove permanent residency requirement for all foreigners, including Unions citizens. \(^{41}\)

Supervision of genuineness of a marriage is not a responsibility of officials of Civil Status Units which provides marriage ceremonies, but State Border Guard which together with OCMA observes couple by inviting them to interviews and if necessary carrying out inspections at the place of common residence.

\(^{35}\) Article 22(4) of the Immigration Law, OG No.169, 20 November 2002, as amended until 2011, OG No.93, 15 June 2011. Article 21 of the Immigration Law which defines norms of the said law applicable to the Union citizens and their family members do not refer Article 22(4) as applicable to such group of persons. It follows that formally OCMA may not require application of documents by the Union citizens and their family member only in five languages specified by the Immigration Law.

\(^{36}\) Telephone interview with official of Migration Department of OCMA, 12 June 2012.

\(^{37}\) Point 50 of the Regulations No.675

\(^{38}\) Point 49 of the Regulations No.675.

\(^{39}\) Telephone interview with official of Migration Department of OCMA, 12 June 2012.


\(^{41}\) Telephone interview with Director of Department of Civil Status Acts of Ministry of Justice on 12 June 2012.
Neither OCMA nor Ministry of Justice reported on any case where a Union citizen of another Member State was suspected in marriage of convenience. Such problem more concerns Latvian citizens (females) wishing to marry to third-country nationals (predominantly from Turkey and Egypt), but to such cases Latvian national immigration law is applicable.

The other aspect of marriages of conveniences with regard to Latvia is that Latvia is still a country of ‘origin’ of ‘brides’ for third country nationals residing in Western Europe, especially in Ireland and Great Britain.\(^\text{42}\) If some years ago Latvian girls voluntary engaged in such marriages of convenience in other EU Member States then in recent years many Latvian girls have become victims of human trafficking. Namely, they were recruited to the UK or Ireland for work but instead after arrival they were locked in closed premises and threatened to be abused if they will not agree to marry a third country national. During recent years the police of all countries involved have discovered groups and schemes of transnational organized crime committing offences in the field of marriages of convenience leading to human trafficking and kidnapping.

5. Access to work
Point 6 of the Regulation No.675 explicitly provides that family members of a Union citizen do not need work permits for employment or self-employment in Latvia. However it is questionable if family member who is third country national may enjoy this right before getting residency permit, i.e., before proving to official authorities that he/she has a status of a family member of a Union citizen. This matter is not regulated explicitly by Latvian law.

Official status of a jobseeker or unemployed family member may acquire only after he/she gets residency permit. Article 2(2)(2) of the Law on the Support of Unemployed and Jobseekers\(^\text{43}\) expressly provides that a family member of a Union citizen must have residency permit in order being registered officially as unemployed or jobseeker. Officially it takes 30 days to obtain residency permit,\(^\text{44}\) but in practice – shorter period of time, i.e., approximately two weeks.

6. The situation of family members of job-seekers

While a Union citizen has not obtained residency permit together with his/her family members latter do not have almost any other rights than right to reside in Latvia together with a Union citizen (legally up to six month or more). It may pose a serious

\(^{42}\) CILVĒKTIESĪBU KOMISIJĀ MEKLĒS RISINĀJUMS FIKTĪVO LAULĪBU IZSKAUŠANAI, HTTP://WWW.DELFI.LV/ARCHIVE/PRINT.PHP?ID=42429304 (ACCESSED 13 JUNE 2012). ON 13 JUNE 2012 COMMITTEE OF HUMAN RIGHTS AND SOCIAL AFFAIRS ORGANIZED MEETING WITH INSTITUTIONS OF INTERIOR AFFAIRS AND NON-GOVERNMENTAL ORGANISATIONS TO DISCUSS PROBLEM OF MARRIAGES OF CONVENIENCE WITH LATVIAN CITIZENS ESPECIALLY IN IRELAND WHERE LATVIAN EMBASSY HAS PROVIDED ASSISTANCE TO 89 POSSIBLE VICTIMS OF HUMAN TRAFFICKING. LATVIAN EMBASSY IN IRELAND HAS A DATA SHOWING THAT DURING LAST FIVE YEARS AT LEAST 1000 LATVIAN WOMEN HAVE REGISTERED MARRIAGE WITH THIRD COUNTRY NATIONALS IN THAT MEMBER STATE.

\(^{43}\) OG No. 80, May 2002.

\(^{44}\) Article 50 of the Regulations No.675.
problem to receive exportable benefits under Regulation 883/2004, because benefits are not exportable while a family member is not registered officially as unemployed at the State Employment Agency, but the State Employment Agency may not register a family member as unemployed while a family member does not possess a residency permit. 45

With regard to social assistance and benefits as described in Chapter I both - Social Assistance and Social Services Law 46 and Law on State Social Allowances 47 require personal code and permanent residency permit. Personal code may not be obtained without acquisition of a residency permit. 48

With regard to education – only those family members who are Union citizens themselves have a right to education without residency permit, while family members who are third-country nationals have a right to education only if they possess residency permit. 49 It follows that the family members of a Union citizen - job-seeker do not have any rights while they do not acquire residency permit along with a Union citizen which runs contrary to Directive 2004/38.

Chapter III: Access to employment. (a) Private sector and b) public sector

1. Access to employment in the private sector

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

Assistance to the jobseekers is provided by employment agencies of two types. First is the State Employment Agency. It is public administrative institution providing whole spectrum of employment services – starting from official registration of unemployed and jobseekers, provision of state paid vocational training and ending with proposition of vacant posts. Second type embraces private employment agencies which simply offer to their clients vacant positions and at the same time provide staffing services to employers.

The State Employment Agency provides employment services stipulated by Law on the Support to Unemployed and Jobseekers. 50 This institution provides vocational training, retraining, enhancement of professional qualifications, involvement in temporary work and in employment activities for special groups of persons, support for taking up entrepreneurship or self-employed activities, and of course career consultations as well as offers vacancies. According to Law on the Support to Unemployed and Jobseekers once a Union citizen has been registered officially as unemployed or jobseekers he/she is entitled to all services provided by the State Employment Agency on the equal grounds. However, serious obstacle to enjoyment of these rights is language. All services provided and training is carried out in Latvian exclusively.

45 See in detail the same problem with regard to a Union citizen Chapter I Section 2.
48 Telephone interview with EURER consultatnt of the State Employment Agency on 5 June 2012.
49 Article 3 of Education Law, OG No.343/344, 17 November 1998.
50 OG No.80, 29 May 2002.
Besides, there are very high Latvian language requirements for employment in almost all professions (see Section 1.2 below). Private employment agencies must obtain license from the State Employment Agency to provide employment services (including temporary work agencies). It is provided by Article 17 of the Law on the Support to Unemployed and Jobseekers. Detailed regulation on the rights and obligations of the private employment agencies are provided by Regulations No.458 “On procedure of supervision and licensing of merchants providing employment services”. Point 24.2 of Regulation No.458 among various obligations of the private employment service providers requires observance of the principle of equal treatment and non-discrimination provided by the Labour law.

1.2. Language requirements

General requirement of obligation of use of official language is provided by the State Language law. According to the Article 1 one of the aims of this law is to ensure that Latvian language could be used freely within every field of life. According to Article 3(1) official language in Latvia is Latvian language. Language requirement with regard to the private sector is regulated by Article 6. It provides that:

(1) employees of enterprises whose majority of shares are owned by state or municipality, must know and use official language at such level as necessary for the performance of their professional duties;

(2) employees of private sector and self-employed must use official language only as far as it concerns legitimate interests of the society (public security, health, morality, protection of health, consumer protection, protection of labour law, safety at work, administrative supervision of public);

(3) employees of private sector and self-employed which according to the delegation by normative acts perform public functions must know and use official language level necessary for the performance of such public functions;

(4) foreign experts and members of the foreign administration bodies of enterprises, who work in Latvia, must know and use official language at level necessary for the performance of their functions or must provide themselves translation into official language.

More detailed regulation on the language requirements are provided by regulation of the Cabinet of Ministers adopted on the basis of Article 6 of the State Language Law.

Currently language requirements for the purposes of employment are provided by the Regulation No.733 “On the level of knowledge of official language and procedure for verification of official language proficiency necessary for the performance of professional duties, for the acquisition of permanent residency permit and status of permanent resident of the European Community, and on state duty for testing of pro-

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52 OG No.105, 06 July 2001. In particular Article 29 of Labour law prohibits discrimination including on the grounds of nationality.
The A level requires basic knowledge of Latvian, the B requires ability to deal with almost all aspects of everyday and professional life in Latvian, the C indicates knowledge close to native speaker.

Regulation No.733 has two appendixes. The appendixes provide a list of the exact requirements on the level of knowledge of the official language for particular professions. The requirements of Appendix I are applicable to the state and municipal institutions and enterprises which are wholly or predominantly owned by the state or municipality or to the persons listed by Article 6(1) of the State Language Law. Appendix I provides exhaustive list of professions acknowledged in Latvian labour market. It means that Appendix I provide official language proficiency level for all professions. The requirements of Appendix II are applicable to private enterprises which according to normative acts perform public functions or whose activities concern legitimate interests of society or to the persons listed by Article 6(2) and (3) of State Language Law. Interpretation of the Article 6(2) is not given officially. However, it may be interpreted in many different ways. It may be interpreted as well that any profession or post in the private sector involves legitimate interests of the society in one or another way, thus applicable to all employees of private sector. Language inspectors of the State Language Centre however explain that Article 6(2) concerns those employees only working with customers and administrative institutions (for example, bookkeepers working with State Revenue Office, office workers and board members working with different administrative institutions). For the rest of employees of private sector employer is allowed to define official language proficiency level itself. However in practice Language inspectors apply this legal regulation in a way allowing private employer setting one level lower proficiency level than provided by Annex I for particular profession in public sector.

Appendix II contains approximately 30% of professions acknowledged in Latvian labour market. It sets proficiency requirements for professions listed therein. The list of profession with particular requirements on the knowledge of official language has been amended (extended) several times by hundreds of particular professions setting concrete level of the knowledge of Latvian language.

According to the case-law of the CJEU:

‘The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language. However,
the implementation of such a policy must not encroach upon a fundamental freedom such as that of the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States.\textsuperscript{57}

It follows that requirements on knowledge of official language must proportionate. The lack of initial assessment of the official language requirements in employment is however obvious. For example, Appendix I of the Regulations 733 requires B.1 level knowledge for chambermaid while Appendix II only A.1 level knowledge. It follows that in case chambermaid is employed by a hotel belonging to a state or municipality he/she must know Latvian language better than chamber maid employed at a hotel owned by private person. The same applies for example, to bathhouse attendant. It is obvious that for professions mentioned the work duties do not differ on account of a status of employer and owner or a business (public or private). Such examples explicitly demonstrate that Latvian language requirements as stipulated by the Regulations No.733 do not correspond to the principle of proportionality as required by the EU law.

In addition, the Regulation No.733 provides for specifically defined means of proof of knowledge of the state language. It could be proved either by a diploma of primary, secondary or higher educational establishment where studies are carried out in Latvian or a diploma issued by the state language proficiency examination commission. It seems that such provisions might not be in conformity with the case law of the CJEU, in particular \textit{Angonese}.\textsuperscript{58}

2. Access to employment in the public sector

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

Posts reserved exceptionally for Latvian citizens according to the special laws are the same as on 2011/2012 - civil servant,\textsuperscript{59} a judge,\textsuperscript{60} a court bailiff,\textsuperscript{61} a notary,\textsuperscript{62} a prosecutor,\textsuperscript{63} official of the system of interior and place of imprisonment,\textsuperscript{64} police offi-

\textsuperscript{57} Decision in case C-379/87, \textit{Anita Groener v Minister for Education and the City of Dublin Vocational Educational Committee}, European Court reports 1989, Page 03967, paragraph 19 . See also to that regard decision in case C-391/09, \textit{Malgožata Runevič-Vardyn un Łukasz Paweł Wardyn pret Vilniaus miesto savivaldybės administracija, Lietuvos Respublikos teisingumo ministerija, Valstybinė lietuvių kalbos komisija un Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyrius}, OJ C 312, 19 December 2009, paragraphs 83-88.


\textsuperscript{59} Law on Civil Service, OG No.331/333, 22 September 2000.

\textsuperscript{60} Law on Judicial Power (\textit{likums “Par tiesu varu”}), OG No.1, 14 January 1993.

\textsuperscript{61} Law on Court Bailiffs (\textit{Tiesu izpildītāju likums}), OG No.165, 13 November 2002.


\textsuperscript{63} Law on Prosecutor’s Office (\textit{Prokuratūras likums}), OG No.65, 02 June 1994.

\textsuperscript{64} Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks (\textit{Iekšlietu ministrijas sistēmas iestāžu un leslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums}), OG No101, 30 June 2006.
cer, an officer of state security institutions, fire fighter, boarder guard, national guard, civil employee in military service and solider, civil servant or an employee of the State Revenue Office, servants and officials at the diplomatic and consular service and executive of sports federation.

2.2. Language requirements
As described in Section 1.2 above language proficiency requirements are regulated by State Language Law and the Regulation No.733. With regard to public sector Annex I of the Regulation No.733 is applicable. Annex I provides level of official language proficiency for all professions acknowledged in Latvian employment market. It means that there is no possibility to work in public sector without knowledge of Latvian.

Language proficiency levels required for persons working in public sector (Annex I) are higher than those employed in private sector (Annex II). It leads to an absurd situation where persons performing the same professional duties but in different sectors (public or private) are subject to different levels of official language requirements. Even more, if proficiency level for a particular profession is not provided by Annex II or a person in private sector is not involved in work with costumers or administrative institutions, he/she is not subject to any language proficiency requirement while person performing the same professional duties in a public sector is subject to official language proficiency requirement set by Annex I. Such legal regulation is inconsistent with reality and evidence itself on the ungrounded and disproportionate character of the language requirements for certain professions.

2.3. Recognition of professional experience for access to the public sector
There are no special requirements in the recruitment procedures other than requirement of Latvian nationality for particular posts or professions and knowledge of Latvian language.

3. Other aspects of access to employment
Although there is no special legal regulation with regard to professional experience for the access to employment in the public sector, nevertheless, previous professional experience is important with regard to the amount of remuneration.

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67 Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks (Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums), OG No101, 30 June 2006.
68 Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks (Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums), OG No101, 30 June 2006.
69 Law on the National Guard of the Republic of Latvia (Latvijas Republikas Zemessardzes likums), OG No.82, 26 May 2010.
70 Military Service Law (Militārā dienesta likums), OG No.91, 18 June 2002.
71 Law on State Revenue Office (likums “Par valsts ieņēmumu dienestu”), OG No.105, 11 November 1993.
72 Law on Diplomatic and Consular Service (Diplomātiskā un konsulārā dienesta likums), OG No.155, 10 October 1995.
Remuneration in public sector is regulated by the Law on Remuneration of officials and employees in state and municipal institutions. The Cabinet of Minister adopted the Regulation No.1651. The Regulation No.1651 stipulates in detail determination of qualification grade and accordingly - amount of pay. The amount of remuneration is higher if official or employee is awarded higher qualification which also depends on professional experience. The Regulation No.1651 recognises professional experience acquired in the public sector only (particular institutions), with two exceptions – if a person has at least three years professional experience in the private sector or the person has acquired professional experience in the municipal sector, and such professional experience is vital for the performance of a particular work in the public sector.

There is no legal regulation requiring certain diplomas or giving privilege to the holders of particular diplomas of particular educational establishments. In practice, however, it is legitimate to require to the candidates to the post particular education, for example, in law or in economics.

**Chapter IV: Equality of treatment on the basis of nationality**

1. **Working Conditions – direct and indirect discrimination**

**Specific issue: Working conditions in the public sector**

As described in Chapter III Section 3 work experience is precondition for getting higher qualification grade and consequently salary of higher amount in public sector. According to the Regulation No.1651 in Latvia only professional experience in public sector in Latvia is taken into account for the award of qualification grade and respective amount of salary. Education is of course determining factor for award of grade in public sector. However normative acts do not contain any specific requirements with regard to diplomas obtained in particular educational establishments or countries for the purposes of determining qualification grade, salary or any other working conditions.

Latvian law does not contain express norms on prohibition of unequal treatment of the Union citizens from other Member States regarding working conditions in the public sector. Taking into account very small number of the Union citizens from other EU countries working in Latvia in general there is no information available on whether some law provisions have indirectly discriminatory effect on them.
2. Social and Tax Advantages

2.1. General situation as laid down in Art. 7(2) Regulation 492/2011

There may be the problems with equal treatment in areas of social law falling outside the scope of Regulation 883/2004. In particular it concerns flat-rate state social allowances provided under the Law on State Social Allowances and social assistance and social services provided under Social Assistance and Social Services Law. Both laws expressly provide that they entitle foreigners to the rights provided thereby under condition they reside in Latvia permanently, even more they explicitly restricts those the right for persons holding temporary residence permits.

State Social Insurance Agency informed that they provide only those state social allowances which fall under the concept of family allowances within the meaning of Regulation 883/2004. The rest of state social allowances, for example, child-birth allowance, state subsistence allowance, remuneration for the performance of duties of a guardian of a minor, are not available to the EU citizens and their family members who holds only temporary residence certificates (permits) irrespective of the fact if they are or not economically active. It means that information provided by Ministry of Welfare before namely that after obtaining of residency permit (registration card), personal code and inclusion into the Population Register a Union citizen and his/her family member qualifies as beneficiaries for state social allowances, social assistance and social services is not true in practice, because the institution in charge of provision of such allowances State Social Insurance Agency takes into account provisions of national law and does not take into account priority of Article 45 if the TFEU and Article 7(2) of Regulation No.492/2011.

According to the Law on Duties and Taxes, a taxpayer is any natural or legal person who in the territory of Latvia performs activities resulting in income to which taxes are applicable. Income of employees and self-employed is subject to the income tax. The income of natural persons is subject to some tax relief. It is the right to negative income deduction expenses on educational and medical services relating to a worker him/herself and/or his/her dependant family members. Detailed regulation on negative income deduction is provided by the Regulation of Cabinet of Ministers No.336 “Regulations on justified expenses for education and medical services”. Point 1.1 of the Regulation No.336 provides expressly that expenses for education within the establishments of the EU are subject to negative tax deduction. However no such express provision appears with regard to the medical services. In particular, it is not clear if expenses for medical services received in the other Member State are subject to the negative income deduction. Besides, expenses for medical services include expenses for health insurance, but regard only to such health insurance which is provided by insurance companies operating in accordance with Latvian law.

82 Article 4(2) of the Law on State Social Allowances, OG No.168, 19 November 2001; Article 3(1) of the Social Assistance and Social Services Law, OG No.168, 19 November 2002.
83 Telephone interview with Department of International Coordination of State Social Insurance Agency, 5 June 2012.
84 Letter of 9 March 2009, No.09.2-07/753.
85 OG No.26, 18 February 1995.
86 Noteikumi par attaisnotajiem izdevumiem par izglītību un ārstnieciskajiem pakalpojumiem, OG No.115, 03 August 2001.
Therefore, a negative income deduction does not apply to such medical insurance which is provided by an insurance company outside Latvia.

### 2.1. Specific issue: the situation of jobseekers

Latvian law does not provide for any special social benefit for jobseekers, thus judgements of the CJEU in cases *Collins*\(^8\), *Ioannidis*\(^9\) and *Vatsouras*\(^10\) are irrelevant for the Latvian situation.

As described in Chapter III Section 1.1 officially registered unemployed persons and jobseekers are entitled to employment services provided by the State Employment Agency. Such employment services include different kind of vocational training courses. During vocational training courses person is entitled to a scholarship.\(^1\) This right is applicable to all officially registered jobseekers irrespective of a nationality. However the obstacle is a language. All courses are conducted in official language - Latvian. So, if jobseeker does not know Latvian, he/she may not attend vocational training and consequently he/she may not entitled to a scholarship.

Under Law on State Social Allowances\(^9\) and Social assistance and social services law,\(^10\) a jobseeker having temporary registration certificate is not entitled to any social assistance and/or social services.\(^1\)

If a jobseeker come to Latvia by the car registered outside and obtains registration certificate in Latvia, he/she may experience some problems. In particular, none of the persons holding residency permit in Latvia is allowed to drive a car registered outside Latvia.\(^1\) Consequently taking into account the fact that in order to be entitled to employment services one should officially register at the State Employment Agency which is impossible without holding registration card (residency permit), a Union citizen wishing to register officially as the jobseeker in Latvia should take into account that he/she will be obliged to re-register his/her car in Latvia immediately after acquiring the registration card (residency permit).\(^1\) The said norms and norms precluding driving a car registered outside Latvia by Latvian citizens were contested before the Constitutional Court of Latvia. The claim was submitted by European company BTA which claims that such rules create serious obstacles to the mobile service provisions within the territory of the EU. The Constitutional Court of Latvia

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\(^8\) Case C-224/98.  
\(^9\) Case C-258/04.  
\(^10\) Joined cases C-22/08 and C-23/08.  
\(^1\) The Regulations of Cabinet of Ministers No.212 ‘On scholarship during vocational training, retraining and enhancement of professional qualification and during acquirement of informal education’ (Noteikumi par bezdarbnieka stipendiju profesionālās apmācības, pārvalkvalifikācijas un kvalifikācijas paaugstināšanas laikā un neformālās izglītības ieguves laikā), OG No.38, 10 March 2009.  
\(^7\) OG No.168, 19 November 2002.  
\(^9\) Telephone interview with Department of International Coordination of State Social Insurance Agency, 5 June 2012; see subsection 2.1 above.  
\(^5\) Article 9(4) and (5) of the Road Traffic Law, OG No.274/276, 21 October 1997.  
\(^6\) See Chapter I Section 2.
Chapter V: Other obstacles to free movement of workers

There are no other obstacles to the free movement of workers in the field of employment, social and tax law identified, however they may appear in different spheres of life but it is not so easy to identify them theoretically.

Chapter VI: Specific Issues

1. Frontier workers (other than social security issues),

Taxes

The tax law is uncertain on the issues if frontier worker enjoy the same tax advantages as workers residing in Latvia.

First, according to Article 14(2)(2) of the Law on Duties and Taxes a frontier worker is to be considered as a resident tax payer. Income of any resident tax payer is subject to the negative tax deduction for itself and for dependants. However the Law on Income Tax does not specify if an employee has a right to income tax relief if his/her dependants reside in another EU Member State.

The more detailed regulation on the negative tax deduction is provided by the Regulation of the Cabinet of Ministers No.336 “Regulations on justified expenses for educational and medical services” which obviously does not envisage the situation of frontier workers. First, expenses for medical services includes expenses for health insurance, but regards only such health insurance provided by insurance companies operating under Latvian Law on Insurance Companies and their Supervision, thus negative income deduction does not apply for such medical insurance provided by insurance companies outside Latvia. Second, although the Regulation No.336 does not refer explicitly to the medical services received in Latvia only, it is more likely that State Revenue Office would apply the Regulation only regarding medical services received in Latvia.

Both points do not take into account situation of a frontier worker and his/her family members who reside in another Member State and more likely receive medical services there and buy medical insurance from the local insurance companies. It follows that Latvian tax law with regard to negative income deduction are contrary to Article 45 of the TFEU and Article 7(2) of Regulation 492/2011.

98 OG No.26, 18 February1995.
99 Resident tax payer under Law on Taxes and Dues is a person who either permanently lives in Latvia or are present in Latvia for at least 183 days during any 12 month period.
100 OG No.26, 18 February 1995.
101 Noteikumi par attaisnotajiem izdevumiem par izglītību un ārstnieciskajiem pakalpojumiem, OG No.115, 03 August 2001.
102 Ibid.
Only on 2008 Regulation No.336 was amended with the provision recognising expenses for educational services received in other Member States as subject to the negative income deduction.103

Education
There are several problems concerning the right to education. First, the Education Law104 provides for equal rights to education without requirement of possession of residency permit to the Union citizens only. Consequently family members of a frontier worker who are third country nationals must obtain residency permit if they wish attending educational establishments in Latvia on the equal grounds with locals. Second, Point 3 of the Regulation No.220 “Procedure for granting, returning and discharging study grants and student loans from a credit authority with State guarantees”105 explicitly provides for a right to grants and loans on equal footing with Latvian citizens and non-citizens to the Unions citizens only under condition they possess temporary or permanent residence permits. At the same time the laws - the Education Law106 and Law on Institutions of Higher Education107 - creating the legal basis for the Regulation No.220 - do not require residency permit to a Union citizen to enjoy studies in Latvia on equal grounds.

2. Sportsmen / sportswomen:

In general sport activities both professional and amateur are regulated by Sports law.108 The Sports law provides general principles of organisation of sports such as principle of equality (everyone has a right to do sport), principle of fair play, principle of safety.

Institution in charge of sports policy is Ministry of Education and Science. This institution is supported by public advisory institution – Latvian National Sports Council consisting of several ministers and representatives of the leading sports organizations.

In general Latvia has adopted approach of non-intervention into organization of professional sports. In other words, executive power is in charge of setting very general framework of sports policy while competence of organisation of professional sport is fully left to the private sport organisations.

Sport organizations could be clubs, sport federations and other institutions defined by Sports law. Sport clubs shall be organizations unifying natural and legal persons having common interests in one specific sport activity. Sports federations shall be non-governmental organisations consisting of sports clubs and other legal persons, whose activities are connected with particular sport activity. One sport federation could represent interests of several specific sport activities.

However the only one federation of a particular sport activity could be recognized. Recognition procedure provides Council of Latvian Sport Federation according to

104 OG No.343/344, 17 November 1998.
105 OG No.303 10 July 2001.
106 OG No.343/344, 17.11.1998.
the Regulation of Cabinet of Ministers. Council of Latvian Sport Federations is also in charge of certain control of recognized sport federations, for example, control on compliance with law, and consequently Council has competence depriving status of recognized sport federation.

Due to economic crisis professional sport activities in Latvia has reduced considerably, for example, due to lack of sponsors there are less competitions and leagues at national level.

**Ice-Hockey**

Ice-hockey is the most popular sport in Latvia consequently here is the highest commercial interest. Latvian Ice-Hockey Federation (recognized federation) organizes ice-hockey activities in Latvia.

Rules on transfer of players of Latvian Ice-Hockey Federation provide that transfer to foreign club which is under IIHF jurisdiction is regulated by IIHF regulation ‘Transfers Regulations’. Latvian Rules on transfer stipulates that only such transfer fees may applicable which are stipulated by an agreement with a previous club. Rules on transfer provide also player’s registration fees. Amount of fees for adults (19 year and older) differs on the grounds of nationality. Latvian player must pay 150 LVL (213 EUR) but foreign player must pay 200 LVL (284 EUR).

Unlike until 2011 currently rules on limited number of foreign players in a team do not appear anymore. Regulations on Latvian Open Supreme League for Year 2012 is silent on the number of foreign players allowed to participate in Latvian club or a game, however it contains a rule that Lithuanian players may not be considered as foreigners.

Very important role in Latvian sport has ice-hockey team (club) ‘Dinamo Rīga’. It is established as joint-stock company with an aim to participate in Continental Ice-Hockey League (Russian league established under law of Russian Federation). Regulations of Continental Ice-Hockey League provide restriction for number of foreign players in Russian teams. For season 2011/2012 the limit is 5 field players and one goalkeeper. No limitation with regard to non-national players appeared with regard to foreign clubs participating in the League as ‘Dinamo Rīga’ is.

**Football**

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109 Regulations No.1396 ‘Procedure of recognition of sports deferation and procedure of supervision of recognized sports federation (Sporta federāciju atzīšanas un atzīto sporta federāciju kontroles kārtība), OG No.195, 12 December 2009.


Latvian Football Federation Rules on international transfer of players provides that transfer of players must be carried out in accordance with FIFA general rules on the transfer of players. Rules of Latvian Premiere League Football Championship for season 2012 do not limit number of foreigner players in team but allow for a game only 5 foreigner players being on a field in total. There are special participation fees for foreign players. Club is under obligation paying participation fees for each foreign player – for first five players – 300 LVL (426 EUR) for each, for sixth – 500LVL (711 EUR), for seventh – 800 LVL (1138 EUR), for each next player – 1000 LVL (1422 EUR). Collected participation fees shall be spent for bonus payments to leading football trainers.

Basketball
Latvian Basketball Confederation has several documents containing detailed rules on transfer of players, registration and training compensation. In order changing clubs after expiry of contract with previous club player must obtain letter of manumission plus old club and new club must reach mutual agreement on amount of compensation. In case both clubs could not reach agreement on amount of compensation it must be calculated according to the Regulations of Latvian Basketball Confederation on transfer. Amount of fees for registration and licensing of players are provided by Regulation on Licensing of Players Latvian Basketball Confederation. It provides for following amount of fees: licensing fees for Latvian player is LVL 25 (EUR 31), but for first foreign player - LVL 400 (EUR 569), second LVL 500 (EUR 711), third – LVL 600 (EUR 853), fourth and following – LVL 800 (EUR 1138).

Volleyball
Latvian Women’s and Men’s Volleyball Championship Rules do not limit number of foreign players. They require foreign players to posses transfer card issued in accordance with Regulations of International Volleyball Federation (FIVB). Rules require existence of transfer card provided by previous foreign club according to the Regulations of FIVB. Transfer fee for women for first to third season constitues 1500 EUR, but for men – 3000 EUR. Reduction in amount of 30% from transfer fees is granted to the players of Latvian national team. Most likely Latvian Volleyball Federation does not regulate transfer and quotas for foreign players, because due to the size and economic development of Latvia there is no considerable business interest in volleyball. There is also one international Volleyball league – Schenker Volleyball League open for Estonian and Latvian clubs. There is no restriction for foreign players explicitly

provided. Transfer of players must be provided in accordance with FIVB. No information on rules on transfer or license fees is available at Schenker league.\textsuperscript{118}

In all considerable fields of sport activities of Latvia (Ice-Hockey, Basketball, Football and Volleyball) where business interests appear rules and regulations of sport federations contain discriminatory restrictions with regard to foreign players (quotas, higher licensing and transfer fees) and measures (compensations between transferring clubs) which impede free movement of players (workers) with regard to all players irrespective of nationality.

Administrations national sports federations consider that quotas, higher licensing and transfer fees for foreign players are justified by considerations of protection of local sport development, which practically mean favouring to local sportsperson by giving them more opportunities. To the certain extent such considerations make a sense for small countries. Requirement for compensation between clubs is to be considered as justified for input made by previous club to the training and development of a sportsperson.

Latvia is comparably small country with an economy in transition. Neither Latvian state nor private business persons invest much money into Latvian sport activities. Due to small size of population financial overturn in sports is low and it is not profitable business in Latvia.

3. The Maritime sector:

Article 272 of the Maritime Code\textsuperscript{119} provides that any person may serve as a captain or a crew-member on Latvian ships if he/she is certified to such work according to Latvian law and international agreements. Article 286 of the Maritime Code provides that employment relationship with a mariner is governed by the Labour law\textsuperscript{120} and other normative acts as far as particular issues are not regulated by the Maritime Code. The Maritime Code does not provides the right to equal treatment (non-discrimination) thus respective provisions on equal treatment and non-discrimination of Articles 7 and 29 of the Labour Law are applicable with regards to crews of ships. The non-discrimination principle provided by the Labour Law covers all aspects of employment including all conditions of employment and principle of equal pay. Consequently if a person either a Union citizen or third country national is employed on a ship registered under Latvian flag he/she is protected against discrimination under Latvian law. There is no information available how such norms apply in practice, because almost all employment agreements in Latvia are confidential. There is also no information available on any national court proceedings on the breach of the principle of equality against sailor.

There are several bilateral international agreements in the maritime sector concluded with Russia, China, Ukraine and Turkey. They do not regulate any matters regarding employment conditions of persons employed on ships.


\textsuperscript{119} OG. No.91, 18.06.2003.

\textsuperscript{120} OG No.105, 6 July 2001.
The only obstacle acknowledged in maritime sector is requirement of knowledge of Latvian language for captains, navigators, mechanics and pilots.\textsuperscript{121}

4. Researchers / artists:

The right to work as a scientist in Latvia is not conditional on nationality. The only requirement is a possession of doctoral degree. This is provided by the Law on Scientific Activities.\textsuperscript{122} Article 3 of the law prohibits discrimination. Although nationality is not among the expressly provided non-discrimination grounds, nevertheless Article 3 provides a non-exhaustive list of non-discrimination grounds and protects against discrimination “in other circumstances” too.

A doctoral degree obtained abroad is subject to recognition. Article 10(1) of the Law on Scientific Activities provides that a foreign doctoral degree has to be recognized in accordance with international agreements. According to Article 11\textsuperscript{1} of the Education Law,\textsuperscript{123} the institution providing expertise on recognition of academic education is the Academic Information Centre.\textsuperscript{124} This centre provides expertise on whether academic education obtained abroad corresponds to the requirements of the Latvian education system. In practice an expert assessment of a doctoral degree and taking of a decision on recognition takes two weeks.

Accordingly, if a Union citizen wishes to perform academic or scientific activities in Latvia, recognition of his/her diploma is necessary. There are no other requirements. For example, for permanent employment in an academic post at the University of Latvia only educational and professional requirements are applicable. Regulations on election for academic posts do not provide for any restriction regarding nationality.\textsuperscript{125} The only practical obstacle may be requirement on the knowledge of official language – Latvian, because only 20\% of lectures may be provided in EU official languages.\textsuperscript{126}

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

5. Access to study grants:

\textsuperscript{121} Regulation of Cabinet of Ministers No.733 ‘On the level of knowledge of official language and procedure for verification of official language proficiency necessary for the performance of professional duties, for the acquisition of permanent residency permit and status of permanent resident of the European Community, and on state duty for testing of proficiency of official language’ (Noteikumi par valsts valodas zināšanu apjomu un valsts valodas prasmes pārbaudes kārtību profesionālo un amatu pienākumu veikšanai, pastāvējās uzturēšanās atļaujas saņemšanai un Eiropas Savienības pastāvējā īedzīvotāja statusa iegūšanai un valsts nodevu par valsts valodas prasmes pārbaudi), OG No.110, 14 July 2009.

\textsuperscript{122} OG No.70, 5 May 2005.

\textsuperscript{123} OG No.343/344, 17 November 1998.


Point 3 of Regulation No.220 “Procedure for granting, returning and discharging study grants and student loans from a credit authority with State guarantees” explicitly provides for a right to grants and loans on equal footing with Latvian citizens and non-citizens to the Union's citizens only under condition they possess temporary or permanent residence permits. Requirement on the possession of the residency permit runs contrary to the Education Law and the Law on Institutions of Higher Education - the laws to which Regulation No.220 is subordinated to. Besides according to the Regulation No.220 study grants are available to the Union citizens only, not to their family members – third country nationals.

6. Young workers
National employment law does not provide for any other obstacles than generally applicable to young workers. One obstacle under Latvian law regards statutory minimum pay. Currently statutory minimum pay in Latvia is defined by the Cabinet of Ministers Regulation No.1069 'Regulation on minimum monthly salary and minimum hourly rate'. The statutory minimum monthly salary and minimum hourly rate is very low – LVL 200 (EUR 285) monthly or LVL 1,189 (EUR 1,69) hourly, but minimum hourly rate is higher for adolescents. It is LVL 1,36 (EUR 1,93). Such special regulation is due to the fact that on the basis of implementing measures of Directive 94/33 adolescents may be employed for no more than 7 hours daily and 35 hours weekly while normal weekly working time in Latvia is 8 Hours daily and 40 hours weekly.

The practical obstacle is high unemployment rate in general and especially among low qualified workforce, what affect young workers particularly, because they usually do not have at their age special professional qualification.

One more obstacle concerns residence rights. The Regulations No.675 requires official accept of both parents to obtain registration certificate or permanent registration certificate.

In sports sector – Ice Hockey and Football transfer fees are applicable also to young sportspersons.

Chapter VII: Application of transitional measures

1. Transitional measures imposed on EU-8 Member States by EU-15 Member States and situation in Malta and Cyprus

127 OG No.303, 10 July 2001.
128 OG No.343/344, 17 November 1998.
130 Persons under age 18 according to the Directive 94/33/EC.
131 Noteikumi par minimālo mēneša darba algu un minimālo stundas tarifa likmi, OG No.193, 7 December 2010.
133 Points 28.3, 34.3, 37.6.
There are no practical problems with regard to the transitional measures, because Latvia does not have any transitional measures concerning other EU Member States anymore. Germany was the last Member State which opened labour market for Latvia on 1 May 2011.

During first part of 2011 Latvian providers of foreign language courses informed that they do not have any more free places in German language study groups. It made politicians to worry that there may be another mass migration of Latvian citizens to Germany. However, so far such prognosis did not prove to be true. There are still more Latvians go for work to Great Britain than to Germany.

2. Transitional Measures imposed on workers from Bulgaria and Romania

There have never been transitional measures imposed by Latvia on workers from Bulgaria and Romania.

Chapter VIII: Miscellaneous

1. Relationship between Regulation 883/04 (1408/71) and Art 45 the TFUE and Regulation 492/2011

According to Law on State Social Allowances and Social assistance and social services law a foreigner must have permanent residency permit to be entitled to state flat-rate allowances and social assistance and social services. The State Social Insurance Agency provided an information that state flat-rate social allowances qualifying as family allowances under Regulation 883/2004 (1408/71) are provided to a Union citizens and their family members, however the rest of state flat-rate social allowances and social assistance and social services are provided only to those foreigners holding permanent residency right in Latvia. Consequently Latvian legal regulation regarding the right to state flat-rate social allowances, social assistance and social services run contrary to Article 45 of the TFEU and Article 7(2) of Regulation 492/2011.


Provisions of Directive 2004/38 and Regulation 492/2011 may lead to situation were a frontier worker on the one hand is granted the right not to register his/her residency at Member State where he/she works (Directive 2004/38/EC) but on the other hand such right may lead to unequal treatment under Regulation 492/2011 against frontier worker if for enjoyment of particular right there is a residency requirement. It espe-

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138 Telephone interview with Department of International Coordination of State Social Insurance Agency, 5 June 2012.
cially concerns the right to state flat-rate social allowances and social assistance and social services (see point 1 above).

3. Existing policies, legislation and practices of a general nature that have a clear impact on free movement of EU workers

Nothing to report.

3.1. Integration measures
There are no integration measures taken due to the low number of persons moving to Latvia from other Member States.

3.2. Immigration policies for third-country nationals and the Union preference principle
There is no immigration policy adopted by the Government neither with regard to the third-county nationals nor to the Union citizens.

3.3. Return of nationals to new EU Member States
There are no reliable data on if and how many persons have returned to Latvia from old Member States. Though old Member States suffer from increase of unemployment unofficial data demonstrates that still higher number of Latvians go to old Member States than return to Latvia.\(^{139}\)

4. National organizations or non-judicial bodies to which complaints for violation of Community law can be launched
Institution which may launch complaints in connection with the breach of the EU law on free movement for workers is Ombudsman of the Republic of Latvia. Such complaints may be reviewed by Ombudsman Office only if they concerns human rights usually in connection with a breach of the principle of non-discrimination.\(^{140}\) Since greatest part of such complaints concern unequal treatment the greatest part of them are most likely to fall within the competence of the Ombudsman. On 2011 the Ombudsman office has not reviewed any case regarding discrimination on the grounds of nationality against a Union citizen of another Member State.\(^{141}\)

5. Seminars, reports and articles
Taking into account limited human and financial resources in Latvia there were no relevant events or publications detected on 2011-2012. There have been also no court rulings relating free movement of workers other than on problems with exportation of social benefits under Regulation 883/2004.\(^{142}\)


\(^{140}\) The Ombudsman Law, OG No.65, 25 April 2006.

\(^{141}\) Information provided by the Ombudsman Office, 14 June 2012.

\(^{142}\) Telephone interview with Head of Unit of Legal and European Affairs, 12 June 2012.