

REPORT
on the Free Movement of Workers
in Latvia in 2009-2010

Rapporteur: Dr.iur. Kristīne Dupate
University of Latvia

November 2010

Contents

Chapter I	The Worker: Entry, Residence, Departure and Remedies
Chapter II	Members of the Worker's Family
Chapter III	Access to Employment: Private sector and Public sector
Chapter IV	Equality of Treatment on the Basis of Nationality
Chapter V	Other Obstacles to Free Movement
Chapter VI	Specific Issues
Chapter VII	Application of Transitional Measures
Chapter VIII	Miscellaneous

Introduction

There have been no major changes on 2009-2010 in Latvian law concerning rights to free movement of persons provided by the EU law. In general situation regarding legal regulation has remained the same.

There are still serious economic crisis in Latvia. By the end of 2009 the GDP has decreased by more than 20% in comparison with the end of 2007.¹ It has affected labor market very much. Statistics show there are more than 19.7 % registered jobseekers.² In absolute numbers it constitutes around 192,000 persons. At the same time the State Employment Agency assumes the real number is much higher. It presumes the real number of unemployed persons in Latvia is around 300 000 persons. Taking into account the total population of Latvia – 2.3 millions, the number of unemployed persons is shocking.

Such internal economical situation of course impacts very much emigration and immigration.

There are no precise data on how many inhabitants of Latvia have emigrated to other Member States. Official institutions mentions 30,000 persons, while scholars presumes the total number is 100,000 persons since the accession on 2004. Scholars also presume that during next three years Latvia could lose another 100,000 persons on account of emigration on economical grounds.

The crisis of course has affected immigration of the Union citizens and their family members. In 2009 only 1,000 Union citizens have requested registration cards along with 34 family members – third country nationals. Due to economic crisis number of workers has decreased considerably. In 2008 there were 895 workers – the Union citizens – but in 2009 they were 251 only.

Immigration from the third countries is still higher than from the EU. Immigrants are predominantly persons from ex-Soviet Republics. The total number of the persons immigrated from the third-countries on 2009 was 1,388. Number of the workers coming from the third countries has also decreased considerably. On 2008 there were 4,500 workers from the third-countries while on 2009 there were 344 workers only.³

1 Central Statistical Bureau of Latvia, <http://www.csb.gov.lv/csp/content/?cat=2148> ,(accessed on 13 April 2010).

2 Central Statistical Bureau of Latvia, <http://www.csb.gov.lv/csp/content/?cat=2225>, (accessed on 13 April 2010).

3 Data provided by OCMA on 12 April 2010, not published.

Chapter I

The Worker: Entry, Residence, Departure and Remedies

Entry, residency and departure provided by the Directive 2004/38 are formally regulated by the Immigration Law⁴ but in substance by Cabinet of Ministers Regulations No. 586 ‘On the Procedure according to which EU citizens, EEA citizens and citizens of Swiss Confederation and their family members enter and reside in the Republic of Latvia’ (further – Regulations No. 586).⁵ This is due to the fact Articles 69 and 70 of the Immigration Law entrust the Cabinet of Ministers adoption of the relevant regulations for free movement of a Union citizens. On the basis of this Cabinet of Ministers has adopted Regulations No. 586 regulating in detail matters relating entry, residency and departure of the Union citizens and their family members. Such legislative form of implementation of directives, namely, by regulations (secondary national legislation) based on law (primary national legislation), not by law directly may lead to ineffective or incorrect application of the EU law. It may be in situation where provisions of regulations implementing directive collides with the law on basis of which respective regulation has been adopted and law itself does not clearly identifies on how far it is applicable with regard to respective regulations. As in this case, Immigration Law does not expressly stipulates that all matters relating entry, residence and departure of the Union citizens and their family members are regulated exclusively by the Regulations No. 586 and no other norms of Immigration Law are applicable, except Articles 69 and 70 serving solely legal basis the adoption of the Regulation No. 586. It could lead to the situation where administrative institution or national court in case of the collision of the provisions of the Regulations No. 586 and Immigration Law apply norms of the Law on the grounds it is of higher level, omitting fact that the Regulations contain norms of the EU law.

The Regulations No. 586 to the great extent copy word-by-word provisions of the Directive 2004/38.

Regulations No. 586 has not been amended since the adoption on 2006.

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Article 7(1)(a)

First, Article 6(1) provides that all Union citizens shall have the right to residence on the territory of another EU Member State for the period of up to three month. Implementation of this provision is imprecise in mathematic terms. Point 12 and 18 of Regulations No. 586 provides that a Union citizen has the right to reside without registration for 90 days from the

4 Official Gazette (further OG) No. 169, 20.11.2002 as amended until 2009 OG No. 43, 18.03.2008. A number of new amendments, including amendments of the Immigration Law, are published on the Office of Citizenship and Migration Affairs (OCMA) website <http://www.pmlp.gov.lv>. All laws and regulations referred to in this report are taken from the commercial database www.likumi.lv available at <http://www.likumi.lv>. Translations of some laws are available at <http://www.ttc.lv/?id=59>. However, not all of these include the latest amendments and the list is incomplete.

5 OG No. 114, 20.07.2006.

day of arrival. It follows that provisions of Regulations No. 586 is less favourable, because in average 90 days is less than three months.

Point 20 of Regulations No. 586 implements Article 7(1)(a) of the Directive 2004/38.

According to the Point 19 a Union citizen is not under an obligation to obtain a registration certificate if he/she resides in Latvia longer than 90 days and:

- resides in Latvia for up to six months within a one year period with the aim to take up employment;
- is employed in Latvia but resides in another country of the EU where he/she returns weekly.

Article 7(3)(a)-(d)

Point 22 of Regulation No. 586 implements requirements of Article 7(3) (a)-(d) of the Directive 2004/38.

Point 22 of Regulation No. 586 provides that a Union citizen retains the status of an employee or self-employed if he/she:

- is temporary unable to work due to an illness or accident;
- is registered as unemployed or as a jobseeker at the State Employment Agency and has previously been employed for longer than one year and unemployment has occurred due to circumstances not dependent upon him/her;
- is registered as unemployed or as a jobseeker at the State Employment Agency in the first 12 months after engagement in employment. In this case, employment status must be retained for up to 6 month;
- has started to obtain a profession education connected with previous professional activities in an educational establishment registered by the Register of Educational Establishments.

It follows that requirements of Article 7(3) (a)-(a) of the Directive 2004/38 is implemented correctly.

In the light of the principle of equal treatment provided by Article 18 (ex 12) TFEU and Article 24 of the Directive it debatable on how long a Union citizen must retain status of unemployed or jobseeker and enjoy services of a competent employment institution on the equal footing with the local unemployed persons and jobseekers under national law and whether status employee or self-employed may be lost on account of voluntary unemployment if under national law unemployed or jobseeker status is awarded to a person irrespectively of the cause of unemployment – voluntary or involuntary.

Article 8(3)(a)

For the purposes of obtaining registration card Point 21 of Regulations No. 586 requires production of valid travel document and submission of an official questionnaire and confirmation that his/her status corresponds to Point 20 of Regulation No. 586, namely, a Union citizen is employed or self-employed (Points 20.1. or 20.2).

Practical application of the requirements of Point 21 of Regulations No. 586 is more complicated. Complications concerns official questionnaire. In practice Union citizen must complete the same official questionnaire as any third country national wishing to obtain residency permit.

Official questionnaire was provided by Regulations No. 813⁶ which are repealed now and replaced by new Regulations No. 326.⁷ The issue regarding the obligation to submit official questionnaire has two fold problem.

First, Regulations No. 326 is adopted on the basis of several articles of Immigration law. None of these articles regulates free movement of Union citizens and their family members. Articles of Immigration law regulating free movement of Union citizen and their family members are Articles 69 and 70. Regulations No. 326 however is not adopted on the basis of Articles 69 and 70, thus formally Regulations No. 813 may not be applicable to a Union citizen and his/her family member. Nevertheless in practice OCMA applies Regulations No. 326 to Union citizens and their family members on the basis Point 21.1 of Regulations No586 requiring submission of official questionnaire applicable for request of any kind of residency permits. Such ‘incorrect’ legal regulation one again highlights necessity of regulation of entry, residence and departure of the Union citizens and their family members at the level of law not as it is now at the level of regulations of Cabinet of Ministers.

Second, official questionnaire of Regulations No. 326 are very detailed and obviously requires excessive information in the context of free movement of a Union citizens and their family members. Official questionnaire requires the following data:⁸

- I. Purpose of immigration (reason of residing, desirable length of stay, profession, if purpose of the stay is employment)
- II. Personal data (name, former names, if they has been changed, date and place of birth, registration of birth and birth registration number, issuing state and authority, sex, nationality, place of residence in the home country, expected place of residence in Latvia)
- III. Travel document valid for obtaining a residence permit (issuing country, authority, date of issue, date of expiration)
- IV. Do you have a permission to reside in another country (if yes, what kind of residence permit you have – permanent, temporary up to 12 month, over 12 month)
- V. Marital status (married (name of spouse, date of birth or personal code, nationality, place of residence, place of marriage), single, divorced (names of ex-spouses, date of birth, date and place of marriages, date and institution in charge of divorce), widower (date of death)
- VI. Information on your relative (children of spouse, including adult child (name, date of birth, sex, nationality, marital status, place of residence), parents (name, date of birth, sex, nationality, marital status, place of residence), brothers and sisters (name, date of birth, sex, nationality, marital status, place of residence, if dead – indicate date of death), guardian or trustee (name, date of birth, sex, nationality, marital status, place of residence, date of establishment of guardianship, place and country, registration number and institution, term for guardianship), persons in your guardianship (name, date of birth, sex, nationality, marital status, place of residence, date of establishment

6 Regulations of Cabinet of Ministers No. 813 „Residency permit regulations’, OG No. 171, 26.10.2006. – repealed since 14.01.2010.

7 Regulations of Cabinet of Ministers No. 326 „Residency permit regulations’, OG No. 07.04.2010.

8 For more detailed information see official questionnaire on web page of OCMA http://www.pmlp.gov.lv/lv/documents/pakalpojumi/uzturesanas/veidlapa_UA.pdf.

LATVIA

- of guardianship, place and country, registration number and institution, term for guardianship)
- VII. Knowledge of languages (fluent/sufficiently to communicate, no proficiency – obligation to indicate proficiency of Latvian; native language, communication language in family)
 - VIII. Employment (places of employment within the last five years (period of time, employer, occupation/position)
 - IX. Education (primary/secondary/vocational, higher (acquired education, name of educational institution, year of entry and graduation)
 - X. Your previous stay in Latvia (period of time, place of residence, reason of stay, refusal of stay, expel)
 - XI. Residence in foreign countries (registered places of residence outside Latvia from 1991, period of time, country, address, refused entry in another country, expel)
 - XII. Have you ever served in military (except compulsory) service or any special service
 - XIII. Criminal record
 - XIV. Person who invites
 - XV. Additional information
 - XVI. Declaration (testify of truthful and full data provided in questionnaire, testify of non-existence of health disorders and diseases listed in Regulations, have sufficient means to reside in Latvia

Reasons for requesting such detailed information are two. One reason is stated already above – questionnaire is intended for third-country nationals. Second reason is necessity to include all persons having residency permit into Resident Register. According to the Resident Register law,⁹ Resident Register must contain detailed data on person and his/her family members, such as children (personal data), marital status, spouse (personal data), parents (personal data). The problem is that on the one hand legal regulation of Resident Register falls within the national competence and it requires detailed data because it serves as central data base for permanent residents of Latvia such as citizens and non-citizens. On the other hand in the light of free movement of the Union citizens amount of information requested by Resident Register is excessive. However OCMA informs that a Union citizen may fill in only those parts of questionnaire he/she wants to.¹⁰ OCMA does not insist on providing mandatory data on marital status, criminal record etc.

Official questionnaire requires showing sufficient financial means. It is first, in breach of Article 7(1)(a) with regard to workers and self-employed. Second, there is certain information testifying that OCMA in administrative practice considers as ‘sufficient resources’ minimum wage as defined in Latvia by normative acts. For years 2009 and 2010 minimum wage is defined 180 LVL¹¹, while threshold below which Latvian citizens are entitled to social assistance was 40 LVL¹². Such practice runs contrary to the Article 8(4) of Directive

9 OG No. 261/264, 10.09.1998. as amended until 2007, OG No. 107, 05.07.2007.

10 Telephone interview with head of Immigration Unit on 7.04.2010.

11 Regulations of Cabinet of Ministers No. 791 „Regulations on minimum monthly salary and minimum hourly tariff”, OG No. 150, 26.09.2008.

12 Regulations of Cabinet of Ministers No. 1489 „Regulations on the level of guaranteed minimum income”, OG No. 201, 22.12.2009. According to the Regulations currently guaranteed minimum income must constitute 40 LVL (57 EUR) per month for an adult and 45 LVL (64 EUR) for a child.

2004/38. However OCMA insists that a Union citizen is simply required to fill in into official questionnaire the source of income, for example, salary from employment, without specifying particular sum and without requirement to verify information given.¹³

However it is not all. Point 38 of Regulations No. 586 provides that OCMA has the right to require and receive from a Union citizen and his/her family member who wants to obtain residence rights in Latvia, from executive institutions of Latvia and from the courts information on the purpose of the residence of the Union citizen and his/her family member in question. Besides OCMA has the right to request information on previous violations of law of a Union citizen and/or his/her family member from the state of their previous residence within the three month after application for residence right.

OCMA issues registration certificate for indefinite terms. However, there is one more practical problem which Union citizen may experience after obtaining of registration certificate. Registration certificate provides address of place or residence. Consequently, in case Union citizen changes his/her place of residence, he/she must change registration certificate too. However this is the problem with the Directive 2004/38. Article 8(2) of this directive requires provision of address of a Union citizen by registration certificate.

Article 14 (4) (a)-(b)

Point 48.1 of Regulations No. 586 provides that Union citizen and his/her family member lose their rights to reside in Latvia if he/she become unreasonable burden to the social assistance system, unless Union citizen is employed or self-employed in Latvia. Requirement of Article 14(b) of Directive 2004/38 does not appear in Regulations No. 586.

It is also uncertainly established under what conditions person may be considered as ‘unreasonable burden on the social assistance system’. Unlike it is stated in Report from the Commission to the European Parliament and the Council,¹⁴ Latvia does not have detailed regulation on what constitutes unreasonable burden. The only legal regulation on this matter is found in last sentence of Point 48.1 of Regulations No. 586 stating that in the course of assessment of the burden a Union citizen or his/her family members constitute for Latvian social assistance system must be considered such aspects as term of residence of a person in Latvia, amount of allowance, regularity of requesting of allowance, reasons for requesting such allowance.

Article 17

Requirement of Article 17(1) (a) – (c) of Directive 2004/38 is implemented by Point 24 and 25 of Regulations No. 586. Point 24 provides:

A Union citizen, who has resided in Latvia as employed or self-employed for less than five years, has the right to permanent residence if he/she:

- at the time he/she stops working, have reached the ages laid down by Latvian law or he/she cease paid employment to take early retirement, provided that he/she has been working in Latvia for at least 12 months and has resided there continuously for more than three years. Periods of employment spent

¹³ Telephone interview with head of Immigration Unit on 7.04.2010.

¹⁴ COM(2008) 840/3.

LATVIA

in another MS of EU, EEA or Confederation of Switzerland shall be regarded as having spent in Latvia;

- has resided in Latvia for more than two years and has stopped working as a result of permanent incapacity for work. If such incapacity for work has occurred due to the accident at work or occupational disease entitling person to a benefit in Latvia, condition on the length of residence is not applicable. Periods of employment spent in another MS of EU, EEA or Confederation of Switzerland shall be regarded as having spent in Latvia;

- has after three years of continuous employment and residence in Latvia, working in the capacity of an employee or self-employed in another Member State, while retaining their place of residence in Latvia, to which he/she returns each day or at least once a week.

Point 25 provides that unemployment periods registered in the State Employment Agency which occurred involuntary, and periods of absence from work or cessation due to the illness or accident shall be regarded as periods of employment.

Point 26 of Regulations No. 586 implements requirements of Article 17(2) of Directive 2004/38. It provides that requirement of the length of residence provided by Point 24 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(4) of Directive 2004/38 is implemented by Point 33 of Regulations No. 586. Point 33 of Regulations No. 586 copies provision of Article 17(4) of the Directive 2004/38 word by word.

It follows that provisions of Article 17(1), (2) and (4) are implemented fully and correctly.

However there are problems with the correct implementation of requirements of Article 17(3) of the Directive 2004/38. Point 31 and 31.2 envisages in case a Union citizen obtains permanent residence right his/her family member is also entitled to the permanent residence permit, which however has to be issued for the period of 10 years only.

Article 24(2)

Social assistance

Social Assistance and Social Services Law¹⁵ regulates system of social assistance and social services. Article 3(1) of said law provides that the right to social assistance and social services have those foreigners only who have obtained Latvian personal code, except those foreigners who have temporal residence permit. Although all persons having residence permit are given Latvian personal code, social assistance and social services are accessible to those having permanent residence permit. Further social assistance allowances are to be provided by municipalities according to their financial means. The only social assistance allowances which must be provided by municipalities are minimum income guarantee allowance and housing allowance.¹⁶ In order to get such allowances person must register his/her place or residence in one of the municipalities and then claim this allowance from the respective municipality. It follows that a Union citizen and his/her family members may claim social

¹⁵ OG No. 168, 19.11.2002., as amended until 2010 OG No. 19, 03.02.2010.

¹⁶ Article 35(1) of Social Assistance and Social Services law, OG No. 168, 19.11.2002.; Regulations of Cabinet of Ministers No. 1489 „Regulations on level of guaranteed minimum income”, OG No. 201, 22.12.2009. According to the Regulations currently guaranteed minimum income must constitute 40 LVL (57 EUR) per month for an adult and 45 LVL (64 EUR) for a child.

assistance allowances only after acquisition of permanent residence permit and registration of place of residence at one of the municipalities.

In reality Union citizen could obtain Latvian personal code and declare place of residence only by acquisition of the official residence right. Because person may declare his/her place of residence and obtain personal code only if person is registered at the Resident Register. Until this registration person does not have any official ties with Latvia.

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 Union citizens and their family members having temporal residence permits (registration cards). Besides Point 39 of Regulations No. 586 requires municipalities to provide data on social assistance required by Union citizen or his/her family members to the OCMA within 10 days of application for social assistance. Such obligation with respect to the employed and self-employed Union citizens runs contrary Directive 2004/38, because economically active persons may not be expelled on account of constituting too heavy burden to social security system.

Social benefits

Other social benefits falling outside the scope of Regulation 1408/71 but falling within the scope of Article 24(2) of Directive 2004/38 are provided by the Law on State Social Allowances.¹⁷ Article 4(1) of the Law on State Social Allowances¹⁸ provides that law is applicable to the foreigners who have obtained personal code and reside in Latvia permanently. Consequently Union citizen and his/her family member have to obtain residency permit (registration card) in order to obtain personal code and to be included in the Residents Register. Ministry of Welfare¹⁹ considers that after obtaining of residency permit (registration card), personal code and inclusion into Residents Register a Union citizen and his/her family member qualifies as beneficiary under Article 4(1) of Law on State Social Allowances. However situation is not so clear, because Article 4(2) the said law expressly provides that the right to state social allowances do not have persons having temporal residency permit.

Thus the Law on State Social Allowances also does not correspond requirements of Article 24(2), because excludes Union citizens and their family members having temporal residency permit.

Education

The Education Law²⁰ is umbrella law for whole education system of Latvia and concerns pre-school education, primary education, secondary and professional education and higher education. Until 26 March 2010 Article 3 of the Education Law provided that any Union citizen who has a residence permit (temporal or permanent) has a right to education on the equal grounds. On 4 March 2010 Parliament (Saeima) adopted amendments to Education Law on persons who have the right to education.²¹ Now Article 3 provides the right to education to a Union citizen without requirement on possession of residency permit. It follows the

17 OG No. 168, 19.11.2001. as amended until 2009 OG No. 178, 10.11.2009.

18 OG No. 168, 19.11.2001. as amended until 2009 OG No. 178, 10.11.2009.

19 Letter of 09.03.2009. No. 09.2-07/753

20 OG No. 343/344, 17.11.1998., as amended until 2009 OG 196, 15.12.2009.

21 OG No. 47, 24.03.2010.

Education Law in general implements requirements of Article 24(2) of the Directive 2004/38.

On the other hand there have been no amendments to other laws regulating each level of education. For example, Law on Institutions of Higher Education.²² Article 83(1)(5) the said law provides that only Union citizens and their children who study at the institutions of higher education in Latvia enjoy equal rights with Latvian citizens regard to education fees. The similar problem occurs with Regulations No. 220 ‘Procedure for granting, returning and discharging study grants and student loans from a credit authority with State guarantees’²³ providing for the right to receive study grants from commercial banks with the state as the guarantor. Point 3 of Regulations 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 permits. Moreover there are Regulations No. 219 ‘Procedure for granting, returning and discharging study loan from the state budget’.²⁴ This regulation provides for the right and procedure on reimbursement of study loans from the state budget. Point 3 of Regulations No. 219 explicitly provides that this loan is accessible to the Latvian citizens and Latvian non-citizens only. Thus with regard to the requirements of the Article 24(2) of Directive 2004/38 on the right to education Latvian law is incomplete.

2. SITUATION OF JOBSEEKERS

According to the provision of Regulations No. 586 job seekers who have not been employed in Latvia previously may claim a registration certificate if they meet the general conditions for Union citizens who wish to reside in Latvia without the status of an employee or self-employed. In general person may reside without registration in Latvia up to 90 days however Point 19.1 of Regulations No. 586 allows residing in Latvia up to six month a year if the aim of residence is establishment of employment relationship.

In practice Union citizen 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 day or arrival and period of residence.

The different is situation if a Union citizen wishes to register at the State Employment Agency officially as unemployed or jobseeker²⁵. 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 attending different kind of educational and vocational courses for unemployed and jobseekers 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 Law on the Support of Unemployed and Jobseekers a Union citizen is entitled to the support services provided by

22 OG No. 179 17.11.1995. as amended until 2010 OG No. 38, 09.03.2010.

23 Adopted on 03.07.2001. OG No. 303 10.07.2001. as amended until 2010 OG No. 29, 19.02.2010.

24 Adopted on 29.05.2001. OG No. 97, 22.06.2001. as amended until 2009 OG No. 98, 01.07.2009.

25 According to Law on the Support of Unemployed and Jobseekers, OG No. 80, 29.05.2002 as amended until 2009 OG No. 100, 30.06.2009., unemployed person is person who is entitled to unemployment allowance, but jobseeker is person who does not have a right to unemployment allowance

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 Union citizen. Right to obtain status of unemployed or jobseeker is regulated in more detailed by Regulations of Cabinet of Ministers No. 891 'Procedure on award of status of unemployed person or jobseeker and documents necessary for the award of such status'²⁶. Point 3 provides list of documents which must be submitted for the award of the status of unemployed and jobseeker. Those are:

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

Taking into account provisions of Point 12 and Point 19.1 of Regulations No. 586 allowing residency up to 90 days and allowing residency for the purposes of establishment of employment relationship up to six month requirements of Point 3.2 of Regulations No. 891 are inapplicable during specified periods.

Consequently Latvian law does not require possession of registration card for the purposes of registration as unemployed or jobseeker at the State Employment Agency.

In practice the State Employment Agency in addition to valid travel document and Form E 303 (where relevant) requires notice on award of Latvian personal code issued by OCMA²⁷. It is necessary for data collecting system of unemployed and jobseekers. However it is impossible to obtain Latvian personal code without registration card. It follows that for the purposes of the official registration as unemployed or self-employed a Union citizen must obtain registration card. Such a requirement runs contrary both – Latvian law and the Directive 2004/38.

With regard to the limitation of residency period for a jobseeker and the right to stay longer if there is genuine chance of being engaged, there is no express provision to this regard under Latvian law. Consequently Article 14(4) is not implemented. According to OCMA there has been no case or decision taken on expulsion of the Union citizen on 2009 and 2010.²⁸

26 Adopted on 18.12.2007., OG No. 205, 21.12.2007.

27 Telephone interview with EURES unit of the State Employment Agency on 7 April 2010.

28 Telephone interview with head of Immigration Unit on 7.04.2010.

Chapter II

Members of the Worker's Family

THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

The definition of family members is implemented incompletely. According to Point 3 of Regulations No. 586, a family member of a Union citizen is:

- a spouse;
- a direct descendants of a Union citizen or his/her spouse under the age of 21 or a dependant of a Union citizen or of his/her spouse;
- dependant direct relatives in the ascending line of a Union citizen or of his/her spouse;
- a dependant of a Union citizen or of his/her spouse who has a common household with a Union citizen in the country of previous residence.

Article 3(2)(b) of Directive 2004/38 provides that Member States shall facilitate entry and residence to the partner of a Union citizen with whom Union citizen has a durable relationship duly attested. Regulation No. 586 does not envisage such group of family members of the Union citizens. Point 3.4 requires two conditions for qualifying as a family member of a Union citizen: (1) dependency and (2) a common household in the country of previous residence. OCMA considers that in order to put Article 3 of Regulations No. 586 in line with Directive 2004/38 word 'and' of Point 3.4 should be replace by word 'or'.²⁹ In addition, Regulations No. 586 does not provide explicitly for a situation where a person has serious health grounds strictly requiring personal care of a Union citizen or of his/her family member.

National immigration law provides more restrictive definition of a family member than EU law. Immigration law³⁰ recognizes as a family member of Latvian citizen or Latvian non-citizen spouse, minor children, minor children of a spouse or 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. 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 loose 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.

29 Telephone interview with head of Immigration Unit on 7.04.2010.

30 OG No. 169, 20.11.2002 as amended until 2009 OG No. 43, 18.03.2008.

2. ENTRY AND RESIDENCE RIGHTS

Entry and residency rights for family members are provided by the same Regulations No. 586.³¹ In general the requirements of Directive 2004/38 with regard to the right to entry and residence of family members of a Union citizen are implemented correctly. However there are some unimplemented rights.

First, Point 30 of Regulations No. 586 according to the Directive 2004 requires submission of documents testifying marriage or other kind of family ties (for example, birth certificate for child). In practice OCMA accepts only legalised marriage certificates or other official documents issued by another Member State. It makes application process time consuming and may be costly.

Second, Point 30.5 of Regulations No. 586 requires accept of both parents for getting a residency permit for minor child. If both parents may not be present at OCMA and give their mutual accept for child's residence in Latvia, the parent wishing reside with his/her child in Latvia must present accept of other parent. Accept of other parent must be testified by sworn notary. Such requirement runs contrary to the Directive 2004/38, since directive gives exhaustive list of documents which administrative institution may require for the purposes of getting residency permit.

OCMA complies with term requirements for issuing residency permits for family members. OCMA states it usually provides residency permit for a Union citizen within two weeks, but for third-country national – within one month.

3. ACCESS TO WORK

Point 4 of Regulations No. 586 explicitly provides that family members of a Union citizen do not need work permits for employment in Latvia. However it is questionable whether 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 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 Jobseekers³² expressly provides that a family member of a Union citizen must have residency permit in order being registered officially as unemployed or jobseeker.

4. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

While a Union citizen has not obtained residency permit together with his/her family members latters do not have almost any other rights than the right to reside in Latvia together with a Union citizen up to 90 days.

31 OG No. 114, 20.07.2006.

32 OG No. 80, 29.05.2002 as amended until 2009 OG No. 100, 30.06.2009.

With regard to social assistance and benefits as described in Chapter I both – Social Assistance and Social Services Law³³ and the Law on State Social Allowances³⁴ require personal code and permanent residency permit. Personal code may not be obtained without acquisition of residency permit.³⁵

With regard to education – only those family members who are Union citizens 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.³⁶

5. ACCESS TO EDUCATION

First, the Law on Institutions of Higher Education³⁷ provides that only a Union citizen without requirement of residency permit has the right to education on the equal grounds. The third-country nationals enjoy this right only if they have residency permits. It follows family members – third-country nationals must have residency permit in order to have the right to education on the equal grounds. Law on Institutions of Higher Education³⁸ unlike umbrella law – the Education Law provides for more restrictive norms regarding a right to education of a family member of a Union citizen. Article 83(1)(5) of the said law provides that only children of a Union citizens who study at the institutions of higher education in Latvia enjoy equal rights with Latvian citizens regard to education fees. It follows that the right to higher education is granted on equal footing to a family member who is a Union citizen himself or children of a Union citizens, thus leaving out other family members of the Union citizens who are third-country nationals and are not children of a Union citizen.

Similar problem has Regulations No. 220 ‘Procedure for granting, returning and discharging study grants and student loans from a credit authority with State guarantees’³⁹ providing for the right to receive study grants from commercial banks with the state as the guarantor. Point 3 of Regulations No. 220 awards equal right with Latvian citizens and Latvian non-citizens have to the Union citizens only, thus excluding family members of Union citizens who are third-country nationals. According to Article 24(2) study grants and loans must be provided at least to those Union citizens and family members who have permanent residency permit.

33 OG No. 168, 19.11.2002., as amended until 2010 OG No. 19, 03.02.2010.

34 OG No. 168, 19.11.2001. as amended until 2009 OG No. 178, 10.11.2009.

35 Telephone interview with head of Immigration Unit on 7.04.2010.

36 Article 3 of Education Law, OG No. 343/344, 17.11.1998., as amended until 2009 OG 196, 15.12.2009.

37 OG No. 179 17.11.1995. as amended until 2010 OG No. 38, 09.03.2010.

38 OG No. 179 17.11.1995. as amended until 2010 OG No. 38, 09.03.2010.

39 Adopted on 03.07.2001. OG No. 303 10.07.2001. as amended until 2010 OG No. 29, 19.02.2010.

Chapter III

Access to Employment: a) Private sector and b) Public sector

A) ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

a.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. This is state administrative institution providing whole spectrum of employment services – starting from vocational training and ending with proposition of vacant posts. Second type embraces private employment agencies which simply offer to their clients vacant positions at the same time providing staffing services for employers.

The State Employment Agency provides employment services stipulated by the Law on the Support to Unemployed and Jobseekers.⁴⁰ This institution provides vocational training, retraining, enhancement of professional qualifications, involvement in temporary work and in activities for special groups of persons, and support for taking up entrepreneurship, and of course career consultations as well as offers vacancies. According to the 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 and training are carried out in Latvian exclusively. Besides, there are very high Latvian language requirements for employment in almost all professions (see a.2 below).

Private employment agencies must obtain license to provide employment services. 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’⁴¹. 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 Labour law.⁴²

a.2. Language requirements

General requirement of obligation on the use of official language is provided by the State Language law.⁴³ 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 the Article 3(1)

40 OG No. 80, 29.05.2002 as amended until 2009 OG No. 100, 30.06.2009.

41 OG No. 108, 06.07.2007 as amended until 2009, OG No. 38, 10.03.2009.

42 OG No. 105, 06.07.2001. as amended until 2010 OG No. 47, 24.03.2010. In particular Article 29 of Labour law, which does not explicitly mention nationality among non-discrimination grounds; however, lists of discrimination grounds are not exhaustive and are open.

43 OG No. 428/433, 21.12.1999.

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 of normative acts perform public functions must know and use official language at such level as 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 such level as necessary for the performance of their functions or must provide themselves translation into official language.

More detailed regulation on the language requirements is provided by regulations of 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 Regulations 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'.⁴⁴ On 2009 Regulations No. 733 repealed previous Regulations No. 296.

Requirements on knowledge of the official language in the employment have been very high since the very beginning.⁴⁵ Regulations No. 733 in general retains the same language requirements as provided Regulations No. 296 before.

There are three levels of the knowledge which are divided into two sublevels – A and B.

The first level requires basic knowledge of Latvian, the second requires ability to deal with almost all aspects of everyday and professional life in Latvian, the third indicates knowledge close to native speaker.

Regulations No. 733 like Regulations No. 296 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 and 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 the 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 the 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 inter-

44 OG No. 110, 14.07.2009., repealing Regulation No. 296 'On the level of knowledge of the state language necessary for performance of professional duties and duties of position and procedure for verification of state language proficiency', OG No. 302, 29.08.2000.

45 Since adoption of State Language Law on 1999.

ests of the society in one or another way, thus applicable to all employees of private sector. Language inspectors of State Language Centre⁴⁶ however, explains that Article 6(2) concerns only those employees working with costumers 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 public 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 respective profession.

Appendix II contains approximately 30% of professions acknowledged in Latvian labour market. It sets proficiency requirements for professions listed therein. It was reported previously that on 2008 Appendix II (Old Regulations No. 296) has been amended by several hundreds of particular professions setting concrete level of the knowledge and use of Latvian language.⁴⁷ New Regulations No. 733 extended list of professions of Annex II more.

In addition, Regulation No. 733 provides for specifically defined means of proof of knowledge of the state language. This could be done either with 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 ECJ, in particular *Angonese*.⁴⁸

B) ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

b.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 in 2007 – civil servant,⁴⁹ judge,⁵⁰ court bailiff,⁵¹ notary,⁵² prosecutor,⁵³ official of the system of interior and place of imprisonment,⁵⁴ (policeperson⁵⁵), state security officer,⁵⁶ fireman,⁵⁷ boarder guard,⁵⁸ national guard,⁵⁹ civil employment in military service,⁶⁰ employees of the State Revenue Office,⁶¹ and employee in the diplomatic and consular service.⁶²

46 State administrative institution in charge of enforcement and supervision of the use of official language in all sectors of life.

47 Amending Regulations No. 612, OG No. 127, 19.08.2008.

48 C-281/98, *Roman Angonese v Cassa di Risparmio di Bolzano SpA*. European Court reports 2000, p. I-04139

49 Law on Civil Service, OG No. 331/333, 22.09.2000. as amended until 2010, OG No. 40, 11.03.2010.

50 Law on Judicial Power, OG No. 1, 14.01.1993. as amended until 2009 OG No. 199, 18.12.2009.

51 Law on Court Bailiffs, OG No. 165, 13.11.2002. as amended until 2007, OG No. 4, 09.01.2008.

52 Law on Notariate, OG No. 48., 09.07.1993. as amended until 2008 OG No. 202, 30.12.2008.

53 Law on Prosecutor's Office, OG No. 65, 02.06.1994 as amended until 2009, OG No. 194, 10.12.2009.

54 Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks, OG No101, 30.03.2006. as amended until 2010 OG No. 47, 24.03.2010.

55 Law on Police, OG No. 31, 15.08.1991. as amended until 2008, OG No. 2000, 23.12.2008.

56 Law on State Security Institutions, OG No. 59, 19.05.1994. as amended until 2009, OG No. 40, 30.12.2009.

57 Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks, OG No. 101, 30.06.2006 as amended until 2010 OG No. 47, 24.03.2010.

58 Law on service at system of Interior affairs and of Imprisonment Office of persons with special service ranks, OG No. 101, 30.06.2006. as amended until 2010 OG No. 47, 24.03.2010.

b.2. Language requirements

As described in Part a.2 above language proficiency requirements are regulated by the State Language Law and Regulations No. 733. With regard to the public sector Annex I of Regulations No. 733 is applicable. Annex I provides level of state language proficiency for all professions acknowledged in Latvian employment market. It means that there are 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 imposed on workers working 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 official language requirements. Even more, if proficiency level for particular profession is not provided by Annex II or 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 Latvian 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.

b.3. Recognition of professional experience for access to the public sector

There are no special requirements on recruitment procedures provided by law regarding posts outside the civil service and other professions not requiring Latvian nationality.

b.4. 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.

Regulations No. 995 ‘On remuneration and qualification grades for workers, servants and officials in direct administration institutions and Central election commission as well as benefits and compensations for servants’⁶³ provides for the remuneration system in the public sector for all categories of workers – civil servants, officials and employees. The amount of remuneration is higher if professional experience is longer. Regulations No. 995 only recognises professional experience in the public sector, with two exceptions – if a person has at least three years professional experience in the private sector or the person has obtained professional experience in the municipal sector, and such professional experience is vital for

59 Law on the National Guard of the Republic of Latvia, OG No. 16, 29.04.1993. as amended until 2007, OG No. 203, 19.12.2007.

60 Law on Military Service, OG No. 91, 18.06.2002. as amended until 2010, OG No. 51/52, 30.03.2010.

61 Law on State Revenue Office, OG No. 105. 11.11.1993. as amended until 2009, OG No. 199, 18.12.2009.

62 Law on Diplomatic and Consular Service, OG No. 155, 10.10.1995., as amended until 2009, OG No. 194, 10.12.2009.

63 OG No. 210, 30.12.2005. as amended until 2009 OG No. 177, 06.11.2009.

LATVIA

the performance of work in the public sector.⁶⁴ The meaning of the ‘professional experience acquired in the public sector’ is clear – Point 8.2. of the Regulations No. 995 explicitly lists the respective institutions and these are only Latvian public institutions. Such legal regulation is not in conformity with the EU law.

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

⁶⁴ Points 11 and 11.1.

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 Part b.4 of Chapter III professional experience affects grade and consequently amount of salary in public sector. According to the Regulations No. 995 in Latvia only professional experience acquired in public sector in Latvia is taken into account for the award of grade and respective amount of salary⁶⁵. 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 states for the purposes of setting grade, salary or any other working condition.⁶⁶

Latvian law does not contain express norms on unequal treatment of the Union citizens of another Member State regarding working conditions in the public sector. Taking into account very small number of the Union citizens working in Latvia in general there is no information available on whether some law provisions have indirectly discriminatory effect.

2. SOCIAL AND TAX ADVANTAGES

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

There is no obvious unequal treatment with regard to the social rights in the fields covered by Regulation 1408/71. However there may be the problems with equal treatment in areas of social law falling outside the scope of said Regulation. In particular it concerns flat-rate state social allowances provided under the Law on State Social Allowances⁶⁷ and social assistance and social services provided under Social assistance and social services law⁶⁸. Both laws expressly provide that they entitle foreigners to the rights provided thereby under condition they reside in Latvia permanently. Although Article 39 of EC Treaty and Article 7(2) of Regulation 1612/68 override said national provisions and Ministry of Welfare⁶⁹ considers that after acquisition of residency permit (registration card), personal code and inclusion into Resident Register a Union citizen and his/her family member qualifies as beneficiaries for

65 OG No. 210, 30.12.2005. as amended until 2009 OG No. 177, 06.11.2009.

66 Law on remuneration of officials and employees of state and municipal institutions, OG No 199, 18.12.2009. as amended until 2010, OG No. 12, 22.01.2010; Regulations of Cabinet of Ministers No 310 'On classification of post system and on procedure of classification at the institutions of direct administration' OG No 75, 12.05.2005 as amended until 2009, OG No. 6, 13.01.2009; Regulation of Cabinet of Ministers No 1651 'Regulations on remuneration, post grades and procedure of their award for officials and employees of the institutions of direct administration' OG No 206, 31.12.2009.; Regulations of Cabinet of Ministers No. 125 'On classification of professions', OG No. 29, 19.02.2007. as amended until 2009, OG No. 166, 20.10.2009.

67 OG No. 168, 19.11.2001. as amended until 2009 OG No. 178, 10.11.2009.

68 OG No. 168, 19.11.2002., as amended until 2010 OG No. 19, 03.02.2010.

69 Letter of 09.03.2009. No. 09.2-07/753.

state social allowances, social assistance and social services such national law provisions of respective law may mislead both groups – workers and their family members and state and municipal officials who take decisions on award of social benefits.

According to the Law on Duties and Taxes,⁷⁰ a taxpayer is any natural or legal person who in the territory of Latvia performs activities resulting in income to which taxes are applicable. Employees and self-employed persons are 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 for educational and medical services relating worker him/herself and his/her dependant family members. Detailed regulation on negative income deduction is provided by Regulations of Cabinet of Ministers No. 336 ‘Regulations on justified expenses for education and medical services’⁷¹. Point 1.1 of Regulations No. 336 expressly provides that expenses for education within the establishments of the EU are subject to negative tax deduction.⁷² However no such express provision appears with regard to the medical services. In particular, whether expenses for medical services received in the other Member State are subject to the negative tax deduction.

2.2. *Specific issue: the situation of jobseekers*

Latvian law does not provide for any special social benefit for jobseekers, thus judgements of the ECJ in cases *Collins*,⁷³ *Ioannidis*,⁷⁴ and *Vatsouras*⁷⁵ are irrelevant for the Latvian situation.

As described in Chapter III Part a.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 the study grant.⁷⁶ This right is applicable to all officially registered jobseekers irrespective of nationality. However obstacle is language. All courses are conducted in Latvian. So, if jobseeker does not know Latvian, he/she may not attend vocational training and consequently they are not entitled to the study grant.

It is unclear whether under the Law on State Social Allowances⁷⁷ and Social assistance and social services law⁷⁸ jobseeker having registration certificate would be entitled to the social assistance and social services.

If jobseeker come to Latvia by the vehicle registered outside, he/she may experience some problems. In particular, none of the persons holding residency permit is allowed to drive a car registered outside Latvia.⁷⁹ Consequently taking into account the fact that in order

70 OG No. 26, 18.02.1995. as amended until 2009 OG No. 205, 30.12.2009.

71 OG No. 115, 03.08.2001 as amended until 2009 OG No. 177, 06.11.2009.

72 Amended on 07.10.2008. OG No. 168, 29.10.2009, in force since 01.01.2009.

73 C-224/98.

74 C-258/04.

75 C22/08 and C-23/08.

76 Regulations of Cabinet of Ministers No. 212 ‘On study grant during vocational training, retraining and enhancement of professional qualification and during acquirement of informal education’, OG No. 38, 10.03.2009.

77 OG No. 168, 19.11.2001. as amended until 2009 OG No. 178, 10.11.2009.

78 OG No. 168, 19.11.2002., as amended until 2010 OG No. 19, 03.02.2010.

79 Road Traffic Law, OG No. 274/276, 21.10.1997. as amended until 2009, OG No. 96, 19.06.2009.

LATVIA

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).

Chapter V

Other Obstacles to Free Movement

There are no other obvious obstacles to the free movement of workers in the field of employment, social and tax law except those mentioned in the previous chapters, however they may appear in different spheres of life which is not so easy to identify theoretically.

One practical example emerged in 2008. The Ombudsman Office received complaint from German national residing in Latvia from 2004, that his right to invite a friend from the Russian Federation to Latvia was rejected by OCMA. Such refusal by OCMA was based on Regulations of the Cabinet of Ministers No. 183 ‘Procedures for Approval of Invitations’⁸⁰, which envisaged the right to invite persons from other countries to visit persons residing in Latvia permanently. At that time the claimant – a German national did not have permanent residence permit. After opening of investigation by the Ombudsman on unequal treatment of a Union citizen and breach of Articles 12 and 18 of the EC Treaty and Directive 2004/38, the Ministry of the Interior agreed on immediate amendments to Regulations No. 183 in order to ensure equal rights to all Union citizens residing in Latvia. However there have been no official amendments made until now. At the same time OCMA informs that in practice the Union citizens possessing temporal residency permit are allowed to invite third-country nationals to Latvia.⁸¹

80 OG No. 65, 30.04.2003. as amended until 2008, OG No. 69, 08.02.2008.

81 Telephone interview with head of Immigration Unit of the OCMA on 7.04.2010.

Chapter VI Specific Issues

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES),

Taxes

The tax law is uncertain on whether 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 Taxes⁸² a frontier worker would be considered as a resident tax payer.⁸³ Each tax payer is subject to the income tax deduction for dependants. However Law on Income Tax⁸⁴ does not specify whether an employee is subject to income tax relief if his/her dependants are residing in another Member State.

Besides resident tax payer may include into negative income deduction expenses on educational and medical services relating his/her dependant family members.

Regulations of Cabinet of Ministers No. 336 'Regulations on justified expenses for education and medical services'⁸⁵ obviously does not catch 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,⁸⁶ thus negative income deduction does not apply for such medical insurance provided by insurance companies outside Latvia. Second, although Regulations No. 336 does not refer explicitly to the medical services received in Latvia only, it is more likely that the State Revenue Office would apply tax deduction regarding medical services bought in Latvia only.

Both points neglect situation of frontier worker and his/her family members, who having residence in another Member State are more likely to receive medical services and medical insurance provided by local service providers.

It follows that Latvian tax law with regard to negative income deduction are contrary to Article 45 of TFEU and Article 7(2) of Regulation 1612/68.

Only on 2008 Regulations No. 336 was amended with the provision considering expenses for educational services received in other Member States as subject to the negative income deduction.⁸⁷

82 OG No. 26, 18.02.1995. as amended until 2009 OG No. 205, 30.12.2009.

83 Resident tax payer under Law on Taxes and Dues' is person who either permanently lives in Latvia or are present in Latvia for at least 183 days during any 12 month period

84 OG No. 26, 18.02.1995. as amended until 2009 OG No. 205, 30.12.2009.

85 OG No. 115, 03.08.2001 as amended until 2009 OG No. 177, 06.11.2009.

86 OG No. 188/189, 30.06.1998 as amended until 2009, OG No. 205, 30.12.2009.

87 OG No. 168, 29.10.2008. In force from 01.01.2009.

Education

There are several problems concerning the right to education. First, the Education Law⁸⁸ provides for equal rights to education without requirement to possess residency permit to the Union citizens only. Consequently family members of a frontier worker who are third country nationals must obtain residency permit wish they obtain education in Latvia on the equal grounds. Second, Point 3 of Regulations No. 220 ‘Procedure for granting, returning and discharging study grants and student loans from a credit authority with State guarantees’⁸⁹ 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 to which Regulations No. 220 is subordinated to – the Education Law⁹⁰ and Law on Institutions of Higher Education⁹¹ – do not provide for requirement of residency permit for a Union citizen.

2. SPORTSMEN/SPORTSWOMEN

Ice-Hockey

Ice-hockey is the most popular sport in Latvia consequently there is the highest commercial interest.

Latvian Ice-Hockey Federation organizes ice-hockey activities in Latvia.

Rules on transfer of players Latvian Ice-Hockey Federation⁹² provides that in order transfer to another club agreement must be reached between old and new club. In other words clubs must agree on compensation. On the other hand Rules provides that if agreement with player does not contain clause on amount of compensation in case of change of club, old club is not allowed requiring compensation from the new club.

Rules on transfer also provides for player’s registration fees. Amount of fees differs considerably on the grounds of nationality. Latvian player must pay 5 LVL (7 EUR) for but foreign player must pay 200 LVL (284 EUR). Transfer card costs the same for all players – 130 LVL (185 EUR).

According to Regulations on Latvian Ice-hockey League adopted by Latvian Ice-Hockey Federation there is restriction of number of foreign players in team for a game. The number of the foreign players announced for a game may be only 5. Said rule does not apply to Lithuanian teams participating in League with regard to Lithuanian players.⁹³

Very important role in Latvian sports has ice-hockey team (club) ‘*Dinamo Rīga*’. It is established as joint-stock company for the purposes of participation in Continental Ice-hockey league (Russian league established under law of Russian Federation). Regulations of Continental Ice-hockey league provide restriction for a number of foreign players for Russian

88 OG No. 343/344, 17.11.1998., as amended until 2009 OG 196, 15.12.2009.

89 Adopted on 03.07.2001. OG No. 303 10.07.2001. as amended until 2010 OG No. 29, 19.02.2010.

90 OG No. 343/344, 17.11.1998., as amended until 2009 OG 196, 15.12.2009.

91 OG No. 179 17.11.1995. as amended until 2010 OG No. 38, 09.03.2010.

92 Available in Latvian on <http://www.lhf.lv/lv/lhf/documents/> (accessed on 12.04.2010.)

93 Latvian Ice-Hockey Federation Rules on Latvian Ice-hockey League 2010, (accessed on 12.04.2010), http://www.lhf.lv/lv/championship_1/terms/.

teams. The limit is 5 field players and one goalkeeper.⁹⁴ This is the case where sport organisations of Russian Federation do not comply with requirements of Article 23(1) of the Agreement on partnership and cooperation between European Communities and their Member States and Russian Federation.⁹⁵ No limitation with regard to non-national players appears with regard to foreign clubs participating in the League as '*Dinamo Rīga*' is.

Football

Latvian Football Federation have several documents containing detailed rules on transfer of players, registration and training compensation.

Latvian Football Federation shall register foreign player if he submits international transfer certificate, agreement with club and residency permit. Besides player is allowed playing only if he has not breached conditions of agreement without serious reason, is not under sanction of FIFA, UEFA, Latvian Football Federation or other national football association.

Rules also contain detailed regulation on compensation in case players at age 12 to 18 which changing club. New club is under obligation paying compensation to club of origin for training and education.

Even in case agreement between club and player has expired transfer to the new club is possible after reaching agreement between old and new club on compensation. Minimum amount of compensation is defined by Rules on status of players and transfers of Latvian Football Federation.

If player of Latvian National team transfers to foreign club respective Latvian club (which transfers Latvian player) must pay single payment in amount of 1800 LVL (2561 EUR) to Latvian Football Federation.

Currently these documents are not available on the Latvian Football Federation's website. Website contains FIFA general rules on the status and the transfer of the players only.⁹⁶

Rules on Latvian Men's Championship league (LMT – Premiere League) do not limit number of foreigner players in a team for game however allow only 5 foreigner players being on field at the same time. 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.

Although such rules are less stringent than recent requirements on strict number of foreign players in each team, nevertheless present Rules constitute direct discrimination against foreign players.⁹⁷

94 Sports Rules of the Continental Ice-Hockey League for season 2009-2010 available in Russian at http://www.khl.ru/documents/KHL_sports_regulations_2009-2010.pdf (accessed on 12.04.2010.)

95 See also case of the ECJ C-265/03

96 <http://www.lff.lv/lv/lff/dokumenti/> (accessed on 8 April 2010)

97 Rules of Latvian Men's Championship League, available in Latvian on <http://www.lff.lv/lv/virsliga/dokumenti/> (accessed on 12 April 2010).

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 licensing and transfer. Licence fees differs considerably between Latvian and foreign players. If for Baltic and Latvian Basketball league registration fees for Latvian player is 22 to 25 LVL (15 to 17 EUR), then for first foreign player fee is 400 LVL (569 EUR), second 500 LVL (711 EUR), third – 600 LVL (853 EUR), fourth and following – 800 LVL (1138 EUR)⁹⁸.

Each club may register for a game no more than four foreigner players.⁹⁹

There is also one international league – SEB Baltic Basketball league where all three Baltic states participates. Rules of Baltic Basketball Elite Division explicitly provide that there is no restriction for registration of players on the grounds of nationality.¹⁰⁰

Volleyball

Latvian Women's and Men's Volleyball Championship Rules do not limit number of foreign players. They requires to foreign players to posses transfer card issued in accordance with Regulations of International Volleyball Federation (FIVB).¹⁰¹ Rules require existence of transfer card provided by previous foreign club according to the Regulations of FIVB. Transfer fees for women from first to third season constitutes 1500 EUR, but for men – 3000 EUR. Reduction of 30% from transfer fees is applicable to the players of Latvian national team.¹⁰² 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. Rules of said league limit number of Latvian players at Estonian clubs. Allowed number is 3 Latvian players. There is no restriction for foreign players. Transfer of players must be provided in accordance with FIVB. No rules on transfer or license fees are available.¹⁰³

98 Rules on expenses for licensing for season 2009/2010, available in Latvian on http://www.basket.lv/lbl/faili/09_10_izmaksas.pdf (accessed on 8 April 2010)

99 Rules on Latvian Basketball League for 2010, available in Latvian on http://www.basket.lv/lbl/faili/lbl_nolikums_2009_10.pdf (accessed on 8 April 2010)

100 Rules on Baltic Basketball League for season 2009/2010, available in Latvian on <http://translate.google.lv/translate?hl=lv&langpair=en|lv&u=http://www.bbl.net/> (accessed on 8 April 2010)

101 Rules of National Volleyball League for season 2009/2010, available in Latvian at <http://www.volejbols.lv/nolikumi> (accessed on 8 April 2010)

102 Rules on transfer allowing playing in foreign clubs, available in Latvian on <http://www.volejbols.lv/nolikumi/1666> (accessed on 8 April 2010)

103 Rules of *Schenker* League for season 2009/2010, available in Latvian on <http://www.volejbols.lv/nolikumi> (accessed on 8 April 2010)

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.

As justification for quotas, higher licensing and transfer fees is mentioned protection of local sport development, which practically means favouring to local sportsperson for giving them more opportunities. To the certain extent such considerations has sense for small countries. Requirement of compensation between clubs is to be considered as justified for input made by previous club to the training and development of sportsperson.

Latvia is comparably small country with economic in transition. Neither Latvian state nor private business persons invest much money into Latvian sport activities. Since overturn is low due to small size of population sport is not profitable business in Latvia.

3. THE MARITIME SECTOR

Article 272 of the Maritime Code¹⁰⁴ provides that any person may serve as a captain or a crew-member if his/her qualification corresponds to the requirements of Latvian law and international agreements. There are several bilateral international agreements in the maritime sector concluded with Russia, China, Ukraine and Turkey. These do not regulate any matters relating to employment of persons on ships.

Also other bilateral agreements concluded between Latvia and non-Member States covering economic cooperation do not envisage any special rights to equal treatment of the workers.

However Maritime Code provides that employment agreement with seafarers must be in written and that provisions of Labour Law are applicable.¹⁰⁵ Latvian Law provides for the principle of equal treatment with regard to the all employment conditions, including pay. There is no information available how these norms apply in practice, because almost all employment agreements in Latvia are confidential. Also there is no information available on any national court proceedings on the breach of the principle of equality.

4. RESEARCHERS/ARTISTS

The right to work as a scientist in Latvia is not conditional upon nationality. The only requirement is possession of doctoral degree. This is provided by the Law on Scientific Activities.¹⁰⁶ 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.

104 OG. No. 91, 18.06.2003. as amended until 2008 OG No. 82, 28.05.2008.

105 Articles 288 and 286 of the Maritime Code.

106 OG No. 70, 05.05.2005. as amended until 2010 OG No. 47, 24.03.2010.

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. However, according to Article 11¹ of the Education Law¹⁰⁷, the institution providing expertise on recognition of academic education is the Academic Information Centre.¹⁰⁸ 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 making 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 by the University of Latvia only educational and professional requirements are applicable. Regulations on election for academic posts do not provide for any restriction regarding nationality¹⁰⁹. There is no legislation in Latvia regulating the activities of the artists.

5. ACCESS TO STUDY GRANTS

Point 3 of Regulations No. 220 ‘Procedure for granting, returning and discharging study grants and student loans from a credit authority with State guarantees’¹¹⁰ 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. Requirement of the possession of the residency permit runs contrary to the Education Law¹¹¹ and Law on Institutions of Higher Education¹¹² – the laws to which Regulations No. 220 is subordinated to. Besides according to the Regulations No. 220 study grants are available to the Union citizens only, leaving out family members – third country nationals.

Regarding study loans there are Regulations No. 219 ‘Procedure for granting, returning and discharging study loan from the state budget’¹¹³. Point 3 of Regulations No. 219 explicitly provides that this loan is accessible to the Latvian citizens and Latvian non-citizens only although Article 83(1)(5) of the Law on Institutions of Higher Education¹¹⁴ provides that Union citizens and their children who study at the institutions of higher education in Latvia enjoy equal rights with Latvian citizens regard to education fees. Consequently, a Union citizen and his/her family members are precluded the right to be discharged from the obligation to return study loan. Such rule is directly discriminatory on the basis of nationality.

107 OG No. 343/344, 17.11.1998., as amended until 2006 OG 207, 29.12.2006.

108 Home page of Academic Information Centre, www.aic.lv.

109 Home page of University of Latvia, www.lu.lv, <http://www.lu.lv/dokumenti/nolikums-akadamati.html> (accessed on 9 April 2010).

110 Adopted on 03.07.2001. OG No. 303 10.07.2001. as amended until 2010 OG No. 29, 19.02.2010.

111 OG No. 343/344, 17.11.1998., as amended until 2009 OG 196, 15.12.2009.

112 OG No. 179 17.11.1995. as amended until 2010 OG No. 38, 09.03.2010.

113 Adopted on 29.05.2001. OG No. 97, 22.06.2001. as amended until 2009 OG No. 98, 01.07.2009.

114 OG No. 179 17.11.1995. as amended until 2010 OG No. 38, 09.03.2010.

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

There are no practical problems with regard to the transitional measures, because Latvia does not have any transitional measures concerning other Member States.

Only Germany has retained restrictions to the free movement of Latvian workers until 2011.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

There are no transitional measures imposed by Latvia on workers from Bulgaria and Romania.

Chapter VIII Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFEU AND REGULATION 1612/68

According to Regulation 1408/71 – 883/2004 special non-contributory benefits may be subject to the place of the residence. There are several non-contributory benefits payable under Law on State Social Allowances¹¹⁵ and Social assistance and social services law.¹¹⁶ Said laws requires residency in Latvia. The problems does not occur with regard to family benefits – child-care allowance, state family allowance, bonus to state family allowance for disabled child and allowance for disabled child-care. According to the information provided by the State Social Insurance Agency frontier workers whose family members reside in another Member State are entitled to such allowances in Latvia.¹¹⁷

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS

The theoretical problems may occur with Article 24(2) of Directive 2004/38 stating that entitlement to the social assistance may be subject to requirement of the possession of the residency permit. However Article 24(2) of Directive 2004/38 is not implemented into Latvian law. The same is true about the fact Latvian law to the great extent neglects situation of frontier worker, except matters covered by Regulation 1408/71. Therefore in the light of the Regulation 1612/68 Directive 2004/38 does not affect rights of the frontier workers under Latvian law.

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

3.1. *Integration measures*

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

115 OG No. 168, 19.11.2001. as amended until 2009 OG No. 178, 10.11.2009.

116 OG No. 168, 19.11.2002., as amended until 2010 OG No. 19, 03.02.2010.

117 Information available at website of the State Social Insurance Agency in Latvia on <http://www.vsaa.gov.lv/vsaa/content/?cat=3978> (accessed on 13 April 2010)

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

There are no special immigration policies neither with regard to the third-country nationals nor the Union citizens.

3.3. Return of nationals to new EU Member States

There are no reliable data on whether and how many persons return to Latvia from old Member States. Even though old Member States suffers from increase of unemployment information testify that still higher number of Latvians go to old Member States than return to Latvia.

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

Institution which may launch complaints in the connection with the breach of the Community law on free movement for workers is Ombudsman of the Republic of Latvia. Such complains may be reviewed by Ombudsman Office only if they concerns human rights.¹¹⁸ Since most of such complains concerns unequal treatment greatest part of them are most likely to fall within the competence of the Ombudsman.

5. SEMINARS, REPORTS AND ARTICLES

Taking into account limited human and financial resources of Latvia no literature, studies or reports on free movement of workers or issues related to that published on 2009 or 2010 have been found.

Interesting study has been published on 2008. It is study 'Impact of immigration on ethnic relationship in Latvia',¹¹⁹ organisation 'Sociālās Alternatīvas Institūts', Latvia, 2008, available in Latvian on http://www.lsif.lv/files/pics/Migracija_SAI_petijums.pdf (accessed on 7 April 2010). Study shows population of Latvia considers immigration of the workforce from both the EU and third-countries negatively. Population of Latvia is less against immigration of the workforce from ex-Soviet Republics and the EU (except Romania) than immigration from Asia and Africa.

118 Ombudsman Law, OG No. 65, 25.04.2006. as amended until 2009, OG No. 193, 09.12.2009.

119 Organisation 'Sociālās Alternatīvas Institūts', Latvia, 2008, available in Latvian on http://www.lsif.lv/files/pics/Migracija_SAI_petijums.pdf (accessed on 7 April 2010).