

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

Rapporteur: Prof. dr. Lyra Jakuleviciene,
Faculty of Law, Mykolas Romeris University

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ABBREVIATIONS

Certificate in Lithuania	document confirming the right of EU national to permanent residence
EC	European Commission
ECJ	European Court of Justice
EU Residence Certificate	document issued to EU national or his/her family member
EEA	European Economic Area
EU	European Union
EU Residence Permit	document issued to a third country national, who is EU national's family member
EU Permanent Residence Permit	document confirming permanent residence right and issued to a third country national, who is EU national's family member
FIFA	Federation of International Football Associations
LBF	Lithuanian Basketball Federation
LFF	Lithuanian Football Federation
LVF	Lithuanian Volleyball Federation
MOI	Ministry of Interior
MES	Ministry of Education and Science
MS	Member State
MSs	Member States
MSSL	Ministry of Social Security and Labour
SODRA	Social Insurance Fund
UK	the United Kingdom

Chapter I

The Worker: Entry, Residence, Departure and Remedies

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Text(s) in force

The main provisions on conditions of entry, residence and departure of EU nationals are contained in the Aliens' Law of 2004 with subsequent amendments of 28 November 2006, 1 February 2008 and 22 July 2009.

According to the Aliens Law (Article 97(1)) EU national may be admitted to Lithuania and stay therein for a period of three months without any formalities counting from the first day of entry into the country. Given that EU nationals, entering or exiting Lithuania do not require any specific entry or exit authorisation and are not registered by the authorities while in the territory of Lithuania (unless they apply for a residence certificate or declare their place of residence, or declare about their departure from the country), there is no data as to how many of them entered/exited Lithuania in 2009. They appear in the official statistics only if they stay for a longer period than 3 months. Refusal of entry of EU national to Lithuania is possible only on two grounds, which are related to lack of valid travel document (the Law does not specify which travel document, but it is understood to cover either ID card or passport) and threat to public security, public policy or public health (Art. 98 of the Aliens Law).

After the expiration of three months of residence without formalities within half a year, EU nationals have to declare a place of residence and submit documents for residence certificate, if comply with at least one of the grounds for residence. The grounds of residence mentioned in Article 101 of the Aliens' Law transpose the provisions of Art. 7(1) of the Directive 2004/38 and include:

- workers or self-employed persons;
- persons who have sufficient resources for themselves and their family members and sickness insurance;
- students, school pupils, interns or participants of vocational training or qualification raising courses and have for themselves and their family members sufficient resources and sickness insurance;
- family members of EU nationals.

Article 7 (3 a-d) of the Directive 2004/38 is not directly transposed in Lithuania, because there are no explicit provisions allowing EU nationals and their family members to stay in Lithuania following the termination of employment relations or other lawful activities in the country. This is not in line with the obligation to provide for a possibility to remain following active employment in certain circumstances as required by the Directive. On the other hand, the author of this Report does not see clear violation of the Directive because even if concrete grounds are not provided, these persons are likely to fall under paragraph 2 of Article 101(1) of the Aliens' Law, which provides that persons can stay in the country when they have sufficient resources for themselves and health insurance. However, according to the

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Migration Department to the Ministry of Interior, such persons would retain the status of worker or self-employed person, even if this is not explicitly provided in the legislation.

Right of residence is confirmed by the certificate issued in accordance with the Order approved by the Minister of Interior on 25 July 2008 on Issuance of Certificate confirming EU national's right of residence in the Republic of Lithuania and Order on Issuance, extension and withdrawal of EU residence permit to a family member of EU national (Order on Residence Certificate and EU residence permit). The Order provides that Certificate is valid for a period of 5 years or other period of EU national's residence if shorter than 5 years. Decision on application for residence certificate shall be adopted within 5 days (may be extended to 10 days in case of objective reasons). The Order on Residence Certificate and EU residence permit was amended on 14 January 2009, but amendments did not contain any significant changes.

With regard to implementation of Article 8(3a) of Directive 2004/38, Lithuanian legislation complies with requirements for presentation of documents along with request for issuance of certificate and does not require any additional documents that could serve as obstacles or unnecessary barriers to request the certificate. However, all documents presented need to be certified (or confirmed by Apostil) and officially translated into Lithuanian language, which may be a practical barrier.

After 5 years EU nationals become eligible for permanent residence, confirmed by a certificate (introduced in Lithuania since 2006). According to Article 104 of the Aliens' Law "EU national, who has been lawfully resident in the Republic of Lithuania for the last 5 years or, who retains the right to Lithuanian citizenship or, who is a person of Lithuanian origin, or arrived to the Republic of Lithuania as a family member of a Lithuanian citizen, is entitled to reside permanently in the Republic of Lithuania" According to the Law, in exceptional cases to be determined by the Minister of Interior residence right may be granted earlier than after 5 years of residence (Art. 104(3) of the Law).

Issuance of the certificate confirming permanent residence and the issuance of EU permanent residence permit to a family member of EU national is regulated by the Order of the Minister of Interior of 25 October 2007 (hereafter - Order on Permanent Residence Certificate). The Order was amended on 25 January 2009 with insignificant clarifications for documents to be submitted in relation to issuance of certificate. Paragraph 3 of this Order transposes Article 17 of the Directive 2004/38. It provides for a possibility to obtain residence permit for EU nationals residing in Lithuania for less than 5 years in situations mentioned by Art. 17 (paragraphs 3-5 of the Order). Furthermore, the periods of employment are calculated in the period of residence, as well as periods of unemployment that occurred without the will of the person (paragraph 7 of the Order).

Request for permanent residence certificate is submitted to the Migration Department through a local migration institution where EU national has declared or is intending to declare his/her place of residence. All supporting documents need to be translated to Lithuanian and officially confirmed. EU national needs to fill in the Foreigner's Data form, which should be filled in Lithuanian language (it is not clear how the foreigner can fill it in if he/she does not know Lithuanian). All requests submitted by EU nationals are registered in a special register. Decision on the basis of the request should be taken within one month from the date of receipt of application by the migration service. Decision on permanent residence granted is notified along with the certificate being sent to the EU national within 3 working days from its' issuance.

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With regard to Article 14(4 a-b) of the Directive 2004/38, no such safeguards against expulsion are provided in Lithuanian laws. Though there are no specific guarantees as mentioned in Art. 14(4a-b) of the Directive, the EU national can only be expelled if the right to residence is lost. Concerning Article 24(2) of the Directive 2004/38, EU nationals who enjoy permanent residence enjoy the same treatment as nationals of Lithuania.

Decision to grant permanent residence to EU national may be withdrawn if the circumstances leading to recognition of such a right have changed. In this case decision on withdrawal of the right shall be adopted within 10 days from receipt of materials by the Migration Department. Worthwhile mentioning that, if EU national is away from Lithuania for a period exceeding 6 months within one year, this may be a ground for refusing the permanent residence right (except when absence from Lithuania is related to serious reasons (including those required by the Directive 2004/38)). Also, the Aliens' Law indicates that acquired right to permanent residence is lost in case of absence from the country for 2 consecutive years (Art. 104(7)).

Residence rights may be terminated to EU nationals and their family members in case of threat to state security or public order (Art. 106(1) of the Law). On 22 July 2009, Art. 106(1) was supplemented to provide that the right of residence of minor EU citizen, if this complies with his best interests, or the right of residence of EU national who has resided in Lithuania for the past 10 years without interruption, may be terminated only in the case of threat to national security. The objective of this amendment was to ensure that the right of residence of the EU citizens who are minors or who have been residing for the last 10 years in Lithuania is not subject to termination except in case of threat to national security.

Criteria for adoption of the conclusion on threat to public order are regulated by the Order of the Commissar General of the Police of 29 May 2006 on verification of data and making conclusions on the foreigner who requests a residence permit in Lithuania, EC family member residence permit or granting of asylum as concerns his/her threat to public order of Lithuania or conclusion of marriage of convenience. Threat to state security and public order includes the following situations, when a foreigner:

- a) was sentenced for serious and particularly serious crime;
- b) was sentenced for a crime punishable with more than one year imprisonment;
- c) received official warning or court obligations in accordance with the Law on Organised Crime prevention;
- d) is reasonably suspected in commission of serious or particularly serious crime and there are evidences that he/she is intending to commit such crimes;
- e) is subject to compulsory medical measures envisaged in the Penal Code of Lithuania;
- f) is wanted by the foreign country for commission of a crime for which Lithuanian Penal Code provides a punishment of more than one year imprisonment.

The officer of the Police Information Board preparing the conclusion on the threat of the foreigner to Lithuania's public order may take into account additional criteria, like: behaviour of the person, administrative offences committed during the past 2 years and other.

After losing the right to residence EU national and (or) his family member (on the basis of Art. 106 (1)) must depart from Lithuania or will be subject to expulsion. No significant developments have taken place in the area of departure of EU nationals during the year. There continues to be no special provisions in the aliens' legislation regulating departure of EU nationals (except different time lines applied).

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While taking a decision on expulsion of the foreigner, certain circumstances should be taken into account, including (Art. 128 of the Aliens' Law): the period of lawful stay in Lithuania; his family relationship with persons resident in Lithuania; social, economic and other connections with Lithuania; type and extent of dangerousness of the committed violation of law. The Order of the Minister of Interior No. IV-429 on Adoption of Decisions concerning Ordering Departure, Expulsion, Return or Transit through the Territory of Lithuania of a Foreigner and the Rules of Implementation of Such Decisions (hereafter – Order on Expulsion of Foreigners) of 24 December 2004, regulates expulsion of foreigners in detail and is also applied to EU nationals on the same conditions as to all other foreigners to be expelled from the country. In case of expulsion, a mark is inserted on a travel document with or without a ban to enter (paragraph 52.2). If this would be applied in practice to the EU nationals, it would be in variance with the Directive 2004/38, which prohibits imposing bans on entry in the context of expulsion decisions. The time limits for EU national's departure from the country are in line with the Directive 2004/38 (one month from receipt of decision in respect of order of departure for EU national or his family member, Art. 127(1) of the Aliens' Law).

Problematic could be the issue of detention of EU nationals, as no specific rules are established and they would be detained under the same grounds/conditions as all other foreigners in the country. Article 113 of the Aliens' Law mentions the following grounds for detention of foreigners (without any exceptions to EU nationals):

- 1) in order to prevent the alien from entering into the Republic of Lithuania without authorisation;
- 2) if the alien has illegally entered into or stays in the Republic of Lithuania (except when applied for asylum);
- 3) when it is attempted to return the alien to the country from where he has come if the alien has been refused entry into the Republic of Lithuania;
- 4) when the alien is suspected of using forged documents;
- 5) if a decision on expulsion of the alien from the Republic of Lithuania or another state (which applies the Directive 2001/40/EC has been taken);
- 6) in order to prevent the spread of dangerous and especially dangerous communicable diseases;
- 7) when the alien's stay in the Republic of Lithuania constitutes a threat to public security, public policy or public health.

Draft legislation, circulars, etc.

New draft of amendments to the Aliens Law were being prepared during 2009-2010, however the text is not yet publicly available and thus not accessible to the author of this Report.

Miscellaneous (administrative practices, etc.)

The table below illustrates the general proportion of foreigners residing with residence permits in the population statistics of Lithuania for the period of 2003-2009 as of beginning of 2010 (in thousands):

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	2003	2004	2005	2006	2007	2008	2009	2010
Foreigners, ¹ including those with residence permits	30,5	30,2	32,6	35,3	33,1	33,4	32,9	32,5
Number of population ²	3 462,6	3 445,9	3 425,5	3 403,2	3 384,9	3 366,2	3 350,1	3 329,0
Proportion of foreigners in the number of population, %	0,88	0,88	0,95	1,04	0,98	0,99	0,98	0,98

According to the data of the Migration Department,³ during 2009, 788 EU residence certificates were issued to EU nationals. 270 requests for EU permanent residence certificate were received and 257 certificates were issued during the year. 2 EU/EEA nationals were detained for more than 48 hours for illegal stay in the country during 2009. According to information of the Department of Statistics, approximately 20,000 persons emigrated in 2009, which is by 4,600 more than in 2008, while 6,100 immigrated to Lithuania during the same period of time (by 2,500 less than in 2008).

Concerning institutional/administrative developments concerning residence of EU nationals during 2009-2010, a special module was realised in the Foreigners' Register (at Migration Department and migration services) as of 1 September 2009, which allows to process electronically information about certificates issued to EU nationals, which confirm their right to residence in Lithuania, as well as reflect the progress of applications for residence permits submitted by family members of EU nationals who are third country nationals. Furthermore, a National Visa Information System was established in November 2009.

2. SITUATION OF JOBSEEKERS

Job seekers are not mentioned in the Lithuanian legislation and job seeking is not explicitly included among the grounds of residence. However, it can be interpreted from the Aliens' Law that job seekers are covered only in so far as they can stay without a residence permit in the country for a period of up to 3 months, which implies that Art. 6 of the Directive are taken into account. Following the period of 3 months they would likely need to obtain the certificate confirming the right of residence on the basis of paragraph 2 of Art. 101(1) of the Aliens' Law (possession of sufficient resources to stay in Lithuania plus valid health insurance). There are no more favourable conditions provided in the legislation, thus recital 9 of the Directive is not taken into account in any legal acts of Lithuania. However as regards *Antonissen* judgement there are no references to it in national legislative or administrative

1 Source: data of the Identification Documents Issuance Centre at the Ministry of Interior (2006) and migration services (2007-2010).

2 Data of the Department of Statistics at the Government of the Republic of Lithuania.

3 Data of the Migration Department to the Ministry of Interior of 29 March 2010.

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acts and the principles are not fully implemented, this applies also to implementation of Art. 14(4) of the Directive, where there are no explicit provisions transposed.

According to the information of Lithuanian Labour Exchange Office (of 19 March 2010), 165 EU nationals were registered as job seekers in Lithuania during 2009. The breakdown according to nationality is the following:

Country	Number of persons registered
Belgium	2
Bulgaria	4
Czech Republic	3
Denmark	1
Estonia	2
Finland	2
France	7
Germany	18
Greece	1
Hungary	1
Ireland	1
Italy	1
Latvia	48
Poland	64
Portugal	3
Slovakia	1
Spain	2
United Kingdom	4
Total	165

Given that situation of job-seekers is not regulated, they may have difficulties accessing social security benefits. In particular, there might be some obstacles to obtain certain benefits if the job seeker has not been contributing to social security or is not permanent resident in Lithuania. For instance, the Law on Sickness and Maternity Social Insurance requires previous 3 months employment (within last 12 month period) or 6 months (within the last 24 months period) before maternity benefit can be granted. Furthermore, from 1 July 2009, the period was extended and is now fixed at 9 months within last 24 months, and from 1 October 2009 - 12 months within last 24 months (Art. 16(1) of the Law). Eligibility to sickness benefits requires at least three months of previous employment (within last 12 month period) or 6 months (within the last 24 months period) and contributions to social security fund. Employment support (counselling, employment mediation, active employment measures, etc.) is provided to nationals and legally resident foreigners only (since job-seeker would likely be considered as not yet residing foreigner, s/he would be excluded from this definition). Job seekers would have access to basic health services only.

Chapter II

Members of the Worker's Family

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

The definition of family members of EU nationals is provided in Art. 2(4) of the Aliens' Law and it includes: spouse or the person with whom a registered partnership has been contracted, direct descendants who are under the age of 21 or are dependants, including direct descendants of the spouse or person with whom the registered partnership has been contracted, who are under the age of 21 or those who are dependants, the dependent direct relatives in the ascending line of a citizen of an EU Member State, of the spouse or of the person with whom the person has contracted a registered partnership. This definition is in line with Art. 2(2) of the Directive 2004/38.

2. ENTRY AND RESIDENCE RIGHTS

Text(s) in force

No significant developments have taken place in 2009 in this field (except for workers who are third country nationals). The amendments made to the legislation and by-laws mostly related to fees for documents issued and not substantive changes of the status. Also, amendments to the Aliens Law of 22 July 2009 clarified the conditions of entry for family members of EU nationals who are third country nationals. Namely, Art. 101 was supplemented by a new paragraph 3 providing that family members of EU citizens who are third country nationals shall be entitled to a residence permit when they arrive to reside in Lithuania with EU national for more than 3 months within half a year [...], or to join him/her.

The Aliens' Law provides that the family members could be admitted together with EU national or join him and stay with them for the same period of 3 months without formalities. Later on they have to obtain EU residence permit (in case they are not EU nationals). Family members are entitled to permanent residence if reside with EU national for the last 5 years or retain a right of residence (Art. 104(2) of the Law). According to the Aliens' Law, application for EU residence permit must be processed within one month from the date of its receipt (Art. 100 of the Law) (in comparison with 6 months applied to all other foreigners).

With regard to family members of EU nationals who are third country nationals, they can enter Lithuania and stay here without a visa for a period of three months within half a year (Art. 11(4)). However this provision is somewhat limited, as it applies to third country nationals who have residence permits in other EU member states already. While those who do not yet hold residence permits are subject to visa requirement as per list of countries for nationals of which visas are required.

The EU residence permits are regulated by the Order of the Minister of Interior on Issuance, extension and withdrawal of EU residence permits for family members of EU nationals of 25 July 2008. This Order deals with residence permits of family members who are third country nationals. According to the Order, the period of EU residence permit validity is fixed at 5 years or shorter period if the EU national's whose family member is issued permit in-

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tends to live in Lithuania shorter than for 5 year period. For children (foster children) the residence permit is issued until the end of formal education process, but no longer than for 5 years. The documents required for issuance of this residence permit are as follows (paragraph 13):

- valid travel document and document proving legal stay in Lithuania;
- documents confirming family relationship with the EU national;
- marriage certificate/registered partnership agreement or document confirming that he/she is a descendent of EU national below 21 years of age or relative;
- document confirming that he/she is dependent descendant;
- EU national residence certificate;
- document confirming health insurance.

Requirement of legal stay in Lithuania as well as requirement of health insurance may raise concerns with regard to compliance with the Directive 2004/38, which does not require these conditions to be met by the family member of EU citizen. Also, a document, confirming that family member is arriving from another Member State territory, is required (in case of family member of Lithuanian citizen). The authorities are of the opinion that Article 101(2) of the Aliens' Law restricts only Lithuanian national who has not yet used his/her right of free movement. However, if it concerns the family member of non-Lithuanian citizen, there is no requirement of this condition, thus in that the Lithuanian legislation is in line with *Metock* judgement of the ECJ.

Depending on the ground on which residence permit is being issued, additional documents may be required. Decision on residence permit shall be taken within a period of one month according to the Order. Lithuania operates so called "double stage system" (firstly, decision on issuance of EU residence permit is taken and secondly, application to formalise the permit, i.e. to be physically issued, shall be submitted). Decision to issue residence permit is valid for 6 months and if the permit is not formalised within this period, then decision to grant it is repealed. Among the documents required for formalisation of residence permit granted, the third country national is required to submit document proving that he is legally in the country, which might be at variance with ECJ jurisprudence if this would be applied to EU nationals who exercised their freedom of movement. Furthermore, this "double system" in view of the author of this Report is unnecessary and creates additional bureaucracy in dealing with the migration authorities.

The right of permanent residence of the EU national family member who is non-EU national is confirmed by the EU permanent residence permit, which is being issued for a period of 10 years and afterwards extended (Art. 104(5) of the Law). This differs from permanent residence for EU nationals, who are not issued a residence permit, but instead a special certificate confirming their right to permanent residence. Issuance of residence permits to family members of EU nationals is regulated by the Order of the Minister of Interior on issuance of EU permanent residence permit for family members of 25 October 2007. In case of children, residence permit is issued until the end of formal educational programme, but for no longer period than 10 years. Decision on request for residence permit shall be adopted by the Migration Department within 1 month from the receipt of application by the migration service. When a family member of EU national receives notification about issued decision on residence permit, he/she needs to formalise the decision by applying to a local migration service ("double stage system" as already described above).

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On 22 July 2009, Art. 101 of the Aliens' Law was supplemented to provide that family members of EU national who are not EU citizens shall be entitled to EU residence permit when they enter the Republic of Lithuania for residence for a time period in excess of three months within half a year accompanying the EU Member State national entitled to reside in the Republic of Lithuania or arrive to join him.

Family members who are EU nationals are issued residence certificate in the same manner as the EU national who arrives to Lithuania. The right of residence of the family member of EU national may be repealed on the ground of national security or public order, or if the right of residence of EU national is repealed, unless he has independent right of residence on other grounds. Decisions on repealing the right of residence are taken by Vilnius District Administrative Court. Right of residence for family members of the EU national is retained in the following circumstances (Art. 101¹):

- when EU national dies or departs from Lithuania and his family member is an EU citizen and complies with conditions of residence (is a worker, self-employed, student or has sufficient resources to reside);
- when EU national dies and his family members are not EU citizens, if they have been residing in Lithuania for at least one year before the death of his family member (in this case they have to submit with the request for permanent residence permit, documents proving their right to reside in Lithuania);
- when marriage is invalidated, terminated or registered partnership is terminated, if the family member is EU citizen and complies with conditions of residence;
- when marriage is invalidated, terminated or registered partnership agreement is terminated and the family member is not EU citizen, if marriage or registered partnership lasted for not less than 3 years, including one year in Lithuania, or if the family member has custody of the children of EU national or termination of marriage occurred due to fault of the other spouse (EU national) (in this case they have to submit with the request for permanent residence permit, documents proving their right to reside in Lithuania); this situation is more limited than that allowed by the Directive 2004/38 (Paragraphs c-d of Art. 13(2)). Furthermore, previous residence in another EU member state would be required, which might be in variance with ECJ jurisprudence if applied vis-à-vis persons who exercised their free movement.
- when EU national dies or departs from Lithuania, the right is retained to his children irrespective of citizenship and one of the parents taking care of them until completion of started formal education programme.

With regard to permanent residence, the family members of EU national also acquire a right to permanent residence in the Republic of Lithuania, if they have resided here legally for the past 5 years with EU national or they retain right to reside in Lithuania in accordance with paragraph 1 of Art. 101¹ of the Law, or are the family members of EU national who retained his right to Lithuanian citizenship pursuant to the Citizenship Law or are family members of person who has Lithuanian origin.

3. ACCESS TO WORK

Similarly, as the EU worker, his/her family members who intend to engage in employment are exempted from the work permit. Family members who are third country nationals may be

exempted from work permits if they fall under specific categories of persons enlisted in the law. If they fall out of explicitly provided list, they have to obtain the work permit.

4. THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS

Since job seekers are not explicitly mentioned in the Lithuanian legislation and job seeking is not included among the grounds of residence as such, the situation of their family members is unclear. However, it can be interpreted from the Aliens' Law that job seekers could be covered firstly by the possibility of EU nationals to stay for 3 months without registration and, secondly, by the residence ground based on availability of sufficient resources and health insurance. In this case, the situation of their family members would be the same as of other EU nationals residing on the grounds of employment, self-employment or studies. Also, as there are no norms affirming to the contrary, it is presumed that the family members of jobseekers who are EU nationals would be also exempted from work permits. Third country nationals who are family members of job seekers could be exempted from requirement to obtain work permits if they fall under one of the categories of persons (arrived to Lithuania on the basis of family unity, or as intern or for vocational training for a period not exceeding 3 months within a year). In other cases they would have to obtain work permits.

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).

Text(s) in force

No significant legislative developments have taken place in this field during the year. The Labour Code of the Republic of Lithuania (hereafter – Labour Code) of 22 June 2004 contains a general principle of non-discrimination in paragraph 1(4) of Article 2: “equality of subjects of labour law irrespective of their gender, sexual orientation, race, national origin, language, origin, citizenship and social status, religion, marital and family status, age, opinions or views, political party or public organisation membership, factors unrelated to the employee's professional qualities“. Furthermore, paragraph 1(1) of Article 96 contains a prohibition of refusing employment to a person on the grounds specified in Article 2, mentioned above. However, Article 13 of the Labour Code provides for legal capacity to engage in employment only to citizens and permanent residents of Lithuania:

“All citizens of the Republic of Lithuania shall have equal legal ability to exercise labour rights and undertake labour obligations (legal capacity in labour relations). Foreign nationals and stateless persons, who are permanently residing in the Republic of Lithuania, shall have the same legal capacity in labour relations in the Republic of Lithuania as citizens. Laws may establish cases of exception from the above provision.”

Though there are no specific provisions in the Labour Code concerning EU nationals the EC Regulations (e.g. Regulation 1408/71/EEC and Regulation 1612/68/EEC) are directly applicable in Lithuanian legal system and the labour laws of the Republic of Lithuania are thus applied only in as much as they do not conflict with the Regulations. This allows ensuring the equal treatment of EU nationals with regard to concluding labour contracts and conditions of work.

EU nationals and their family members are exempted from the work permit in accordance with Article 103 of the Aliens Law, thus they can engage in employment without restrictions. However family members who are third country nationals are exempted from work permits in limited cases only (e.g. arrived to Lithuania on the basis of family unity, or as intern or for vocational training for a period not exceeding 3 months within a year), while in all other cases they are subject to work permits.

Differently from 2008, there were no important legislative developments during 2009 with regard to recognition of professional qualifications. The Directive 2005/36/EC was transposed by the Law on Recognition of Regulated Professional Qualifications adopted on 3 April 2008. A decision was adopted by the Minister of Social Security and Labour in 2009 to prepare a draft legislation concerning recognition of professional qualifications of third country nationals. Inter-institutional working group was created for this purpose and it was tasked to prepare by IV quarter of 2010 a draft resolution of the Government on recognition of professional qualifications of third country nationals.

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The author of this Report did not observe any particular obstacles to accessing employment by the EU nationals. Naturally, the effects of the economic crisis have directly impacted on the situation in the labour market in Lithuania, where the local supply of labour force increased enormously, while the demand was very low. One possible obstacle concerning the language requirement is dealt with in the following section below.

Miscellaneous (administrative practices, etc.)

Concerning assistance by employment agencies, the EURES network operates since 2003 in ten regions of the country (Vilnius, Kaunas, Klaipeda, Siauliai, Panevezys, Alytus, Utena and Taurage cities, Pasvalys and Lazdijai border regions) with the purpose of facilitating the implementation of free movement of persons in Lithuania and outside it. EURES specialists are also placed at all 46 territorial labour offices throughout the country. They provide information and consultations to interested persons on the free movement of workers, conditions of employment, residence and studies within the EU, as well as to Lithuanian employers searching for workers in other EU MSs. During 2009 the consultants of EURES provided consultations on free movement to 24619 persons. Lithuanian nationals have been helped to enter into employment: 53 persons were employed in UK, 7 in Netherlands, 10 in Sweden, 9 in Norway, 1 in Cyprus⁴. There were also private employment agencies that provided employment assistance to Lithuanian nationals in other EU member states. EURES advisors provide counselling to EU nationals arriving to Lithuania as well. Employment support (counselling, employment mediation, active employment measures, etc.) is provided to nationals and legally resident foreigners, thus except job seekers, other EU nationals who reside in Lithuania, would be eligible for Lithuanian Labour Exchange services (state body). Overall, 40-42 private employment agencies having the licences of the MSSL to engage in mediation of employment abroad were operating. These employment agencies found employment to 1559 Lithuanian residents during 2009 (914 males, or 59%, and 645 female, or 41%; 1328 persons out of these were unemployed, while 181 had a job in Lithuania)⁵. In comparison with 2008, increase in the statistics of employment abroad can be noticed (1892 persons were assisted with employment in 2007, while 1327 in 2008).

In the context of recognition of professional qualifications, 129 persons applied for recognition during 2009 (99 of them were EU nationals, 30 - nationals of third countries). The professional composition of persons seeking employment in Lithuania according to profession was the following: 2 midwives, 7 medical doctors, 11 doctors, 3 veterinary doctors, 5 general practice nurses, 4 chemists, 6 doctors odontologists, 23 teachers, 16 guides, 6 school psychologists, 3 social pedagogues, 1 restaurateur, 2 assistants of doctors odontologists, 1 tiflopedagogue. 39 persons (35 guides, 1 doctor odontologist and 3 doctors) sought to provide temporary or one time services. Positive decisions on applications were adopted in 67 cases and 21 were rejected, 1 case was suspended and in one case additional information was requested. 39 positive decisions were adopted concerning one time temporary service provision. Compensatory measures were applied in several cases: professional practice (2 cases), additional studies (5 cases), 2 year adaptation period (16 cases). Concerning negative decisions, they concerned the following professions:

⁴ Information of Lithuanian Labour Exchange of 19 March 2010.

⁵ Information of Lithuanian Labour Exchange of 19 March 2010.

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- Medical doctor (Lithuanian national who acquired qualifications in Russia. Compensatory measure (professional practice) was applied);
- 2 general practice nurses (Lithuanian nationals, qualifications acquired in Belarus);
- 1 pharmacist (Lithuanian national, qualifications acquired in USA);
- 1 doctor odontologist (Lithuanian national, qualifications acquired in Belarus);
- 3 teachers (Lithuanian nationals, qualifications acquired in Poland, Switzerland and Germany);

In comparison, slightly more applications were rejected for third country nationals (nationals of Belarus, Russia, Ukraine).

a.2. Language requirements

Text(s) in force

The Law on the State Language of the Republic of Lithuania No. I-779 of 31 January 1995 (last amended on 13 June 2002) establishes that apart from public officials, persons in the field of communications, transport, health and other establishments providing services to the residents must be proficient in state language in accordance with the categories of state language proficiency, established by the Government (Art. 6). Furthermore, heads of commercial services must ensure that services to the residents are provided in state language (Art. 7).

Language proficiency requirement is further regulated by the Government Resolution No. 1688 on Approval and Implementation of State Language Proficiency Categories (further – Language Proficiency Resolution) of 24 December 2003 (as amended on 8 April 2009). This Resolution establishes three categories of language proficiency and the list of positions to which each category applies:

- 1) First category (e.g. proficiency to fill in standard document forms, communication in short sentences, preparation of short non-official texts, etc.) is applied to persons employed in service provision, production, commercial and transport services, if they have to communicate with persons while executing their functions and/or fill in simple document forms (e.g. drivers, cloakroom attendants, sellers, waiters and other commercial employees or employees performing economy or technical functions);
- 2) Second category (characterised by for instance, ability to communicate and prepare documents on topics of daily life and work, describe events, experience and reasons, etc.) is applied to persons employed in education, culture, health care and other sectors, public, if they constantly communicate with persons and/or fill in the forms of documents while performing their functions (e.g. employees of educational and cultural establishments, teachers and others);
- 3) Third category (e.g. ability to formulate long and complex sentences and understand concrete and abstract texts, prepare official documents, explain positions, fluently communicate on various topics, etc.) is applied to the heads of companies and organisations, lecturers, aviation specialists and specialists controlling flight security, specialists of maritime and internal waters' transport responsible for transportation of cargo and passengers (captain of the ship, port captain) and others. The list is not exhaustive, thus it is likely to be applied also in some other cases on discretionary basis, which may be of concern.

The lists provided above and other provisions of the Language Proficiency Resolution indicate that state language proficiency requirement is applied not only to persons employed in the public service, but also in certain spheres of the private sector. Also, Lithuanian language proficiency requirement is applied in the maritime sector (see below for details). This may pose additional obstacles for employment of other EU nationals, who may not be proficient enough in Lithuanian language. Slight amendments were made to the abovementioned resolution during 2009 concerning equation to a third category of persons who have finished studies in Lithuanian, as well as persons who finished vocational training in non-Lithuanian equated to second category of proficiency).

There have been specific exceptions made in the past for certain professions (e.g. for advocates under Art. 64(8) of the Law of the Bar of 18 March 2004; for doctors under the Law on Medical Practice of 18 December 2003). As concerns doctors, Article 5 of the Law establishes that doctors who are EU, EEA and Swiss nationals may provide temporary services in Lithuania even if they do not have a licence. Thus language requirement is not, at least explicitly, provided. It would be worthwhile though to include a special exemption concerning language proficiency requirement for doctors who are EU, EEA and Swiss nationals in the Order of the Minister of Health Care No. V-396 on Approval of Rules on Licensing of Medical Practice of 27 May 2004. This Order in its' paragraph 18.1 states that the State Service for Accreditation of Health Care Supervision at the Ministry of Health Care (responsible institution for issuing the licences) may request the applicant for a licence to provide documents, attesting Lithuanian language proficiency in accordance with the order established by the legal acts. If doctors, who are EU nationals, will indeed apply for a licence, they may also fall under this requirement. This Order was amended on 8 April and 14 May 2009, however the amendments did not relate to addressing the mentioned concern.

B) ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

b.1. Nationality condition for access to positions in the public sector

Generally, there have been no reforms of the national rules in 2009 in the field of employment of EU/EEA citizens in the public sector of Lithuania.

Text(s) in force

The employment in the public service in Lithuania remains restricted to Lithuanian citizens except a few jobs that are available to foreigners under labour contracts without performing the function of public administration. According to the Constitution of the Republic of Lithuania of 25 October 1992 (as last amended on 11 June 2009, No. XI-286),⁶ the right to seek employment in the public service of Lithuania is reserved for citizens only (Art. 33). The law was amended in 2009, however the amendments did not concern access to public services of EU nationals. Furthermore, the requirement of Lithuanian citizenship is applied for becoming a member of the Parliament (Art. 56), the President of the Republic of Lithuania (Art. 78), judge of the Constitutional Court (Art. 103) or any other court (Art. 112). As

⁶ Available in English at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

concerns the members of municipal councils, not only Lithuanian citizen, but also permanent residents of Lithuania are eligible (Art. 119).

Employment in the public sector is regulated by the Law on the Public Service No. VIII-1316 of 8 July 1999 (new version adopted on 1 July 2002) (hereafter – Law on Public Service).⁷ It determines that a person, entering the public service, must have a citizenship of Lithuania (Art. 9(1)). The public servant is defined as a person performing the function of public administration, while the

“Public service means a sum total of legal relations arising after the acquisition of the status of a public servant, the change or loss thereof, as well as those resulting from the public administrative activities of a public servant in a state or municipal institution or agency when implementing the policy of a particular sphere of state governance or ensuring the co-ordination of the implementation thereof, co-ordinating the activities of institutions of a particular sphere of state governance, managing and allocating financial resources and controlling their use, carrying out audits, adopting and implementing legal acts, decisions of state and municipal institutions or agencies in the sphere of public administration, preparing or co-ordinating draft legal acts, agreements or programmes and giving opinions on them, managing personnel, or having public administrative powers with respect to persons, who are not subordinate” (Art. 2(1)).

This definition in itself should not raise any issues of incompliance with Article 39 of the EC Treaty. However, it should be read in conjunction with uniform lists of positions of public servants, approved by the Parliament and the Government of Lithuania. These lists were approved with the intention to avoid institutional subjectivity and to determine appropriate number of state institutions and public servants. Parliamentary Resolution of 24 April 2008 established a list of positions of public servants in the Parliament, Chancery of the Parliament, institutions accountable to the Parliament, the President’s Office and institutions accountable to the President, National Court Administration, courts, Prosecutor’s Office and municipal institutions. This list included the institutions that belong to public service rather than listing the categories of public servants as it was done in earlier legislation. Another, Government Resolution of the same date, established a list of ministries, Chancery of the Government, government institutions and institutions at the ministries. Now, the lists of actual positions for 2010-2012 are attached as Annex III to the Law on Public Service (through amendment to the Annex of 2 December 2009). Some positions mentioned in the list could be considered as a rather broad expansion of the public service (e.g. court secretary, chief pilot, chief fireman, rescuers, etc.).

In conclusion, public servants can be a Lithuanian national only, which means that public service remains reserved for nationals only. Language requirement also applies. The provisions of the Law on Public Service do not apply to persons providing public services and performing technical functions. Thus, as concerns engagement of foreigners, including EU nationals, in jobs in the government/municipal bodies under labour contracts (without performing public administration function), there are no restrictions provided in the laws.

No significant legislative developments took place in this field in 2009 and there has been no public debate or political discussion concerning possible opening of the public service to EU nationals.

⁷ Available in Lithuanian at: <http://www.lrs.lt>.

b.2. Language requirements

There is an explicit Lithuanian language requirement following from paragraph 2 of Article 9(1) of the Law on Public Service, which mentions requirements for admission to public service. No changes were introduced during 2009. The law does not specify proficiency of language level, but reference could be made to Lithuanian language exam, which is mandatory when requesting citizenship of Lithuania or long-term residence permit of the EU. The level of proficiency for language exam is based on European Council A2 level, which means that the person understands short and clearly structured sentences, is able to speak about concrete known issues, able to fill simple forms of documents or write informal communication. The author of this Report is yet of the opinion that higher proficiency would be requested, e.g. for working in the ministry.

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

Given that Lithuanian public service remains restricted to Lithuanian nationals only, the recruitment issue of EU nationals is not relevant in this respect. However, should access for EU/EEA nationals to Lithuanian public services be given, according to the Public Service Department to the Ministry of Interior, there should be no problems to recognise professional experience acquired in another country, provided that there is an evidence of such experience which would have to be supplied. However, there would potentially be problems as concerns calculation of this experience for the purpose of grades and categories of public servants, because according to current legislation, service supplements are being paid on the basis of service for Lithuanian state only.

b.4. Other aspects of access to employment

Lithuanian public service as mentioned above remains closed for foreigners, including EU/EEA nationals, thus the situation is assessed only through modelling the situation of a Lithuanian national who obtained qualifications and experience abroad and is seeking access to public service in Lithuania. According to the information of State Service Department to the Ministry of Interior (of 12 April 2010), diplomas/education, experience and professional qualifications obtained abroad and duly recognised in Lithuania would be evaluated in the same way as obtained in Lithuania in the recruitment procedure. It is worthwhile mentioning that during recruitment procedure of public servants points for education or professional qualification are not being assigned, because only fulfilment of general and specific requirements for the post are being evaluated. The oral exam is used to verify the skills of the candidate to perform public service functions for which the person applies. Candidate's skills in foreign languages are also being checked during the oral exam. The legal acts regulating public service do not envisage any preferences for certain candidates during recruitment procedure. The level of grade and category (which is essential to determine the salary level) is established on the basis of criteria for evaluation of functions and the list of functions (enclosed in Annex 3 to the Law on Public Service). However the level of salary will very much depend on the level of post (there are different rates for managers, specialists, servants and workers) and education that the public servant possesses (rates differ for possession of high

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university education, high college education, special higher education, etc.). Generally, the experts who evaluated the payment conditions in public service in 2009,⁸ conclude that payment conditions within the public sector vary a lot and the most unfavourable conditions of payment are for persons who work under labour agreements in the public service (their work is regulated by the Labour Code in contrast to specific legislation of other public servants).

8 Valerija Gerikienė, Inga Blažienė, Problems of Regulating Remuneration for the Work of Public Sector Employees in Lithuania, *Jurisprudencija*, No. 4(118), 2009, p. 314.

Chapter IV

Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Text(s) in force

Working conditions for EU nationals and their family members are the same as for Lithuanian workers. Concerning the payment for work, the legislative guarantee is Article 186(3) of the Labour Code stating that “the wage of an employee shall depend upon the amount and quality of work, the results of the activities by the enterprise, agency or organisation as well as the labour demand and supply on the labour market. Men and women shall get an equal pay for equal or equivalent work”.

The Labour Code provides for a right to information and consultation for the employees of EU enterprises or groups of enterprises. According to Article 47 (6) they can receive information and consultations through the European Labour Councils.

In compliance with the Regulation 1612/68/EEC, EU nationals have equal access to trade unions with Lithuanian nationals according to the Law on Trade Unions No. I-2018 of 21 November 1991, as amended on 3 November 2003, to enable “all persons, legally working in the territory of the Republic of Lithuania under labour contract and on other grounds established by the laws to freely join trade unions and participate in their activities. Notwithstanding, the Civil Code of the Republic of Lithuania of 18 July 2000 (as amended in 2004), retains a provision that founders of a trade union may be Lithuanian citizens or permanent residents of Lithuania only (Art. 2.38(3) of the Code). EU nationals can also join the labour councils (bodies, representing employees and defending their professional, labour, economic and social rights, as well as representing their interest), as the Law on Labour Councils No. IX-2500 of 26 October 2004 does not place any restrictions on that. However, there is no statistics on how many EU nationals or other foreigners, if any, are members of trade unions or labour councils. The trade unions’ organisations have not been gathering such information so far.

Specific issue: Working conditions in the public sector

Given that Lithuanian public service remains restricted to Lithuanian nationals only, the issue of working conditions of EU nationals is not relevant in this respect. However, should access for EU/EEA nationals to Lithuanian public services be given, there should be no problems to recognise professional experience acquired in another country, provided that there is an evidence of such experience which would have to be supplied. Methodology on description and evaluation of public servants’ functions (approved by the Government on 20 May 2002) does not mention the place of acquiring professional experience, thus it can be inferred that professional experience acquired in other EU MSs would be recognised. However, there would potentially be problems as concerns calculation of years of service for the purpose of grades and categories of public servants, because according to current legislation, service supplements are being paid on the basis of service for Lithuanian state only (up to 30% supplement to the salary).

2. SOCIAL AND TAX ADVANTAGES

Text(s) in force

EU nationals may enter into labour relations on the same conditions as Lithuanian nationals and would be entitled to the same unemployment benefits, provided they comply with requirements for receiving such benefits. There might be some obstacles to obtain certain benefits if the EU worker has not been contributing to social security or is not permanent resident in Lithuania.

As concerns taxation, EU nationals working under labour contract are paying the same social insurance taxes, as Lithuanian citizens. Lithuania continued to drastically change national legislation concerning taxation, and more specifically introducing new tax obligations for persons who were not subject to it before. On 1 January 2009 the legislation expanding the personal scope of social taxation entered into force (these amendments did not specifically relate to taxation of EU nationals, but they are equally applicable to them):

The list of persons who shall be insured with social insurance and pension social insurance was expanded to also include persons obtaining income from sport activity or artistic performance activity, persons receiving income as authors, farmers and their partners (this additional taxation in the opinion of the author of this Report significantly reduces Lithuania's attractiveness for mobility of EU nationals). The taxation is quite high and there are almost no exceptions to persons who already contribute to social security under labour contracts and are at the same time working under author's agreements.

As concerns social insurance conditions for self-employed persons: they will have to be compulsorily insured for pension social insurance, as well as social insurance of illness and maternity (except those working with patents, advocates and their assistants, notaries and bailiffs). They will need to pay social insurance taxes even in case they are at the same time working for another employer and thus are already contributing to the Social Insurance Fund.

All reduced rates of VAT were abolished for authors, artists and sportsman as of 1 January 2009. Until 31 December 2008, services of writers, composers and performers, who receive honorarium for their services, were subject to reduced VAT tariff of 5% (in comparison with others who were subject to 18% VAT).

There was a transitional period for 2009 for reduced tariff of social security tax in case of: sportsman, artists or persons working under authorship agreements, tariff of 7% social security tax and 3% of health insurance tariff, while the person insured would pay 1% pension social insurance tariff and 6% tariff for health insurance. Some reduced tariffs continue to apply in 2010 also.

Non-permanent residents have the obligation to pay income tax if the source of funds received is in Lithuania, thus e.g. this tax would have to be paid from income from employment relations, from sport activity (would affect foreign sportsmen playing in Lithuania), as well as from authors'/artistic activity. Differences as regards obligations to register as VAT payer for foreign citizens and Lithuanian nationals still remain. Lithuanian nationals register as VAT payers only when their income reach 100 000 Litass (approx. 29 000 euro) limit within 12 consecutive months. Foreign nationals (legislation does not make any exception to EU nationals) are required to register as VAT payers immediately after commencement of economic activities in Lithuania. This may place self-employed EU nationals at fiscal disadvantage if compared with nationals and could discourage self-employment in Lithuania.

Family members of EU nationals are treated in the same way as EU nationals as concerns social and tax issues. Concerning third country national family members, e.g. the Law on Consular Fees of 23 June 1994 (new version of the law of 1 January 2008) provides in its Article 6(4) for an exception from the fee to the EU nationals as concerns the issue of visas to the family members of the EU/EEA nationals.

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

Refer to response under point 2 (Social and Tax advantages) above.

2.2. Specific issue: the situation of jobseekers

The Law on Employment Support of 2006 (new version of the law of 1 August 2009) provides for equal treatment between Lithuanian nationals and foreigners legally residing in Lithuania (Art. 1(2)). This law provides for various services that are provided to job seekers: information, consultation and mediation in finding employment. Foreigners legally residing in Lithuania and seeking employment have the same rights to participate in active labour market measures and employment support programmes managed by the Lithuanian Labour Exchange.

Situation of Lithuanian nationals and nationals of other EU member states does not differ as concerns state supported active and passive labour market measures (e.g. consultation, public works, support to establishment of working place, subsidies, etc.). The Law on Employment Support states several categories of persons to whom the measures provided by the law apply (e.g. persons with different level of disabilities, persons starting their employment career after they acquired qualifications, long-term unemployed, 50+ persons, persons returning from places of imprisonment and others). However, the list does not mention, and thus the Law is likely not to apply to job seekers who do not fall within one of the specific categories of persons mentioned above. This nevertheless would equally apply both to Lithuanian, as well as to other EU nationals. The Law on Unemployment Social Insurance (of 2003, as amended in July 2009) envisages support to unemployed persons, however access of EU nationals who are unemployed and seeking employment in Lithuania may be limited by formal requirements (registration in Labour Exchange Office, previous unemployment insurance record of at least 18 months within the last 36 months). According to information of Lithuanian Labour Exchange, in practice, such work record would be calculated on the basis of records obtained not only in Lithuania, but also abroad. To prove the record abroad, the person concerned should submit the form E301 to the exchange office, or the later may inquire the other MSs on request of the person concerned. However, there is a requirement that the last place of employment was in the country that assigns unemployment benefit, i.e. in Lithuania (there are also a few exceptions, e.g. seasonal jobs, work in ships with state flag, etc.). There might be also situations when unemployed person already acquired unemployment benefit abroad and arrives to Lithuania. In this case, the person may seek employment in Lithuania for 3 months based on form E303 submitted to territorial labour exchange office. During this period, the labour exchange would pay the assigned benefit (this benefit is later on compensated to Lithuanian institution by the other MSs that assigned the benefit).

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With regard to implementation of ECJ decisions in cases *Ioannidis*, *Collins*, *Vatsouras*, the national rules do not provide for any specific financial support aiming at facilitation of access to the labour market, if the EU national (as well as Lithuanian) national does not have specific characteristics (disability, long-term unemployment, etc.), which entitle to financial and other support.

Chapter V

Other Obstacles to Free Movement

Miscellaneous (administrative practices, etc.)

Some practical constraints exist in the field of taxation for foreigners (EU nationals are not excluded) with regard to possibilities to exempt them from taxes of incomes received abroad if they reside in Lithuania. Tax inspection requires that while declaring income received abroad, permanent residents of Lithuania present documents confirming that foreign employer has deducted taxes to foreign state budget. Foreigners frequently face problems in obtaining proper documents, because usually documents issued in other countries (e.g. pay slips) are not being stamped or signed by the employer. Thus such documents are not always accepted by the Lithuanian Tax Inspection. If failed to provide for proper documentation, foreign worker permanently residing in Lithuania may be required to pay income tax in Lithuania, thus double taxation would not be avoided.

Chapter VI

Specific Issues

1. FRONTIER WORKERS

Text(s) in force

Lithuanian legislation provides a definition of frontier worker and explicitly regulates the payment of family benefits and benefits in case of death to these workers (regulated by the Order of the Minister of Social Security and Labour of 27 December 2004 concerning the Order on Implementation of Council Regulation No. 1408/71/EEC and Regulation No. 574/72/EEC provisions relating to family benefits and benefits in case of death). Frontier workers are defined as persons employed under labour contracts or self-employed persons, who work in one state and live in another state, whereto they usually return every day or at least once per week (paragraph 4). According to the interpretation of the Migration Department, since the frontier worker is not intending to stay in Lithuania for more than 3 months (as s/he is not residing in Lithuania) and is returning to home country every day, there is no obligation for them to register and request certificate proving their status.

A frontier worker, who is sent to the same or another state by a company where he usually works or provides services in the territory of the same or another state, retains the status of a frontier worker, but no longer than for 4 months even if during that period he is unable to return home every day or at least once per week. Benefits are payable (paragraph 5) to:

- Persons who are insured with compulsory social insurance, as well as persons who engage in activity that is considered employment;
- Unemployed who receive the benefit of unemployed;
- Persons receiving state social insurance pensions;
- Students.

Persons who do not reside in Lithuania, but perform their main activity in Lithuania, are insured with social insurance in Lithuania. Concerning income tax, according to the State Tax Inspection, non-permanent residents who receive income from employment in Lithuania, have to pay income tax in Lithuania irrespective of whether they return daily to the country of residence or not. According to the opinion of the author of this Report, income tax for income received in Lithuania could be paid in the country of residence only when there is an agreement between the two countries on avoidance of double taxation.

There were no major developments in 2009 that would be relevant for frontier workers.

Miscellaneous (administrative practices, etc.)

In view of issues analysed by ECJ in *Hartmann case* there should be no similar problems in Lithuania; because the family benefit may be paid to the person on the basis of work place and not residence (competent country is a country of work even if one of the parents is unemployed). According to the MSSL, the frontier worker would be paid family benefits even for family members residing in another state. If the allowance is bigger in the country of residence, then the later pays the difference. However, if parents work in different countries and the child is living with one of the parents, then the competent state would be the state of child's residence. Another rule is applied when parents are working in different states but the

child does not live in any of them. Then, the competent country will be the one that provides for largest allowance. The other state has to compensate the paying state half of the amount of the allowance (but not more than the amount of allowance in this state).

Frontier workers are usually coming from border regions in Poland with which Lithuania has a common internal border and where a number of Lithuanian minorities is living in the border regions. There is no available statistics of how many of such persons are working across both sides of the border, as they are not registered and frequently the only possible trace of these persons is through the labour contract concluded in Lithuania. Such persons do not generally face any problems in crossing the internal border, they are not required to re-register their vehicles, they are included in the social system through employment contract and payment of compulsory social taxes.

2. SPORTSMEN/SPORTSWOMEN

Text(s) in force

In the area of sports, the impact of the *Bosman*, *Kolpak* and *Simutenkov* rulings is limited in Lithuania. Restrictions on foreign players and transfer fees have not been abolished in 2009. In *football*, new Regulations for 2009 Competitions were approved by the Executive Committee of the Lithuanian Football Federation on 27 March 2009. They have not eliminated important restrictions concerning foreigners, including limitations on foreign players, transfer certificates/fees. Information was not available if previous financial differences in registration are still applicable, as well as restrictions on youth players of foreign nationality, because the LFF did not respond to the inquiry of the author of this Report. Paragraph 46 of the Regulations states that “the number of foreigners (not having Lithuanian citizenship) in the applications by teams is not limited, but not more than 5 foreign citizens can play at the same time within the composition of one team during the match” (in 2008 this number was 6 players). Another restriction is that player who played in a foreign club can be registered only if he receives international transfer registration certificate (ITC) (paragraph 150 of the Regulations).

As concerns *basketball*, several restrictions on registration of foreign players remained in 2009. National rules on limitations concerning registration of foreign players and training masters in basketball leagues (of 4 June 2008) continued to be applicable in 2009. These restrictions include:

Championship of 2009-2010:

Men championship: Highest League - 3 foreign players; First League - 1 player.

Women championship: Highest League - 3 players.

Championship of 2010-2011:

Men championship: Highest League - 3 foreign players; Second League - 1 player; Third League - 1 player.

Women championship: Highest League - 3 players; Second League - 1 player.

As regards foreign training masters, clubs that are willing to employ them are bound to pay a registration fee of 20,000 Litas (approx. 5800 euro) for each training master to the Lithuanian Basketball Federation before issuance of training master certificate.

Restrictions also remained with regard to transfers of players between clubs. The Regulations of 27 May 2009 envisage a Letter of Clearance. If the player moves from sports' school/club to the basketball club, the club has an obligation to compensate the school for the preparation of the player. The scope of compensations for the transfer has been clarified in 2009 and depends on the league. This rule remains valid for up to four years from the graduation from sports' school. In case of foreign players and their transfers the transfer fee is based on paragraph 94.1.4 (Section XI) of FIBA Europe Regulation and amounts to 100 000 euro for covering the costs of issuance of Letter of Clearance. Transfers of players below 18 years of age are forbidden and may be allowed in exceptional case only (paragraph 5.1 of the Regulation). 46 foreign players were playing in Lithuanian teams in 2009: 6 female and 40 male players).

Existing restrictions applied in basketball and football competitions concerning foreign players may not be fully compatible with the Community law and the above mentioned judgements of the ECJ (*Bosman*, *Simutenkov*). Usually, these restrictions are motivated by the rules of FIBA Europe, which allow national federations to apply such restrictions for foreigners, including the EU nationals, in the national championships.

No specific explicit restrictions follow from the Regulations for the *volleyball* competitions, and the author of this Report did not receive a response from Lithuanian Volleyball Federation clarifying the actual situation.

Ice-hockey is not widely practiced in Lithuania; the regulations do not provide for any particular limitations on the number of foreign players (whether EU/EEA nationals or third country nationals) allowed to register or play in one match and this information is also confirmed by the Lithuanian Ice Hockey Federation (information of 8 March 2010). Concerning the transfer fees, they are non-existent when transfer is from one Lithuanian club to another, however applied for international transfers. These transfers are applied in accordance with the rules of the International Ice-Hockey Federation (for foreign players arriving to Lithuania the transfer fee to the International Federation is 300 Swiss francs, plus 500 francs for national federation of the country where the player comes from). There are no transfer fees in case of transfer of player below 18 years of age. There are no foreign players in the 2009/2010 men championship, while National children ice-hockey league championship involves Finish, Kazakh, Belarus nationals and two Canadians.

Concerning *cycling*, the Rules on Transfer of Lithuanian sportsman from one sport organisation to another of 10 January 2007 provide that a sportsman willing to transfer to another sport organisation must implement all contractual obligations to previous sport organisation and obtain from it a Letter of Clearance (paragraph 5). The rules on competitions (of 2009) do not provide any restrictions on foreign cyclists. In 2009, a team of Italian women cycling sport was registered and included 7 Lithuanians, 4 Italians, 1 Ukrainian and 2 Spanish nationals.

Restrictions exist in *rugby*. According to the Regulations of Lithuanian championship of 2009, not more than 3 foreign players (paragraph 9.5) may play in one team. There is an exception for a team "Gelezinis vilkas", where 5 players may take part. With regard to *handball*, the Regulation on transfer of players from one club to another (of 27 June 2006) continues to apply. According to the Regulation, following expiry of the contract and when the player is over 24 years of age, the player may transfer to another club. However, in case of younger players the organization letting transfer may require compensation for the player. However such compensation requirement cannot serve as a barrier to issue a transfer certificate. The amount of compensation is indicated in the Letter of Clearance. In case of dis-

agreement about the amount of compensation, this question is then decided by the Board of the Lithuanian Handball League, however its' decision is final and cannot be appealed. The maximum compensation is 3000 Litas (approx. 870 Euro). If the contract of the player is still valid, the club may refuse a letter of clearance. In case of disagreement between the clubs, the player remains in the old club or cannot play in any club for one year. This restriction clearly constitutes a barrier to free movement of players.

3. THE MARITIME SECTOR

Text(s) in force

There have been no legislative amendments in the maritime sector as concerns free movement during 2009. There is a language requirement in the maritime field. The Law on Safety of Navigation of 15 February 2005 requires that pilots of ships sailing by regular passage to ports of Lithuania shall know the Lithuanian language, if the captains have permission to sail without a locman. But this requirement would not be applied if the ship is lead by a locman (Art. 12(2)). With regard to composition of crews, restrictions were relaxed in 2008 in a sense that the crew can be also composed of EEA nationals, not only EU or Lithuanian citizens. Article 11(2) of the Law on Trade Navigation of 12 September 1996 (new version of the law of 2005, last amended on 19 June 2008) provides that “crew of the ship (including the master of the ship and chief assistant to the master) shall be composed of not less than 2/3 of EEA or Swiss nationals or permanent residents of Lithuania. Post of the master of the ship and the chief assistant to the master shall be held by citizens of EEA or Swiss Confederation only. Captain of the ship or at least one of his assistants shall know the Lithuanian language”.

In the context of sailor's income taxation, there is a differentiation of treatment for sailors working in Lithuanian/EU/EEA ships and those working in ships of third countries. Since 2008 sailors working in Lithuanian ships and ships registered in the EEA member state maritime register (if received during the passage) continue not to be subject to income tax, while those sailors who work in ships of third countries have to pay income tax in the amount of 15% (Paragraph 1(45) of Art. 17 of the Law on Personal Income Tax). Such a differential treatment may create a basis for discrimination of persons of the same profession. Also, all sailors have to be compulsory insured by health insurance since 2009. Health insurance of 9% shall be paid by sailors working in Lithuanian and EEA ships. For sailors who work in Lithuania, this tax is deducted by the employer, the same happens in other EU states according to legislation of these states. The sailor has to present documents from tax authorities in those countries to Lithuanian authorities about payment of such taxes. In this case they would be exempted from taxation in Lithuania, but if documents are not presented they would have to pay the tax again in Lithuania, which may lead to double taxation problem.

4. RESEARCHERS/ARTISTS

4.1. Researchers

Text(s) in force

The Aliens' Law provides in Article 40(13) that a foreigner is entitled to temporary residence permit if he intends to engage in research and (or) pilot development works as a researcher under labour contract with the research institution registered in Lithuania. Family members of researchers enjoy a privileged position in a sense that the requirement of two-years residence before asking for family reunification with researcher in Lithuania does not apply to them (Art. 43(6) of the Aliens Law). There are no specific regulations concerning the treatment of researchers from other EU countries and there have been no specific legislative developments in the field of researchers - EU nationals during 2009. One piece of legislation that affects foreign researchers and which was adopted on 14 August 2009, was amendment to the Order of the Minister of Social Security and Labour on Issuance of Work Permits to Foreigners. However, this Order relates mostly to situation of researchers who are third country nationals, since EU nationals do not need work permits in Lithuania. This Order though provides the priority for Lithuanian and EU nationals in Lithuanian labour market, which is being taken into consideration before issuing work permit to third country national.

Since autumn 2009, a new version of the Aliens' Law has been under preparation, however final draft is still not publicly available. The draft available in December 2009 indicated that the provisions of the Directive 2005/71/EC had been taken into account. However, the provisions are mostly related to researchers from third countries.

Concerning the treatment, a new Law on Science and Studies No. XI-242 of 30 April 2009 provides that Lithuanian institutions may invite researchers and lecturers for a period not exceeding 2 years to work in these institutions under temporary work contract (Art. 61 (1) of the law). Though it is logical to regulate the temporary work relations by temporary work contracts, in practice there are less guarantees for persons employed under temporary contracts (e.g. no maternity leave, possibility to terminate the agreement much easier, etc.). While Lithuanian researchers are in a better position in this respect, because their employment is not limited to temporary work contract.

Miscellaneous (administrative practices, etc.)

According to the Lithuanian Centre for Mobility of Researches, there are no formal obstacles to mobility of EU researchers. However in practise, there is still some reluctance and "fears" to accept foreign researchers by the Lithuanian educational establishments. The majority of foreign researchers arriving to Lithuania come from EU MSs. They come usually for a very short stay (e.g. for a few days research visit). Looking at the countries, majority of researchers come to Lithuania from Germany, Poland, Austria, Denmark, Spain. Another issue that may be of concern is informal "preferential" treatment for local researchers in a way how positions at universities are being filled in. There is allegedly a practice that "previous work" before the competition is required in the same institution. Thus it may be an obstacle for competition under equal conditions for researchers arriving from abroad.

4.2. Artists

Text(s) in force

Foreign artists in Lithuania can either enter into authorship agreement with an institution in Lithuania or provide services as self-employed artists submitting invoices for fees. Since 2009 persons receiving income from artistic activity shall pay 6 percent compulsory health insurance tax calculated from the whole amount of income, while employer of these persons - additional 3 percent tax. However, starting from 1 January 2010, the taxation changes (based on amendments of 22 July 2009) and the method of calculation of the taxable amount changes. Differently from 2009, the tax will be calculated not from all income, but from the amount taxable for social security taxes. As of 2009 they have to pay social insurance on top of income tax. The author of this Report could not obtain any information on the existence or non-existence of “withholding fees” for foreign artists in Lithuania, while generally such taxation is applicable in Lithuania.

Persons who provide services under the authorship agreements and exceed the annual turnover of 100,000 Litas (approx. 29,000 EUR), must register as VAT payers and pay the VAT (VAT rate was raised to 21% from 19% applied before) (this is a general rule applied, however EU nationals differently from Lithuanians, have to register immediately without waiting for mentioned amount of income to be reached).

If a Lithuanian artist provided services in another country, in Lithuania he would have to pay himself the income tax in the amount of 15% from earned income, as well as health insurance (social insurance would not be applicable if payment comes from a foreign entity). If authorship agreement is concluded in Lithuania for foreign national (similarly as for Lithuanian national), the 15% income tax will have to be automatically deducted by the body entering into agreement with the artist. According to Article 37 of the Law on Income Tax of Residents, taxes paid by permanent Lithuanian resident abroad are being taken into account while calculating taxes for income received abroad. This is done with a view of avoiding double taxation of income. Lithuania also is a party to a number of bilateral agreements on avoidance of double taxation.

Between 2006-2008 applicable VAT rate for live performance was 5% only, thus encouraging Lithuanian venues to receive performing artists from abroad without excessive tax liability. For instance, if a company, which is VAT payer in Lithuania, invites German artists for the organised event and these artists are not registered in Lithuania for VAT, the Lithuanian company will have to pay VAT for services provided by the foreign artist. However, the VAT rate was raised to 19% due to tax reform in 2008 and further to 21% in 2009, which makes Lithuania not attractive for foreign artists. Many concerns have been raised by the artists' organisations concerning excessive taxation.

Concerning the possibility of deductions before calculating the taxes, Lithuanian legislation provides that such deductions (factual expenses) are possible also for non-residents of Lithuania, thus foreigners seem not to be discriminated.

In the beginning of 2010, a draft amendment to social legislation concerning artists was registered in the Parliament. The amendment proposes not to apply some formal requirements for granting social assistance to artists (e.g. previous employment record, registration in the labour exchange record, etc.). If adopted, it is however not clear at this stage if the privileged treatment will also affect EU nationals - artists.

5. ACCESS TO STUDY GRANTS

Text(s) in force

In 2009 Lithuania has implemented a significant educational reform, as a result of which paid high education was introduced in Lithuania (previously it was state funded with some exceptions). A new Law on Science and Studies was adopted on 30 April 2009 (it replaced previous law of the same title and the Law on Higher Education of 21 March 2000, referred to in previous reports). Study grants in the form of loans from banks were introduced in Lithuania and loan granting is regulated by the Order of the Director of the Lithuanian State Science and Study Fund on Approval of the Regulation on Granting Loans to Students (No. V1-29 of 24 August 2009). In comparison with the earlier system, whereby the Ministry of Education and Science could establish higher education establishment enrolment quotas and procedure for foreign citizens and persons without citizenship whose studies are fully or partly compensated from the State budget, current legislative framework is different. According to the new legislation, state funding (thus also access to study grants and compensations) is not accessible to foreigners. However, there is an exception to this rule concerning EU/EEA nationals (unless Lithuania's international agreements or other legal acts provide to the opposite) (Art. 72(3) of the law), as well as foreigners of Lithuanian origin (refer for details below). Thus at least on legislative basis there is equal treatment between Lithuanian and EU/EEA nationals. However, it is not yet clear how this provision will affect EU nationals' family members who are third country nationals. There might be some obstacles to them to access study grants based on this new legislation. The Order No. 52 of the Ministry of Education and Science on Admission of persons who acquired education abroad to fully or partially funded by the Lithuanian budget studies in higher establishments of Lithuania of 15 January 2007 was repealed in 2009 by the new Order of the Minister of Education and Science of 22 May 2009 (No. ISAK-1086) on Approval of the Order on Competition while entering state funded study places by persons who acquired education in foreign institutions abroad. According to the Order, persons entering Lithuanian establishments of high education shall have a document confirming the recognition of their education obtained abroad (paragraph 2). Persons who acquired education abroad may be enrolled though competition to studies paid by the state budget if they belong to one of the mentioned groups:

- Lithuanian, EU/EEA nationals;
- Nationals of foreign countries (non EU/EEA nationals) and stateless persons who have a permanent residence permit in Lithuania;
- Persons of Lithuanian origin who present a certificate on Lithuanian origin from a community in a country where he/she used to reside.

All other foreigners are enrolled through competition and have to pay for their own studies. Foreign nationals, enrolled in high educational establishments shall receive temporary residence permit or EC member state national residence permit or shall have permanent residence permit in Lithuania. The mentioned Order does not address the study grants issue for EU nationals' family members who are third country nationals.

The Order envisages that mentioned groups of persons compete among themselves for state funded studies in Lithuanian educational institutions, and not with all persons who are seeking enrolment. Annual quota for these foreigners is established and funded by the Lithuanian state budget. According to the Order of the Minister of Education of 10 June 2009 (No.

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ISAK-1208), the quota for 2009 was 100 persons funded by the state (50 in universities and 50 in colleges).

Access to study grants (state loans) is possible for persons meeting certain criteria, which does not depend on nationality. State supported loans (introduced since autumn 2009) are granted with state guarantee from credit institutions. These loans may be also granted for partial studies under international (interagency) agreements. EU/EEA nationals who are workers, self-employed persons, persons retaining the status of worker and their family members may receive state funded loans on equal basis with Lithuanian nationals and permanent residents. State supported loans may be granted to other EU/EEA nationals only after they acquire permanent residence status (i.e. after 5 years residence in Lithuania). Thus, according to information available to the author of this Report, there are no residence conditions for accessing study loans for EU nationals and their family members as long as they fall under mentioned groups of persons.

During 2009, 60 persons who acquired education abroad were accepted to state funded places in Lithuania's educational establishments according to the Order of 10 June 2009. This number however included not only EU/EEA nationals. Furthermore, EU/EEA nationals may also be enrolled into Lithuanian educational establishments if they fund their own studies.

There might be particular problem with access to one type of scholarships for EU students who are not permanent residents in Lithuania. So called social scholarships (allocated for students from families having no sufficient living resources or single persons eligible to such scholarship according to the Law on Financial Social Support to families and single persons having no sufficient resources of 2003, as last amended in 2009), would not be available to all EU/EEA students because the law poses a permanent residence requirement in order to be eligible for this type of state support.

Miscellaneous (administrative practices, etc.)

According to the Order of the Minister of Education of 10 June 2009, the quota for foreigners eligible to state sponsored education in 2009 was 100 persons funded by the state (50 in universities and 50 in colleges). Clearly, the number of places for Lithuanian students is bigger than for those who acquired education abroad.

According to the information of the Department of Statistics (of 29 March 2010), 960 foreign students were studying in universities during the semester of 2009-2010 (coming from EU/EEA countries and Switzerland). In addition, 54 of them studied in colleges. This constitutes a slight drop in numbers in comparison with 2008 (1131 EU/EEA students were studying in Lithuanian universities as of 1 October 2008. Previously, the tendency was that the number of foreign students in Lithuania has been constantly increasing for the previous two years, as illustrated below:

2004-2006	2006-2007	2007-2008	2008-2009	2009-2010
1198	1872	2955	3844 (1131 EU/EEA na- tionals)	960 (EU/EEA nationals)

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

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

Lithuania applies no equivalent restrictions for entry into its labour market either for old or new Member States of the European Union in response to transitional arrangements applied by them. This to a certain extent may be explained by the fact that labour migration to Lithuania has been rather low throughout the years, labour quota was frequently unfilled. There were no significant developments in this area during 2009, as well as no individual cases have been brought to the attention of the author of this Report.

Chapter VIII Miscellaneous

1. IMPACT OF THE ECONOMIC CRISIS IN 2009-2010 ON THE LABOUR MARKET AND MOBILITY OF WORKERS⁹

As in many countries worldwide, the economic recession in Lithuania has had a significant adverse impact on the national social economic development. The major negative social consequences of the economic downturn in Lithuania manifest themselves in job losses and income decrease, which respectively results in rising long-term unemployment and growing social exclusion, as well as boosts emigration and shadow economy in the country. In the period of the economic recession in Lithuania, the situation in the labour market worsened significantly. According to the data of the Labour Force Survey, the unemployment rate in Lithuania stood at 11.9% in the first quarter of 2009 and was one of the highest in the EU. The national unemployment rate more than doubled as compared with the first quarter of 2008 (from 4.9% to 11.9%). As a result of an increase in unemployment, the number of the employed in Lithuania decreased by 74 thousand (or 5%) in the first quarter of 2009. In the first quarter of 2009, the employment rate in Lithuania constituted 61% and was 2.9 percentage points lower than the previous year. Despite the fact that employment and unemployment variation trends are affected by many factors such as internal (households' consumption changes, lending opportunities for business and etc.) as well as external ones (recovery of other countries' economies, competitiveness of Lithuanian production in foreign markets) it should be noted that employment of Lithuanian population will be the most dependent on Government's implemented employment policy and promotion of economic activity of relevant population groups.

The labour market dynamics shows that failure to take more active relevant labour market policy measures may increase the unemployment rate to 15.4% in 2010 (according to the data of the Bank of Lithuania - as much as 19%). This means that the number of the unemployed in the said period would amount to some 260 thousand residents, while the average annual number of the employed would decline to 1340 thousand persons. Country's labour force variation in numbers during the forecasted period will be influenced not only by economic processes but also by intensity of emigration processes as well as by registration activity of economically non-active persons of employable age (as per the eligibility criteria set for social assistance). Thus, labour force variation in numbers may not be consistent with the changing numbers of employed and unemployed persons. Bearing this in mind, after the recovery of the national economy in the long run (2015), the number of the employed will remain lower, and the number of the unemployed will be nearly one third higher than those before the beginning of the economic downturn. Young people and people aged above 50 would be faced with particularly difficult situations – the number of the unemployed in these age groups could amount to respectively 31 thousand and 71 thousand in 2010, while the

9 Based on information provided in the report: *Inclusive Lithuania: Through Analysis-Based Policy Dialogue towards Effective Decision Making*. Economic Crisis Poverty and Social Impact Analysis (PSIA), Vilnius, 2009, p. 6-7.

tension in the labour market would be felt in these groups (especially among senior population) as long as until 2014-2015. It is worth paying attention to the fact the forecasted share of unemployed youth in comparison with the increased total number of unemployed appear as relatively inconsiderable, however this does not reflect the seriousness of youth unemployment problems that have long-term negative consequences not only for individual persons or their groups but also for national economy. Researches carried by the Labour and Social Research Institute (Lithuania) indicate that 25 thousand young unemployed persons cost annually for the state for about 2.2 billion Litas (indirect costs – not created GDP, not paid taxes; direct costs – social allowances, financing labour market policy measures, prevention of criminality and others).

The implementation and better financing of active labour market policy measures, as well as a policy aimed at job preservation could allow keeping the number of the unemployed at 190-210 thousand (in 2010-2011), and the number of the employed – at 1400 thousand. In this case, the number of the unemployed (especially the long-term ones) would be cut by 30-40 thousand in 2010-2012. Otherwise, drastic economic decisions (making substantial job cuts in the public sector, increasing the tax burden on business entities and individuals) make a more pessimistic scenario likely according to which the average number of unemployed persons could reach 300 thousand or more in 2010, while long-term unemployment may continue growing and account for 40% of all the unemployed in 2012-2013. This may be conditioned by further decline in the overall demand (consumer demand in particular), the shrinkage of the construction sector, deterioration in the activities of the transport, food processing and trade industries. Such tendencies (according to the pessimistic scenario) may limit opportunities for agricultural activities, which would significantly add to employment problems in rural areas.

2. GENERAL TENDENCIES IN THE LABOUR MARKET IN 2009 WERE THE FOLLOWING¹⁰

2560 requests for labour permits were received during the year and 2239 labour permits were issued: 2175 for males (97%) and 64 for females (3%). The largest group of labour migrants from third countries as in 2008 were from Belarus (28%), Ukraine (26%), Turkey (24%).

Majority of labour permits were issued in services sector: 1091 permit (49%), in manufacturing – 692 (31%), construction – 455 (20%). 1 permit was issued in agriculture/forestry sector. The tendency in 2009 in comparison with 2008 was that there was an increase in labour permits in service sector by 9% and decline in construction sector, but only by 2%. Overall, the number of issued labour permits in Lithuania in 2009 declined 3,5 times if compared with 2008.

Looking at the dynamics between employed persons under labour contracts and posted workers, 1194 permits were issued to work under labour contracts. Posted workers received 411 permits. 613 permits were extended. 21 permits was issued for sailors working in ships with Lithuanian flag. However, looking at the tendency of numbers throughout the year (per

¹⁰ Information of Lithuanian Labour Exchange of 19 March 2010.

quarter), the numbers were going down (904 permits in Ist quarter, 627 – in IInd, 362 – in third and 346 in IVth quarter).

3. LEGISLATIVE DEVELOPMENTS IN 2009 RELEVANT TO WORKERS WHO ARE THIRD COUNTRY NATIONALS

Amendments to the Aliens Law of 22 July 2009 were also directed to situation of workers who are third country nationals. The amendments in this respect included:

- Simplification of legal conditions for workers-third country nationals as concerns family reunification (for persons of high professional qualification, lecturers, staggers or participants of exchange programmes, as well as for foreign investors);
- Introduction of a possibility to issue a temporary residence permit for a foreigner, who intends to engage in economic activity, when he registers enterprise or organisation in Lithuania as owner or co-owner with the authorised capital not less than 50 000 Litas (approx. 15 000 euro), and his presence in Lithuania is necessary for the achievement of company/organisation objectives and performance of activity.

The list of grounds to withdraw work permit was supplemented with additional ground that the labour contract is not submitted for registration at the territorial labour exchange office within 2 months since the issuance of work permit and when it is established that a foreigner does not comply with necessary conditions for issuance of work permit.

Furthermore, on 17 March 2009 the Minister of Interior signed an amendment to the Order on Issuance of Visas at the border, where it was established that a national visa may be issued for a foreigner possessing the profession, which is included in the list of lacking workers in Lithuania according to economic activities (the list is being approved by the Minister of Social Security and Labour) and having submitted documents for temporary residence permit in Lithuania. The visa is issued for the period until 6 months from the date of request for a residence permit. These workers can immediately arrive to Lithuania. Also, the Order on Issuance of Work Permits for Foreigners approved by the Minister of Social Security and Labour on 14 August 2009 provides for a shorter period to consider the employer's request to issue a work permit to a foreign worker (the period for decision making was shortened from 2 months to 20 calendar days, while for employment of workers of high qualifications and lacking professions - from 1 month to 10 calendar days).

On 23 September 2009, the expert consultations between Lithuania and Russia finished coordination of Lithuanian-Russia-EC agreement on readmission and the protocol of its' implementation.

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

Text(s) in force

Apart from a few exceptions, social security system in Lithuania remains largely based on permanent residence requirement. Therefore, in most of the cases, only persons, who live in Lithuania permanently are entitled to social security benefits in accordance with national legislation. Lithuanian legislation regulates all types of social security benefits, which are

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provided in the Regulations 1408/71/EEC, 574/72/EEC, 3096/95/EC and others. Concerning social insurance benefits, they depend on contributions and level of previous income, therefore payment of these benefits does not depend on nationality of the person or residence condition (at least not directly). All legislative developments concerning payment of social benefits that have taken place during 2009 were mostly related to introduction of various restrictions on payments generally in view of a difficult situation of Social Security Fund.

Concerning sickness and maternity/paternity, as well as child raising benefits, the State Patient Fund under the Ministry of Health of Lithuania is competent institution responsible for these benefits. Compulsory health insurance in Lithuania is implemented by State Patient Fund and 5 local Territorial Patient Funds. Though the case is not known to the author of this Report, the SOLVIT centre report on Lithuanian case where allegedly the Lithuanian authorities refused to pay child benefits for a boy living with his mother in Lithuania while his father lived in Germany.

If a person is not working under labour or authorship agreement, social insurance would not be applicable and thus there will be no eligibility to maternity benefit. For instance, doctoral students and researchers working on other types of agreements would not be eligible for this support. In addition, certain work record is required to be eligible for this benefit. Concerning sickness benefit, the person has to have a record of at least 3 months within the last 12 months or at least 6 months within the last 24 months for illness and maternity social insurance.

Professional rehabilitation social security benefit is applicable to persons working under labour and authorship contracts, provided that they participate in professional rehabilitation programme and do not receive income from employment; have a record of at least 3 months within the last 12 months or at least 6 months within the last 24 months before the start of the rehabilitation programme.

Health insurance is applicable both for permanent and temporary residents of Lithuania who legally work in the country, as well as to their minor children; also schoolchildren and students of Lithuanian educational, professional establishments, studying in day-time departments, as well as students studying in high education establishments of other EU MSs. Compulsory health insurance in the tariff between 6-9 percent of income applies since 2009 to new categories of workers and self-employed persons, also covering EU/EEA nationals in Lithuania. If they enter into labour or authorship agreement, insurance will be valid and thus benefits could be paid from the moment of entering into labour relations. The benefits however would be provided to self-employed persons following three months of contributions only. With regard to health insurance, some grounds of residence require to have a health insurance before confirming the right to residence. In this case, it may happen that EU/EEA national acquires voluntary insurance for this purpose and after he/she gets employed, additionally compulsory insurance will have to be acquired.

EU nationals travelling to Lithuania shall hold with them one of these documents confirming the entitlement to reimbursement of health care services: European Health Insurance Card (EHIC); Provisional Replacement Certificate (PRC); Certificate E 106 and E 109.

Family members of EU nationals have to hold their EHIC or the certificate E 106 or E 109. If EU nationals have EHIC, they are entitled to necessary medical care services which are free of charge in health care institutions belonging to the Lithuanian National Health System. They do not need to register at territorial patient fund office if they or their family members hold EHIC. In case of holding E106 the foreigner must register at territorial patient fund office as soon as possible after arrival to Lithuania. Then he will be issued the Lithuanian-

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ian health insurance certificate. The holders of such certificate can get free of charge all kind of medical care (not only the necessary medical care) at health care institutions belonging to Lithuanian National Health System. Those EU nationals that seek medical care at the institutions that do not belong to the Lithuanian National Health System, have to cover all the expenses of medical services and these expenses are not reimbursed. Lithuania issues EHIC for a period of not less than 3 months and not longer than 6 months. It is issued by the State Patient Fund. Lithuanian nationals who hold special compensatory medicine books may be prescribed compensatory medicine, however such books are not issued for foreigners. Such compensatory medicine may be still prescribed on the basis of certain exceptional form of prescription. According to the Order of the Minister of Health Care No. 112 on Issuing Prescriptions of Medicine and Issuance of Medicine (of 8 March 2002 with most recent amendments), those persons who are insured with compulsory health insurance have the right to obtain a Compensatory Medicine Passport (CMP), which allows receiving partial or full compensations for medicine and medical supplies from Health Insurance Fund. If the person is insured but does not have such a passport, while compensatory medicine is necessary for him (i.e. threat to life in case of non-prescription of this medicine), a prescription of form Nr. 3 (exceptional cases) shall be applied. Medicine according to such a prescription can be assigned for a period of no longer than 1 month. This Order was amended in 2008 with a view of specifically including EU nationals (paragraph 63) as persons who could be issued with special prescription for compensatory medicine even if they do not possess the CMP. The same amendment also mentioned a period specific for EU nationals for prescribing such medicine – for the period of visiting Lithuania, but for no longer than 1 month period. Thus legally EU nationals are also eligible to obtain compensatory medicine in Lithuania. While purchasing such medicine, EU nationals have to submit personal identification document, European Health Insurance Card or E-form certificate.

On 1 October 2009, the Director of State Patients' Fund to the Ministry of Health approved a new Order on Issuance of E106 form certificates. The Order provides that such certificates are issued to persons who are insured and working in Lithuania, but residing in other EU MSs; persons who are insured in Lithuania, but are posted to work in another EU MSs, if they declare transferring their residence to another MSs; persons who work under labour contracts, self-employed persons and their family members, as well as frontier workers as per Regulation 1408/71 EC.

Certain provisions of Regulation 1408/71 are implemented by the Order of the Minister of Social Security and Labour and the Minister of Health Care No. A1-152/V-443 on Issuance of E104 LT form certificate for persons insured with social insurance and/or compulsory health insurance in the Republic of Lithuania (of 4 June 2007). These rules were adopted due to the fact that social insurance and health insurance systems are separated in Lithuania and two institutions are responsible for approving insurance periods for the Form E104, as well as there was a need to ensure the interests of the insured persons and facilitate the issuance of such forms. The certificate is issued on the basis of request of a person or institution of a foreign country within 10 days from receipt of all necessary documents.

Concerning the pension system in Lithuania, pension is provided to permanent nationals of Lithuania only, who have a social insurance record of at least 15 years. Social insurance records, acquired in other states is calculated on the basis of bilateral agreements or on the basis of EU legislation (for EU/EEA nationals). The situation of EU/EEA nationals as concerns payment of pensions is the same.

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Lithuania has specific regulation with Estonia concerning calculation of the insurance periods acquired in the territory of former Soviet Union (Agreement with Estonia ratified on 1 July 2008; similar agreement with Latvia was pending in 2009). The purpose is to avoid duplication of insurance periods, acquired in the territory of former Soviet Union, whereby this period could have been calculated both in Lithuania and also in one of the other Baltic States. According to the agreement with Estonia the period of insurance, acquired in the territory of former Soviet Union until 1 January 1991 is calculated only in the state in which the period of insurance is of a longer duration. If the duration of the period acquired in the territory of Lithuania and in the territory of Estonia is equal, the period is calculated by the state which laws were applied lately to the person. While re-calculating the assigned pension, also while assigning pension anew or of a new form, or if the person has transferred his/her residence from one state to another, the competent state responsible for calculation of period acquired in another state, belonging formerly to the Soviet Union, does not change.

One specific problem in Lithuania in the field of social security similarly as in the other EU MSs is the definition of “residence” for the purpose of issuing family benefits or the benefits in the case of death. According to the Regulation 1408/71 and in coordination of social security systems, the “residence” is defined as a place of usual stay. However, Lithuanian legislation relates it to the place of declared place of residence. In practice problems occur, because frequently persons departing from Lithuania do not declare departure.

Secondly, the concern could be the calculation of insurance periods for pension. According to the Law on State Social Security Pensions, the period of insurance is a period when the insurance payments are made. The same law defines in Article 54 the periods that are being equalled to the state social insurance pension periods. However, this Article deals with periods before the adoption of this law and does not refer to periods of insurance in other EU MSs. However, if the person has not yet acquired the minimum period for pension (15 years) while working in Lithuania, the periods acquired in other MSs should be calculated. But this again is done only to determine the right to the benefit, but pension for these periods is not assigned. Therefore, the pension would be assigned proportionally to the acquired Lithuanian insurance period. Similarly, there could be concerns with regard to payment of social security benefits to persons who have been working for less than 12 months. Insurance is provided for at least one year and should the period of contribution is less than this period, no social security benefit will be paid.

With regard to transport advantages, EU/EEA nationals belonging to specific categories of persons (e.g. students of EU high educational establishments studying in day-time departments) enjoy the same treatment as Lithuanian citizens, as guaranteed by the Law on Transport Advantages of 30 March 2000 (as last amended on 28 April 2009) (Art. 1(2-3)).

Miscellaneous (administrative practice, etc.)

Specific practical issue continued to exist during the year concerning migrant workers from third countries. Posted workers from third countries do not need to be compulsory insured in Lithuania if a labour contract is concluded with them in the foreign country from which they are posted to Lithuania. EU nationals, on the other hand should be compulsory insured with Lithuanian social security insurance if they are working on Lithuanian territory. This could be viewed as less favourable treatment of EU nationals vis-à-vis third country nationals.

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From the statistical perspective, there were 165 EU nationals registered in employment offices in Lithuania in 2009 (this constitutes a significant increase if compared with 60 registered in 2008).¹¹ The table below presents a breakdown according to nationality:

Country	Number of persons registered as unemployed
Bulgaria	4
Estonia	2
Spain	2
Italy	1
United Kingdom	4
Latvia	48
Poland	64
Germany	18
France	7
Czech Republic	3
Portugal	3
Belgium	2
Finland	2
Ireland	1
Denmark	1
Greece	1
Slovak Republic	1
Hungary	1
Total	165

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

Refer to response under point 1 of Chapter VI (Specific issues) above.

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

6.1. Integration measures

There are no special integration measures under national legislation or administrative practice in Lithuania for third country nationals or EU/EEA nationals, except persons granted

¹¹ Information of Lithuanian Labour Exchange Office, 9 March 2009 and March 2010.

asylum in Lithuania. The later are provided with language learning support, support in accessing labour market, social assistance, housing and other measures. The issue of integration support to foreigners living in the country has been an object of discussion for some time already, but no concrete actions/legislation materialised so far.

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

Lithuania generally promotes strict immigration policies, as well as strict naturalisation requirements for those immigrants who live in the country already long time. There are no special schemes to promote immigration and traditionally emigration has always been incomparable higher than immigration. During the economic growth period there have been vivid discussions about opening labour migration for third country nationals, as there was significant lack of labour force in certain sectors. However with economic crisis and its consequences, which are estimated to last in social sphere for not less than 6-10 years, the issue of labour migration from abroad became less relevant. Having said this, the issue may emerge in 3-4 years time when economy recovers while meanwhile many Lithuanian workers have emigrated abroad.

With regard to application of Community preference principle, Lithuanian legislation gives preference to Community workers and residents who are family members of EU citizens by simplifying the entry and employment possibilities (e.g. no need to obtain work permit). Generally, Lithuania does not promote active labour immigration policies for workers from third countries. The Economic Migration Strategy of 2007 states the objective (while addressing the needs of Lithuanian labour market) to attract workers from third countries taking into account the influx of returning local labour force from emigration and providing preference to EU citizens.

6.3. Return of nationals to new EU Member States

One of the consequences of economic crisis was that many Lithuanian workers who had previously migrated to other EU MSs for work purposes, have been returning to Lithuania in 2009, allegedly in significant numbers. Official statistics of the Department of Statistics mentions 4821 Lithuanian citizens who re-emigrated and declared return to Lithuania in 2009. However “real” numbers might be several times higher.

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

There are SOLVIT centres that examine the complaints for violations of Community law. The author of this Report was not aware of any other legal remedies (except judicial) for this purpose.

8. SEMINARS, REPORTS AND ARTICLES

Inga Blažienė, Valerija Gerikienė "Valstybinio sektoriaus darbuotojų darbo apmokėjimo reguliavimo problemos Lietuvoje", *Jurisprudencija*, No. 4(118), 2009, p. 299–320. Translation: "Problems of Regulating Remuneration for the Work of Public Sector Employees in Lithuania". The Article is not related to the situation of EU/EEA nationals as such (because they have no access to public service), but might be of interest concerning the general working conditions in the public sector as it was one of the focuses of this Report). It analyses the main objectives of work pay in public sector, as well as current legislation in Lithuania regulating the conditions of payment for work for public sector workers. Detailed analysis of work pay composition of various categories of public sector employees (state politicians, public officials, judges, employees of educational, cultural and artistic establishments, etc.) is provided in the article. Comparison is made among the size of work pay for managers, chief specialists and specialists. The article also presents the recommendations for improving the regulation of Lithuanian public sector as concerns work pay.

Tyrėjų mobilumas ir jo socialiniai aspektai, Socialinių tyrimų institutas, 2009. Translation: "Mobility of researchers and social aspects of it", Institute for Social Research, 2009, 73 pages. The research focuses on analysis of conditions for mobility of mostly third country nationals - researchers, their legal status in Lithuania, transposition and implementation of EU legislation in this field, as well as obstacles to mobility of researchers.

Užsienyje įgytų kvalifikacijų ir mokslo laipsnių akademinis pripažinimas, ISM studija, Kaunas, 2009. Translation: „Academic recognition of qualifications and scientific degrees obtained abroad“, ISM study, Kaunas, 2009. The study is not freely available, thus the author of this Report had no access to the actual text.

Inclusive Lithuania: Through Analysis-Based Policy Dialogue Towards Effective Decision Making. Economic Crisis Poverty and Social Impact Analysis (PSIA), Vilnius, 2009. This study aims to assess possible long-term social consequences of the economic recession in Lithuania (with focus on the most vulnerable groups of the population) and put forward recommendations on the implementation of measures aimed at mitigating the consequences of the recession on the most vulnerable groups of the population in the country. It also provides a costing of various policy options to the state budget.

Conference "Financing opportunities for researchers" (Konferencija "Finansavimo galimybės tyrėjams"), organised by the Centre for Evaluation of Quality of Studies on 24 September 2009. The Conference aimed at discussions around various funding opportunities available to researchers. Information on various mobility programmes was shared, as well as possibilities to engage in the activity of Joint Research Centre.

Seminar-discussion "Implementation of the Order on Conditions for Issuing Work Permits to Foreigners" (Seminaras-diskusija tema „Dėl leidimo dirbti užsieniečiams išdavimo sąlygų ir tvarkos aprašo įgyvendinimo“), organised by the Lithuanian Labour Exchange Office on 25 August 2009. The objective of the seminar was to review the new Order of the Minister of Social Security and Labour concerning Issuance of Work Permits to Foreigners.

In October 2010, the Observatory together with national reporters in Lithuania and Poland is planning a joint seminar on the issues of free movement of workers. A draft programme of the seminar is available upon request from the author of this Report.