



Conformity Study for Latvia
Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission. The national report reflects that legal situation as it stands on 1 August 2008. No subsequent changes have been taken into account.

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**ANALYSIS OF THE LEGISLATION TRANSPOSING
DIRECTIVE 2004/38/EC ON FREE MOVEMENT OF UNION CITIZENS**

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EXECUTIVE SUMMARY

1. Introduction

The Latvian legal system is based upon the continental system of codification. There is no binding law of precedent in Latvia although judgments are considered to be authoritative with respect to the interpretation of the law. The Legislature and Executive must act in compliance with the Constitution as interpreted by the courts. Latvia is a unitary State. According to the Constitution of the Republic of Latvia, the sovereign power of the State of Latvia shall belong to the People of Latvia.

2. Introduction to the main particularities of the legal system of the Member State relating to the transposition of Directive 2004/38/EC.

Directive 2004/38/EC has been transposed in the Latvian legislation primarily by the Republic of Latvia Cabinet Regulation No. 586 “Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members” (hereinafter – R586). These regulations issued by the Cabinet of Ministers of the Republic of Latvia have, according to the hierarchy of laws in Latvia, lower legal status than laws adopted by the Parliament. There may arise therefore some problems if e.g. some higher-level law concerning relevant issues also regulates the same points as the transposing legislation. In such cases – if the regulation differs from the transposing legislation - the law adopted by parliament would be applied as it is higher in the hierarchy of legal acts. Nevertheless, for the present there are no such contradictions between these or other relevant laws and no application problems of the transposing legislation have been found.

Some other conditions concerning the requirements of the Directive have been transposed as amendments in other relevant national laws and regulations such as Immigration law, Passport Regulations, Personal Identification Documents Law and other acts stated below.

According to the Constitution of the Republic of Latvia (Article 61.), the Cabinet of Ministers shall deliberately draft laws prepared by individual ministries as well as matters which pertain to the activities of more than one ministry. In this case the responsible ministry for drafting transposing legislation was the Ministry of Interior of the Republic of Latvia in collaboration with The Office of Citizenship and Migration Affairs. These authorities are also responsible for the application of the transposing and relevant legislation. It should be noted that the Ministry of Interior of the Republic of Latvia is the higher institution for these issues. One could appeal against decisions reached by The Office of Citizenship and Migration Affairs at this ministry.

3. Conclusions of the legal analysis of the transposing measures for Directive 2004/38/EC

Although part of the Directive 2004/38/EC was transposed correctly, a great amount of relevant issues were not transposed or transposed improperly in the national legislation. Some transposition issues are ambiguous and some have been incorporated in a more stringent manner than the Directive allows. This is considered to be a relevant problem as many transposing requirements has been broadened, thus limiting the right of free movement.

It is therefore necessary to summarize the most important non-conformities and indicate separately the more stringent transposition issues in the national legislation.

Incomplete transposition

- *The scope of beneficiaries*

There is no transposition of Article 3(2) (a) of the Directive providing that a beneficiary of the Directive is also a family member where serious health grounds strictly require the personal care of the

family member, whose entry and residence in the country should be facilitated. Further, the transposing legislation provides that entry and residence should also be facilitated for person who is a dependant or spouse of a Union citizen **and** who has shared a household with a Union citizen. However, the Directive envisages these provisions as two separate conditions. Moreover, Latvian legislation does not cover those partners of the Union citizen with whom the Union citizen has a durable relationship, duly attested. Therefore the scope of beneficiaries having the rights granted by the Directive is restricted by national legislation.

- *Right of entry*

Although issuing the visa at the border control on the spot is considered to be accelerated and the procedure in the consular or diplomatic mission requires the visa to be issued in five days (if additional information needed), there is no clear and explicit provision in the national legislation stating that such visas shall be issued “as soon as possible” and on the basis of an “accelerated procedure”.

- *Right of residence up to three months*

When transposing Article 6(1) of the Directive, the Latvian legislation provides that all Union citizens and their family members shall have the right of residence for up to 90 days in Latvia without any conditions or any formalities other than the requirement to hold a valid identity card or passport. However, there is no exception for jobseekers in the national law.

- *Equal treatment*

Even though some other transposing legislation (e.g. Education Act, Medical Law, Regulations concerning student Loan) tries to grant equal treatment to EU citizens and their family members, these provisions do not always covers family members of EU citizens. However, as there is no specific transposition, and the principle does not apply to all aspects covered by the Directive, Latvia cannot be considered as having correctly transposed the directive on this issue. Finally, Article 24(2) of the Directive was not transposed correctly in national legislation.

- *Continuity of residence*

The conditions for attesting the continuity of residence (Article 21 of the Directive) were not transposed in Latvian legislation.

- *Expulsion measures*

A very important issue stated in Article 14(3) of the Directive, providing that an expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system, has not been transposed in national legislation.

- *General provisions concerning residence documents*

Article 25 of the Directive stating that possession of a residence document may under no circumstances be made a precondition for the exercising of a right or the completion of an administrative formality, (as entitlement to rights may be attested by any other means of proof), was not transposed in the national legislation. This is considered to be a significant lack of conformity. Furthermore, there is no reference to the “certificate attesting the submission of an application for a family member residence card” in the national legislation.

- *Protection against expulsion*

Latvian legislation states that a Union citizen and his or her family member shall lose the right to reside in the Republic of Latvia and their permanent residence certificate if competent State authorities have provided information that a person poses a threat to State security, public order or public health thereof. The necessity to have “serious grounds” on this provided in the Directive is not transposed, thus widening the scope for expulsion of permanent residents.

- *Public health*

The Latvian law only refers to public health in general whereas the Directive refers to specific diseases. The Annex of the transposing regulations contains a list of diseases due to which Citizens of European Union Member States, European Economic Area States and the Swiss Confederation and Members of their Families shall be “denied rights to receive a residence permit”. In addition, these provisions on diseases are not the subject of protection provisions applying to nationals of the host Member State. Moreover, the Directive refers to diseases occurring after 3 months from arrival. The national law refers to illnesses occurring within 3 months from arrival.

- *Exclusion orders*

Part of Article 32 of the Directive providing that persons excluded on grounds of public policy or public security shall have no right of entry to the territory of the Member State concerned while their application is being considered and the condition that the Member State concerned shall reach a decision on this application within six months of its submission, is not transposed in the national legislation.

- *Expulsion as a penalty or legal consequence*

Article 33(1) of the Directive provides that expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty. This Article of the Directive has not been transposed. Latvian Criminal Law provides expulsion from the Republic of Latvia as a sanction. Article 24 of Latvian Criminal Law provides expulsion from the Republic of Latvia as a sanction stating: “(1) A citizen of another state, or a person who has a permanent residence permit of another state, may be deported from the Republic of Latvia if a court finds, that considering the circumstances of the matter and the personality of the offender, it is not permissible for him or her to remain in the Republic of Latvia ; (2) This punishment shall be adjudged as an additional sentence, not indicating its term and executing it only after the basic sentence has been served.”

There are no specific crimes defined by law for which an Expulsion sanction should be enforced. It is the court’s decision for which crimes the expulsion sanction should be relevant to use. Court can consider this as an additional sanction if it finds it relevant, not as a basic punishment.

- *Right on entry of a Union citizen, or a family member who is not a national of a Member State when not having the necessary travel documents*

Article 5(4) of the Directive has been transposed incompletely, by providing only opportunity for Union citizens and their family members to enter the state without necessary documents according to State Border Guard’s decision. There is no provision that **not only** travel documents, but also other documents can be means of proof. There is also no reference to what is a reasonable period of time for proving their right of free movement and residence.

Incorrect transposition

- *Restrictions on the right of entry and the right of residence on grounds of public policy and public security*

Latvian legislation provides that Union citizens and their family members should be expelled, if a Union citizen or his or her family member, residing in the Republic of Latvia, poses a threat to State security or public order. This provision is broader than prescribed by the Directive. Moreover, Latvian legislation did not transpose the requirements of proportionality and based their decision exclusively on the personal conduct of the individual concerned provided for in Article 27(2) of the Directive.

The transposing legislation does not clearly establish that these enquiries shall not be a matter of routine. Furthermore, the Latvian legislation has not transposed the obligation on the Latvian authorities to answer requests from other Member states within 2 months of the consultation.

- *Sufficient resources*

Latvian legislation provides for a definition of sufficient resources that may lead *de facto* to stating a fixed amount, which is contrary to the Directive. Latvian legislation defines sufficient resources by reference to a percentage, thus actually stating a fixed amount. In addition, there is no reference that only the situation of the person concerned must be taken into account and this is only indicative amount.

- *Right of residence for more than three months*

Article 7(3) (c) granting the right for a Union citizen who is no longer a worker or self-employed person to retain the status of worker or self-employed person if he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office, has not been transposed correctly. The requirement that the status of worker shall be retained for no less than six months has been transposed incorrectly by providing in national legislation six months for retaining the status of worker as a maximum.

- *Residence card of a family member of a Union citizen*

The Latvian legislation fails to designate the document “Residence card of a family member of a Union citizen”, as required by the Directive. The Latvian legislation designates the document as “residence permit” against the spirit of the Directive (i.e., to eliminate residence permits)

Article 10(1) of the Directive was not transposed precisely in the national legislation. The time period for taking a decision regarding the issuance of documents certifying residency rights to a family member who is not a Union citizen does not comply precisely with the Directive.

- *Right on employment or self-employment for family members*

The right regarding employment or self-employment as a related right for the family members of a Union citizen who have the right of residence provided by Article 23 of the Directive in Latvian legislation was not transposed. National legislation only provides that such a person does not need a work permit once working or once starting as a self-employed person.

- *Requirements for submission of documentation*

The Articles of the Directive determining which documents can be required from citizens of the EU or their family members were transposed in a more stringent manner, thus creating problems of conformity. For instance, Article 19(1) of the Directive has been transposed in a more stringent manner by asking for a specified form to be filled out, containing additional questions (e.g. purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education, a.o.). Also Articles 8(3), 8(5), 10(2) of the Directive have been transposed in the same incorrect manner - Article 21.1 R586 also asks for the abovementioned special form (questionnaire). Similarly, Article 8(2) of the Directive is transposed in a more stringent manner, because Latvian legislation provides that a registration certificate includes not only the name, address and date of registration as prescribed by the Directive, but also the number of the registration certificate and a personal identity number.

- *Permanent residence cards for family members who are not nationals of a Member State*

Article 20(1) of the Directive is transposed in a stricter manner. In Latvian legislation the date of reference is the date of submission of all documents. The Directive states that the period of reference is the submission of the application, which may or may not coincide with the submission of all documents.

- *Validity of the residence card shall not be affected by temporary absences*

Article 11(2) of the Directive prescribes that the validity of the residence card shall not be affected by temporary absences provided in this Article of the Directive. Although it is transposed in national legislation that absence due to obligatory military service or an extraordinary absence that shall not exceed 12 consecutive months due to an important reason, are not grounds for losing the residence certificate, the transposition is not correct. The transposing legislation also covers loss of a registration card and, moreover, also the **right to reside**, not simply the residence card itself. This is more than what the Directive requires and therefore it is a stricter and incorrect transposition.

- *Retention of the right of residence by family members in the event of death or departure of the Union citizen*

The last part of Article 12(2) of the Directive providing “being members of a family already constituted in the host MS of a person satisfying the requirements” has not been transposed. Article 32 R586 refers to Article 20 R586 which does not include being a family member of a Union citizen meeting the requirements. This paragraph basically reproduces the conditions under Article 7(1) (a)-(d) of the Directive, which includes being a family member of an EU citizen meeting the conditions. Regulation 20 only transposes Article 7(1) (a)-(c), thus excluding (d) “being a family member”. Therefore the transposition is incomplete.

- *Permanent residence card for family members who are not nationals of a Member State*

Article 20(3) of the Directive states that interruption of two consecutive years shall not affect the validity of the permanent residence card of third country family members of a Union citizen. This guarantee is transposed in a more stringent and incorrect manner in Latvia by providing that a Union citizen and his/her family member lose the right to reside and the residence permit shall be annulled.

- *Term for notification of decisions*

The condition prescribed by Article 30(3) of the Directive that the time allowed to leave the territory shall be no less than 1 month is transposed as within one month generally. Less than a month refers only to emergency cases.

- *Procedural safeguards – submitting the defence*

The guarantee of the Directive (Article 31(4)) that MS may not prevent the individual from submitting his/her defence in person is not transposed in the national legislation. Also, under general procedural law there is no similar specific obligation, but only a general right for a person to defend himself.

- *Duration of exclusion orders*

Article 32(1) of the Directive stating that the Member State concerned shall reach a decision on this application within six months of its submission is not transposed. There are no such time limits in general administrative procedures in court either.

SUMMARY DATASHEET

1. Transposing legislation

The transposing legislation of the Directive 2004/38/EC in Latvia is made by:

- the Republic of Latvia Cabinet Regulation No. 586 “Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members”. This regulation was adopted 18 July 2006, enacted 21 July 2006. Transposition was therefore three months late.

Amendments, transposing the Directive 2004/38/EC, were made to:

- the Republic of Latvia Cabinet Regulation No. 108 “State fees for processing the necessary visa, residence permit or permanent European Community residence status application documents and related services” was adopted on 13 February 2007, enacted 17 February 2007 (transposition was late).
- Immigration Law, amended 20 December 2007, enacted 23 January 2008 (transposition was late).

Other national legislation contains specific provisions that are relevant for the transposition of the Directive. These are:

- Support for Unemployed Persons and Persons Seeking Employment Law, amended 21 June 2007 (transposition was late).
- Republic of Latvia Cabinet Regulation No. 220 “Procedures for the Allocation, Repayment and Cancellation of a Study Loan and Student Loan from the Resources of Credit Institutions with the Government Guarantee”, amended 27 September 2005. (Transposition was in time).
- Medical Treatment Law, amended 08 June 2006 (transposition was late).
- Republic of Latvia Cabinet Regulation No. 755 “Passport Regulations”, adopted 13 November 2007, enacted 20 November 2007.
- Republic of Latvia Cabinet Regulation No. 310 “Procedures by which Persons Cross the State Border of the Republic of Latvia”, adopted 10 July 2001, enactment – 14 July 2001 contains provisions referring to crossing the state border.
- Personal Identification Documents Law, adopted 23 May 2002, enactment 1 July 2002.

2. Assessment of the transposition

a) Incomplete transposition or non-transposition

Art. 3(2)(a)	The part of the provision stating ‘where serious health grounds strictly require the personal care of the family member by the Union citizen’ is not transposed.
Art. 3(2) (b)	Those partners of the Union citizen with whom the Union citizen has a durable relationship, duly attested - not transposed.
Art. 4(1)	There is no reference that a European Union citizen shall have the right to leave the territory of a Member State to travel to another Member State.
Art. 5(2), last paragraph	There is no clear and explicit provision stating that visas issued for family members who are not nationals of a Member State shall be issued “as soon as possible” and on the basis of an “accelerated procedure”.
Art. 5(4)	There is no reference to a reasonable period of time for proving the right of free movement and residence.
Art. 6(1)	The Latvian legislation provides that all Union citizens and their family members shall have the right of residence for up to 90 days. However, there is no exception for jobseekers.

Art. 7(1)(c), 1st indent	The transposing provision does not covers vocational training, but only an accredited educational establishment.
Art. 7(1)(c), 2nd indent	As to the necessity to have a sufficient level of subsistence for family members, the transposing legislation requires the family member of a Union citizen to prove that they are covered by health insurance and have a sufficient level of subsistence not to become a burden on the social assistance system. In Latvian law there are no detailed criteria for assessing such sufficient resources. Article 21.2 R586 requires submitting “a declaration that one of the conditions specified in Paragraph 20 of these Regulations is in existence to receive a registration certificate”. No other documents are required and no explanation, what ‘a declaration’ means. Latvian legislation does not provide opportunity to prove such resources by equivalent means they may choose.
Art. 7(3)(d)	The exception in the case of involuntary unemployment is not transposed.
Art. 9(1)	The ‘specified period’ in the transposing legislation is not precisely defined. There are also no other provisions, which indicates three months as a minimum period of residence to receive a residence card.
Art. 10(1)	The requirement that certification of application has to be issued ‘immediately’ is not transposed.
Art. 10(2)(e)	There is no proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen.
Art. 12(2), 2nd paragraph	The last part, “being members of a family already constituted in the host MS of a person satisfying the requirements”, has not been transposed.
Art. 12(2), last part	The requirement that “such family members shall retain their right of residence exclusively on a personal basis” has not been transposed.
Art. 13(2)(d), 2nd paragraph	The last part, “being members of a family already constituted in the host MS of a person satisfying the requirements”, has not been transposed.
Art. 14(2), 2nd paragraph	It is not transposed in national legislation that in specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13 of the Directive, Member States may verify if these conditions are fulfilled and that this verification shall not be carried out systematically.
Art. 14(3)	Provision that an expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system is not transposed in the national legislation.
Art. 14(4)(b)	It is not transposed that an expulsion measure may in no case be adopted against Union citizens or their family members if the Union citizens entered the territory of the host Member State in order to seek employment. It is not transposed that the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.
Art.15(1)	The procedural safeguards are not explicitly stated in transposing legislation. Although the Administrative Procedure Law provides most of the procedural conditions (decisions in writing, with right to appeal a.o.) Articles 30 and 31 of the Directive were not transposed completely in the national legislation.
Art. 15(3)	The condition that the host Member State may not impose a ban on entry in the context of an expulsion decision is not transposed by Latvia.
Art. 16(1)	The Latvian provision does not transpose the obligation not to apply Chapter III to permanent residents. The “legality” requirement is replaced with compliance with paragraph 20, which transposes Article 7 of the Directive (the conditions to have the right of residence). Latvia has no power to establish that “legality” is according to this Regulation (paragraph 20).
Art. 17(2)	The Latvian legislation only transposes the exception regarding length of residence but not regarding the length of employment.
Art. 17(3)	The right of permanent residence for the family members of a worker or a self-employed person who are residing with him in the territory of the host MS has not been transposed.
Art. 20(1)	It is not transposed in Latvian legislation that the permanent residence card is automatically renewable every 10 years. Provision that the residence card is issued within 6 months upon submission of the application has not been transposed.
Art. 21	Rules of continuity of residence have not been transposed.
Art. 24(1)	National provisions granting equality in different national laws does not always cover family members of EU citizens.

Art. 24(2)	This article was not transposed correctly in national legislation.
Art. 25(1)	The condition that the residence documents may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof has not been transposed.
Art. 25(2)	There is no reference to the “certificate attesting the submission of an application for a family member residence card” in the national legislation.
Art. 27(1)	No transposition of that these grounds shall not be invoked to serve economic ends.
Art. 27(2)	Latvian legislation does not transpose requirements of proportionality and requirement of basing exclusively on personal conduct of the individual concerned. The Directive’s criteria are not transposed completely, in particularly the last sentence.
Art. 27(3)	The transposing legislation does not clearly establish that these enquiries shall not be a matter of routine. No transposition of the obligation on the Latvian authorities to answer requests from other Member states within 2 months of the consultation.
Art. 28(2)	There is no reference to “serious grounds”.
Art. 29(1)	The Latvian law stops at referring to public health generally whereas the Directive refers to specific diseases.
Art. 29(3)	It is not transposed that where there are serious indications that it is necessary, Member State may, within three months of the date of arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. There is also no reference that such medical examinations may not be required as a matter of routine.
Art. 30(1)	There is no indication in national legislation about the “comprehensiveness” of the decision and what it means for them.
Art. 31(4)	Not transposed. Under general procedural law there is no similar obligation, but as a right for a person to defend himself.
Art. 32(1), 1st paragraph	The condition that the persons excluded on grounds of public policy or public security shall have no right of entry to the territory of the Member State concerned while their application is being considered is not transposed in the national legislation.
Art. 32(2)	The condition that the Member State concerned shall reach a decision on application within six months of its submission is not transposed in the national legislation.
Art. 33(1)	Expulsion as a penalty or legal consequence is provided in national law, for what reason the requirement of the Directive has not been transposed.
Art. 34	On website there is only very general and irrelevant information. For example, concerning registration cards for EU citizens, there is only link to the transposing legislation provided.
Art. 35	The transposition is incomplete as Articles 30 and 31 of the Directive were not transposed completely in the national legislation.

b) Incorrect or imprecise/ambiguous transposition

Art. 3(2)(a)	National legislation provides that a family member shall be a person who is a dependant or spouse of a Union citizen and who has shared a household with a Union citizen. The Directive <i>a contrario</i> envisages these provisions as two separate conditions.
Art. 5(4)	As the Directive requires that not only travel documents but other documents can be means of proof, the transposition is not correct.
Art. 7(3)(c)	Latvian legislation specifies six months for retaining the status of worker as a maximum, which is contrary to the Directive prescribing that the status of worker shall be retained for no less than six months.
Art. 8(2)	Transposed in a more stringent manner - Latvian legislation provides that the registration certificate includes not only the name, address and date of registration as prescribed by the Directive, but also number of registration certificate and personal identity number.
Art. 8(3)	Transposed in a stricter manner – national legislation asks for a specified form containing different questions to person (e.g., purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, and education a.o.).
Art. 8(4)	Latvian legislation provides a definition for sufficient resources by reference to a percentage, thus stating a fixed amount, which is contrary to the Directive. There is no reference that this is only indicative amount or subject to consideration.
Art.8(5)	Transposed in a stricter manner – national legislation asks for a specified form containing different questions to person (e.g. purpose of immigration, nationality, marital status,

	information of relatives (including brothers and sisters), knowledge of languages, employment, education, a.o.). In addition, national legislation includes certification that he or she has a valid European Health Insurance Card, a note that the person is entitled to receive medical assistance to the amount guaranteed by the State in the Republic of Latvia, or has a valid health insurance policy and a sufficient level of subsistence to not become a burden on the social assistance system if the Union citizen with whom he or she is residing in the Republic of Latvia has been issued with a registration certificate.
Art. 10(1)	Latvian legislation fails to designate the document “Residence card of a family member of a Union citizen”, as required by the Directive. The Latvian legislation designates the document as “residence permit” as against the spirit of the Directive (i.e., eliminate residence permits).
Art. 10(2)(a)	Transposed in a stricter manner – national legislation asks for a specified form containing different questions to person (e.g. purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education, a.o.). Art. 30.3 of the R586 of national legislation includes certification that he or she has a valid European Health Insurance Card, a note that the person is entitled to receive medical assistance in the amount guaranteed by the State in the Republic of Latvia, or has a valid health insurance policy and a sufficient level of subsistence to not become a burden on the social assistance system if the Union citizen with whom he or she is residing in the Republic of Latvia has been issued with a registration certificate.
Art. 10(2)(b)	Incorrect transposition. Registered partnership is not recognised in national law. Article 3.2 (b) is also not transposed in Latvian legislation.
Art. 10(2)(c)	National legislation asks for additional information in specified form containing different questions to person (e.g. purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education a.o.).
Art. 10(2)(d)	National legislation asks for additional information in specified form containing different questions to person (e.g. purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education a.o.).
Art. 10(2)(e)	Transposing provision envisages requesting the documents only if the rights to residency are being requested by a person who is a dependant. There is no reference that also other household members have such right.
Art. 11(2)	The transposing legislation also covers losing registration card and also the rights to reside, not only a residence card.
Art. 15(2)	The transposing article implies that this reason alone (‘per se’) shall not provide grounds for expulsion. This opens an opportunity to use this reason as an additional ground for expulsion.
Art. 16(4)	There are other conditions provided in national law that state the possibility to lose the right of permanent residence.
Art. 19(1)	Transposed in a stricter manner – national legislation asks for a specified form containing different additional questions for the individual person (e.g. purpose of immigration, nationality, marital status, information about relatives (including brothers and sisters), knowledge of languages, employment, education a.o.).
Art. 19(2)	Latvian legislation provides 90 days instead of ‘as soon as possible’, which should be close to five days.
Art. 20(1)	Article 20.1 of the Directive is transposed in a stricter manner. The Directive states that the period of reference is the submission of the application, which may or may not coincide with the submission of all documents. Moreover, as the term “residence permit” is used in the transposing legislation instead of “residence certification”, the transposition is not correct.
Art. 20(3)	The transposing legislation provides that a Union citizen and his/her family member lose the right to reside and the residence permit shall be annulled, if he/she has resided outside the Republic of Latvia continuously for more than two years.
Art. 23	Latvian legislation provides that the person does not need a work permit once established relations, which does not comply with the Directive stating that they have the right to work and be self-employed.
Art. 29(2)	The Directive refers to diseases occurring after 3 months from arrival. The national law refers to illnesses occurring within 3 months from arrival. This is incorrect transposition,

	not incomplete.
Art. 30(3)	Condition of no less than 1 month is transposed in Art. 50 as within one month generally. Less than a month is only for emergency.

c) Minor instances of non-conformity

Art. 10(2) (f)	No transposition given that Article 3(2) (b) was not transposed by Latvian legislation.
Art. 13(2)(d), last part	The requirement that “such family members shall retain their right of residence exclusively on a personal basis” has not been transposed.
Art. 32(1), 2nd paragraph	The condition that the Member State shall reach a decision on this application within six months of its submission has not been transposed.
Art. 40	Latvia was late in transposing the Directive to its national legislation.

ABBREVIATIONS USED

AAP	Act on Administrative Procedures
Art	Article
ECJ	European Court of Justice
MS	Member State of the European Union
PIDL	Personal Identification Documents Law
R568	Republic of Latvia Cabinet Regulation No. 586 “Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members”
R217	Republic of Latvia Cabinet Regulation No. 217 “Visa Regulation”

1 INTRODUCTION

This conformity study analyses in detail the provisions of Directive 2004/38/EC on the free movement of EU citizens in its consolidated version, and it compares it with the legislation in place in Latvia.

Directive 2004/38/EC repealed the earlier directives on free movement of persons (Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC) as from 30 April 2006.

EU citizenship gives every Union citizen the right to move and to reside freely within the territory of the Member States. The facilitation and promotion of this right, which is at the same time one of the fundamental freedoms of the internal market, is the objective of Directive 2004/38/EC. A second objective of Directive 2004/38/EC was to codify and review the various pieces of legislation and case-law dealing with this issue.

Free movement as a fundamental freedom of the internal market

Free movement is one of the fundamental freedoms of the internal market and can therefore only be restricted in a limited number of pre-determined circumstances. Thus, national legislation cannot adopt more restrictive legislation than provided for in the Directive.

Directive 2004/38/EC introduces, on the one hand, a uniform approach regarding the formalities that Member States can impose upon EU citizens residing in their territory. These formalities are expressly established in the Directive and restricted in function of the duration of the stay in the Member States.

- For a stay of less than three months, the only formality a Member State can impose is the presentation of a valid passport or national identity card.
- For residence of more than three months, a Member State can only require the EU citizen to register in the population register of the place of residence. This registration needs to be validated immediately if a certain number of conditions are to be complied with. The Member State can only require the EU citizen to present proof that he/she is a worker, a self-employed person, a student or has sufficient resources not to become a burden upon the social security system of the Member State. Member States cannot lay down a fixed amount of what they consider to be “sufficient resources”, but must always take into account the personal situation of the person concerned. Family members of the EU citizen will have to present an identity document and proof of the family link to an EU citizen.
- After five years of continuous residence in a Member State, an EU citizen obtains a right to permanent residence. The host Member State shall issue a document certifying permanent residence. A permanent resident has the right to be treated equally to a national of the Member State.

On the other hand, the Directive also determines and clarifies the only acceptable reasons for restriction of the free movement of citizens by Member State authorities, namely for reasons of public order, public security and public health. (For the interpretation and conditions of such exceptions, it is important to rely upon the case-law of the Court of Justice.)

These measures guarantee a strong protection against expulsion for EU citizens who have been long-term residents in another Member State. Such measures need to be proportionate and shall always look at the personal conduct of the individual concerned which must represent a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”. In addition, the Directive establishes some procedural safeguards in case an expulsion decision is considered.

1.1 OVERVIEW OF THE LEGAL FRAMEWORK IN LATVIA

The Latvian legal system is based upon the continental system of codification. There is no binding law of precedent in Latvia although judgments are considered to be authoritative with respect to the interpretation of the law.

Latvia is a unitary State. According to the Constitution of the Republic of Latvia, the sovereign power of the State of Latvia shall belong to the People of Latvia. One of the ways in which the People can implement this power is through free and democratic elections
This is the hierarchy of legal acts in Latvia:

- The Constitution;
- International agreements approved by the Parliament;
- Laws;
- Legislative Acts of the Cabinet of Ministers;
- Other acts of the Cabinet of Ministers;
- Municipal rules.

The legal norms of the European Union (Community) shall be applied in accordance with their place in the hierarchy of external regulatory instruments. In applying the European Union (Community) legislation, authorities and courts shall take into account the case law of the European Court of Justice.

1.2 FRAMEWORK FOR TRANSPOSITION & IMPLEMENTATION OF DIRECTIVE 2004/38/EC IN LATVIA

1.2.1 Distribution of competences according to the national Constitution

According to the Constitution of the Republic of Latvia, the *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by the Constitution. Article 65 of the Constitution provides that draft laws may be submitted to the *Saeima* by the President, the Cabinet of Ministers, committees of the *Saeima*, by not less than five members of the *Saeima*, or, in accordance with the procedures and in the cases provided for in this Constitution, by one-tenth of the electorate.

The Cabinet of Ministers is the highest executive body of the country. The role and functions of the executive power are stipulated in the *Satversme* (the Constitution) of the Republic of Latvia and in the Law on the Structure of Cabinet. The Cabinet of Ministers is formed by a person invited by the State President. Public institutions are subject to the authority of the Cabinet of Ministers.

The Cabinet of Ministers has legislative rights and may issue legislative enactments – regulations (lower level than laws issued by *Saeima*), only in the following cases: when such a right specially stipulated or delegated to the Cabinet by the respective law or if the particular matter has not been regulated by law. The regulations issued by the Cabinet may not be contrary to the Constitution or laws. The regulations shall include a reference to the law pursuant to which they have been issued.

The Prime Minister, Deputy Prime Ministers and Ministers are entitled to issue orders in cases provided for in laws and Cabinet regulations. An order is an individual administrative act that applies to specific State institutions and officials.

The Cabinet of Ministers is a collegial institution that adopts its decisions at the sittings of the Cabinet of Ministers. The Cabinet of Ministers, within the scope of its competence, issues policy planning documents, external and internal legal acts, orders of the Cabinet of Ministers, informative statements,

national positions and official opinions of the State. Upon approval by the Cabinet of Ministers, all legal acts are published in the official newspaper “Latvijas Vēstnesis”.

The Ministry of Interior of the Republic of Latvia is the member of the Government of the Republic of Latvia (Cabinet) with responsibility for immigration.

According to the Cabinet Regulation No. 240 “Bylaw of the Ministry of the Interior” of 29.04.2003 (enactment - 14.05.2003.), the Ministry of the Interior develops and implements public policy in the fields of safeguarding of public order and security, including state borders, protection of personal rights, legal interests and state security, tackling issues regarding registration of private individuals, migration control and citizenship.

The Ministry’s central apparatus coordinates activities of institutions subordinated to the Ministry of the Interior (The Office of Citizenship and Migration Affairs, The State Border Guard, The State Police).

The Ministry of the Interior is also responsible for drafting/preparing national legislation and policy planning documents, involving competent authorities. Thus the transposition of the Directive 2004/38/EC was ensured by the Ministry of the Interior in collaboration with The Office of Citizenship and Migration Affairs.

1.2.2 General description of organisation of national authorities implementing Directive 2004/38/EC in Latvia

The public policy in fields of migration control and citizenship are a competence of the Ministry of Interior of the Republic of Latvia.

The Office of Citizenship and Migration Affairs is a state institution under the supervision of the Ministry of Interior of Republic of Latvia and is directly responsible for issuing identity and travel documents, maintenance of the Population Register, implementation of state migration policy – issues dealt with in Directive 2004/38/EC.

Concerning migration and citizenship, the Office of Citizenship and Migration Affairs (hereinafter referred to as the Office) issues identification and travel documents, keeps record of the mentioned documents and develops and maintains the relevant data bases. The Office, within its competence, regulates documents and controls the entry and stay of foreign citizens and stateless persons in the Republic of Latvia.

It is also the Office’s competence to issue visas for entry into the Republic of Latvia and crossing its territory, to ensure further development of the Republic of Latvia’s regulatory enactments and their harmonisation with the legislation of the European Union in the field of visa regime and entry of foreign citizens and stateless persons. The Office also analyses statistical data and issues related to the visa regime.

The transposing legislation of the Directive 2004/38/EC¹ provides that all the documents concerning registration, residence or permanent residence have to be submitted to the Office and that the Office issues certificates and other documents concerning residence to a Union citizen.

¹ Republic of Latvia Cabinet Regulation No. 586 “Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members”, adopted 18 July 2006, enactment – 21 July 2006, Latvijas Vēstnesis (the official Gazette of the Government of Latvia).

Concerning implementation of the transposing legislation of the Directive 2004/38/EC, some functions are also realised by other state institutions subordinated to the Ministry of the Interior. These institutions mainly deal with expulsion issues or crossing of the state borders.

These authorities are the State Border Guard and the State Police, which, according to the transposing legislation, are responsible to act if the Union citizen or his or her family member does not have the necessary documents for crossing the State border of the Republic of Latvia. The Head of the State Border Guard shall take a decision allowing the person to enter the Republic of Latvia. If a Union citizen or his or her family member, during their residence in the Republic of Latvia, seriously threatens State security or public order, the Minister for the Interior shall take a decision regarding his or her forcible expulsion, if necessary determining prohibitions for re-entry into the Republic of Latvia for a time of up to three years. The State Border Guard according to the procedures specified in the Immigration Law shall carry out the expulsion of a person.

As all the decisions made by The Office of Citizenship and Migration Affairs, Ministry of the Interior or the State Border Guard are administrative acts according to the Administrative Procedure Law of Latvia, these decisions can be appealed to a higher institution or to the administrative court.

There are three levels of administrative courts in Latvia – the Administrative district court, the Administrative Regional Court (Court of Appeal) and the Administrative department of the Supreme Court (Supreme Court of Cassation). Administrative matters shall be adjudicated on the merits by a court of first instance, but pursuant to a complaint by participants in an administrative proceeding regarding a judgment of such court, also by a court of second instance in accordance with appeal procedures. Participants in an administrative proceeding may appeal to a judgment of a court of second instance in accordance with cassation procedures in the Administrative department of The Supreme Court. The Supreme Court assesses the legality of the decisions. A court shall initiate an administrative matter pursuant to the application of an applicant.

2 LEGAL ANALYSIS OF THE TRANSPOSING MEASURES FOR DIRECTIVE 2004/38/EC

2.1 Definitions, family members and beneficiaries

The definition of Union citizen according to Latvian legislation includes also EEC and Swiss Confederation nationals.

Definitions: the concept of “family members” (Article 2)

The definitions provided in Article 2 of the Directive have been transposed properly. Article 2(2)(b) providing a family member as a partner with whom the Union citizen has contracted a registered partnership has not been transposed into Latvian legislation as Latvia does not treat registered partnerships as equivalent to marriage and does not provide for registered partnership at all.

It is likely that changes concerning this issue should not be expected in the near future. There has even been made an amendment to the Constitution of the Republic of Latvia to ensure that only marriage between man and women is accepted by law in Latvia.²

Beneficiaries and facilitation of entry and residence (Article 3)

General

² Article 110 of the Constitution was amended to state that „the State shall protect and support marriage – a union between a man and a woman” to eliminate the possibility that marriage could be treated as partnership between same-sex couples. These amendments indicates the political will to secure this opinion on the constitutional level.

Article 3 deals with the beneficiaries of the Directive and also imposes an obligation on the Member States to facilitate entry for a secondary class of beneficiaries (essentially, members of the extended family).

Article 3(1) of the Directive provides that the Directive shall apply to all citizens, who move to or reside in a Member State other than that of which they are a national, and to those family members who accompany or join them. Latvian legislation does not specify that a family member should accompany or join the Union citizen to enter the Republic of Latvia. There are no clear provisions that the family member should **accompany or join** the EU citizens if they enter Latvia and stay less than 90 days. However, if the family member wants to reside in Latvia for more than 90 days, he/she should accompany or join the EU citizen (Article 29 R586). As explained by Office of Citizenship and Migration Affairs, it does not mean that a family member could enter the state alone and reside for 90 days. The Article 1 R586 sentence “These Regulations prescribe the procedures for the entry into and residence in the Republic of Latvia of Citizens of European Union Member States [...] **and their family members**” should be interpreted as “**together with their family members or travelling alone to join Union citizen already living in Latvia.**” Therefore, this provision, although not precisely providing ‘accompany or join’, complies with the Directive. There is no any national case law on these issues as this is a new regulation for Latvia.

Article 3(2) (a) of the Directive also covers family members, irrespective of their nationality, who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen. This provision was transposed incorrectly and incompletely in Latvian legislation. The national transposing article provides that a family member shall be a person who is a dependant or spouse of a Union citizen **and** who has shared a household with a Union citizen. Though, the Directive envisages these provisions as two separate conditions.

Moreover, the part of the provision stating ‘where serious health grounds strictly require the personal care of the family member by the Union citizen’ is not transposed at all. As to the issue of dependency, Article 20 of the Law on State Pensions provides that family members of the person shall be considered to be dependent upon him/her if he/she maintained them or they received assistance from him/her, which was permanent and their main source of income and support.

Article 3(2) (b) of the Directive also defines as a beneficiary the partner with whom the Union citizen has a durable relationship, duly attested. This is not transposed in the national legislation. It seems that in passing a draft law, this provision of the Directive was interpreted as partnership as in Article 2(2) (b) of the Directive, and therefore not transposed.

Also, the provision of the Directive providing that the host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people is not transposed in national legislation. The condition of extensive examination of the personal circumstances and reasoned decision is compulsory for all state institutions under the Act on Administrative Procedures. This Act includes a number of principles to be respected in administrative procedures, such as the principle of observance of the rights of persons (which means - in administrative proceedings, especially when adopting decisions on the merits, institutions and courts shall, within the scope of the applicable norms of law, facilitate the protection of the rights and legal interests of private persons) and the principle of not allowing arbitrariness (which means - administrative acts and court adjudications may only be based on facts that are necessary for taking a decision and on the objective and rational legal considerations arising from such facts). Nevertheless, in this case specific protection is required, and as there is no specific provision that provides the necessity to ensure these principles in case of denial of entry or residence, there is a problem of conformity with the Directive.

2.2 Rights of exit and entry (Articles 4 -5)

Right of exit (Article 4)

General

Article 4 grants a general right to Union citizens and family members to leave the territory of a Member State, provided they have the required identity card or passport.

In the Latvian legislation there is no explicit reference stating that a European Union citizen shall have the **right** to leave the territory of a Member State to travel to another Member State. Yet the transposing article allows crossing the Latvian borders with nothing more than valid travel documents. The provisions refer to both entry and exit. PIDL provides both passports and identity cards as travel documents. By not providing this essential, general right to exit the territory of Latvia, the transposition is incomplete. There are no other provisions concerning exiting the country. The valid travel document is the only precondition to exit Latvia and no exit visa is required. There is also no special provision for persons to whom these conditions applies (i.e. no reference to EU citizens, their family members), but a general condition referring to all persons.

One of the problems with the national level of implementation of the conditions laid down by the transposing and relevant legislation is that, although it is provided by law that in Latvia passports and identity cards (ID cards) are issued, there is no detailed law or regulation on ID cards duration, renewal and other relevant questions. As explained by the Office of Citizenship and Migration Affairs, in practice, it is not yet possible to get the ID card although such opportunity is already provided for by law (i.e. PIDL). It means that despite the fact that Latvia has transposed provision of issuing ID cards, this provision has not yet been implemented in Latvia.

Right of entry (Article 5)

General

Article 5 provides a general right of entry for Union citizens and their family members. Latvian transposing legislation states that if an EU citizen (or family member) has a valid travel document and he/she does not pose a threat to State security, public order or public health, they may enter and reside in the Republic of Latvia.

The right of entry is only limited by reasons of public order, public security and public health, in line with Article 27 of the Directive.

As to the entry visa there are no provisions in Latvian legislation stating that requiring an entry visa for a Union citizen is prohibited. Contrarily, there are also no provisions stating that an entry visa would be necessary in Latvia for Union citizens. Conditions for entry into the Republic of Latvia for a Union citizen are only prescribed by Article 12 R586 (requiring only a valid travel document). Moreover, Article 7 of the Administrative Procedure Law of Latvia states that the actions of an institution shall comply with the norms of law and that institutions shall operate within the scope of their powers as prescribed by regulatory enactments, and that they may use their powers only in conformity with the meaning and purpose of their empowerment". Consequently, there is no right for an institution to ask for a visa if it is not prescribed by law.

Concerning the requirement that visas shall be issued free of charge - national legislation meets this requirement. The Directive also prescribes (Article 5(2), paragraph 2) that such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure. Although the issue of the visa at the border control on spot is considered to be accelerated and the procedure in the consular or diplomatic mission, the visa should be issued in five days (if additional information needed).

However, in R217, art. 11.2, there is no clear and explicit provision stating that such visas shall be issued as soon as possible and on the basis of an accelerated procedure which makes the transposition incomplete.

There are no rules or regulations that provide for an entry or exit stamp in the passport of family members who are not nationals of a Member State. Article 10 of Regulation 562/2006 (directly applicable in Latvia) establishes the obligation to stamp only when the family member does not present the residence card, in accordance with Article 5(3) of the Directive.

Article 5(4) of the Directive prescribes the right for a Union citizen, or a family member who is not a national of a Member State, to have an opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means if they do not have the necessary travel documents. In Latvian transposing legislation there is no definition for ‘necessary documents’, therefore if interpreting it together with Article 12 R586, ‘necessary documents’ means travel documents. As the Directive requires that **not only** travel documents but other documents can be means of proof, the transposition is not correct. There is also no reference in the transposing legislation to the duration of a “reasonable period of time” for proving their right of free movement and residence. However, Latvian law provides the opportunity for Union citizens and their family members to enter the state without the necessary documents according to the State Border Guard’s decision.

2.3 Right of residence

2.3.1 Right of residence for up to three months (Article 6)

General comment on articles of the Directive concerning the three-months term – Latvian transposing legislation refers to 90 days instead of 3 months. Nevertheless, this appears to be in line with the Directive as the difference between these terms is not substantial.

Article 6 of the Directive provides that Union citizens and their family members have the right of residence for a period of up to three months without any conditions other than the requirement to hold a valid identity card or passport.

Latvian legislation states that a Union citizen and family member is entitled to enter and reside in the Republic of Latvia for up to 90 days counting from the first day of entry if he/she has a valid travel document and does not pose a threat to State security, public order or public health.

However, there is no exception for the status of jobseekers in the national law, which makes the transposition incomplete.

2.3.2 Right of residence for more than 3 months (Article 7-13)

(a) General conditions under Article 7

General

Article 7 provides for the right of residence to continue after three months where certain conditions are satisfied. For the most part, these conditions have been adequately transposed.

There have however been some inaccuracies in implementing Article 7. The transposing legislation does not explicitly grant a **right** to continue the residence after three months. Despite this difference in language, the transposition should be interpreted by reading Article 18 and Article 20 R586 together: “if a Union citizen wishes to reside in Latvia for longer than 90 days, he or she shall register and receive a registration certificate”. It means – if a Union citizen wishes, he or she gets the registration certificate

provided he/she meets the conditions (e.g., being a worker, self-employed and so on). For this reason the transposition is considered as correct.

Article 7(1) (c) of the Directive was not transposed correctly by not covering vocational training, but only an accredited educational establishment.

In Latvian law there are no detailed criteria for the way in which Union citizens can prove they have sufficient resources. Article 21.2 R586 requires submitting “a declaration that one of the conditions specified in Paragraph 20 of these Regulations is fulfilled to receive a registration certificate”. No other documents are required and no explanation is given as to what ‘a declaration’ means. Latvian legislation does not provide the opportunity to prove such resources by equivalent means of their choice.

Part of Article 7(3) (c) of the Directive is more favourable than prescribed by the Directive. In national legislation, unemployed is definitely broader than involuntary unemployment by covering also voluntary unemployment. Thus, this part is more favourable treatment. The Latvian provision is broader - “in the first 12 months after commencing employment” – it definitely also includes the situation when there is a fixed term contract of less than a year; when, if such contract is completed, he/she becomes a job-seeker.

Nevertheless, Article 7(3) (c) specifies six months for retaining the status of worker as the maximum period, which could be considered as contrary to the Directive prescribing that the status of worker shall be retained for **no less than six months**. This is theoretically correct and accepted by the European Commission, though is not an optimal transposition.

Article 7(3) (d) was transposed incompletely - the exception in the case of involuntary unemployment is not transposed.

As to Article 7(4) of the Directive, Latvian legislation does not limit the scope of family members in the case of students. Therefore it is more favourable treatment.

Article 20.5 R586 provides that Union citizens shall have the right of residence on the territory of Latvia for a period of longer than three months if they have “a valid European Health Insurance Card, a statement issued by a European Union Member State or European Economic Area State that the person in the Republic of Latvia is entitled to receive medical assistance in the amount guaranteed by the State or a valid health insurance policy”. A statement issued by a European Union Member State or European Economic Area State that the person in the Republic of Latvia is entitled to receive medical assistance to the amount guaranteed by the State provided for in Article 20.5. R586 means any kind of statement (reference, notice) of any competent authority of relevant EU State which can confirm that the person has right to receive medical assistance. These documents, prescribed in Article 20.5 R586 are considered to be the means of proofs of “comprehensive sickness insurance” mentioned in the Directive.

(b) Administrative formalities for Union citizens (Article 8)

Latvia has chosen to transpose Article 8 of the Directive providing for additional administrative formalities. There is an obligation for Union citizens to register in the Office of the Citizenship and Migration Affairs. The requirements of registration in Latvia were transposed in a more stringent manner, providing that the registration certificate includes not only the name, address and date of registration as prescribed by the Directive, but also the number of the registration certificate and the personal identity number.

The form can be found at:

http://www.pmlp.gov.lv/lv/documents/pakalpojumi/uzturesanas/veidlapa_UA.pdf

The first attachment to the form:
<http://www.pmlp.gov.lv/lv/documents/pakalpojumi/uzturesanas/page18852.pdf>;
The second attachment to the form:
<http://www.pmlp.gov.lv/lv/documents/pakalpojumi/uzturesanas/page18853.pdf>
The third attachment to the form:
<http://www.pmlp.gov.lv/lv/documents/pakalpojumi/uzturesanas/page18854.pdf>

Article 8(3) of the Directive also exhaustively limits the documents that can be required from Union citizens to prove they fulfil the conditions, has been transposed in a stricter manner. Article 21.1 R586 asks for a specified form in conformity with regulatory enactments regarding residence permits. This form is a questionnaire containing different personal questions (e.g., purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education a.o.). Similarly, national provisions transposing Article 8(5) of the Directive concerning documentation for family members of Union citizens has also been transposed in a stricter manner by requiring additional information in the registration process – such as different personal questions (e.g. purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education a.o.). The transposing article also includes a requirement for a certification that he/she has a valid European Health Insurance Card, a note issued by an EU MS or EEA State that the person is entitled to receive medical assistance in the amount guaranteed by the State in the Republic of Latvia, or has a valid health insurance policy and a sufficient level of subsistence to not become a burden on the social assistance system if the Union citizen with whom he or she is residing in the Republic of Latvia has been issued with a registration certificate. Thus the transposition is stricter than prescribed by the Directive.

Article 8(4) – sufficient resources

Latvian legislation defines sufficient resources in a way that may lead *de facto* to stating a fixed amount, which is contrary to the Directive. Latvian legislation defines “sufficient resources” by reference to a percentage, thus stating a fixed amount. Although Article 48.1 R586 states that “on evaluating whether a person is an unreasonable burden on the social assistance system, the length of residence of a person in the Republic of Latvia, the amount of the benefit, the frequency of it being requested, as well as the reason for requesting social assistance shall be taken into account”, there is no reference that this is only an indicative amount or subject to consideration. Moreover, this article refers to the situation when there is need to evaluate whether a person is an unreasonable burden for the purpose of an eventual expulsion.

The transposing article stating that “a sufficient level of subsistence shall be a monthly income that is greater than 50% of the minimum wage in force for the relevant period of time” has to be interpreted as a definition, which should be applied when issuing a registration certificate (because included in the Article prescribing the issue of registration certificates). There is no reference in the legislation that the situation of the person concerned must be taken into account and that this is only an indicative amount. Thus, the state institution (Office of Citizenship and Migration Affairs), when issuing registration certificates, will consider this 50% as a definition for sufficient resources. This may lead to the decision that if no such amount of sufficient resources is available to the Union citizen, he/she could not get the registration certificate. This transposition creates a serious problem of conformity with the Directive.

(c) Family members who are not nationals of a Member State (Article 9-11)

- **Administrative formalities (Article 9)**

General

Article 9 provides for the issuing of residence cards to the family members of EU citizens.

Although it is transposed in national legislation that if a family member of a Union citizen who is not a Union citizen resides in the Republic of Latvia for a specified period, he/she shall be issued with a residence permit for a family member of a Union citizen, there are two problems of conformity in the transposition.

Firstly, it is not defined precisely what the ‘specified period’ in the transposing Article means. There are also no other provisions that indicate three months as a minimum period of residence to receive a residence card.

Secondly, Latvian transposing legislation uses term ‘residence permit’ instead of ‘residence card’ as provided by the Directive. This is considered to be against the spirit of the Directive as there should be no **permit** from the state to stay in Latvia.

As there is no deadline for submitting the residence card application in the transposing legislation, according to Latvian legislation it is possible to submit the application at any time (“during the time of his or her legal residence in the Republic of Latvia”). Even though it is considered to be a more favourable transposition, it lacks clarity since a deadline is established for EU citizens but not for their family members.

- **Issue of residence cards (Article 10)**

General

Article 10 is a detailed article addressing the issue of residence cards to family members of a Union citizen who are not themselves Union citizens.

The transposing legislation provides an even shorter term (30 days) than the Directive for taking a decision regarding the issuance of documents certifying residency rights to a family member who is not a Union citizen. However, the time period begins from the moment all necessary documents (for example, a document certifying the existence of a common household, or others) have been submitted, which means that only after submitting all the documents (not only an application), is it possible to receive a decision in 30 days. Therefore, it does not comply precisely with the Directive.

The requirement that certification of application be issued ‘immediately’ is not transposed.

Article 10(2) of the Directive has been transposed in a stricter manner - Article 30.1 R586 asks for a specified form in conformity with regulatory enactments regarding residence permits. This form is a questionnaire containing different questions to person (e.g. purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education, a.o.). Article 30.3 R586 includes certification that he or she has a valid European Health Insurance Card, a note issued by a European Union Member State or European Economic Area State that the person is entitled to receive medical assistance in the amount guaranteed by the State in the Republic of Latvia, or has a valid health insurance policy and a sufficient level of subsistence to not become a burden on the social assistance system if the Union citizen with whom he or she is residing in the Republic of Latvia has been issued with a registration certificate.

Article 10(2) (b) of the Directive concerning a document attesting to the existence of a family relationship or of a registered partnership has been incorrectly transposed. The Latvian law does not register partnership and Art. 3(2) (b) is also not transposed to Latvian legislation.

Article 10(2) (e) of the Directive concerning dependants or members of the household of the Union citizen, or personal care of the family member by the Union citizen has been incompletely and incorrectly transposed. Article 3(2), 2nd part, of the Directive was not transposed completely by Latvian legislation. There is also no proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen required. The transposing provision envisages requesting these documents only if the rights to residency are being requested by a

person who is a dependant. There is no reference that also other household members have such right whereas the Directive grants this right to all the member of the extended family covered by Article 3(2).

- **Validity of residence cards (Article 11)**

General

Article 11 provides for the period of validity of residence cards and provides that certain temporary absences will not render the card invalid.

Article 11(2) of the Directive providing that the validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country, has been transposed incorrectly.

Although Latvian legislation states that absence due to obligatory military service or an extraordinary absence that shall not exceed 12 consecutive months, due to an important reason (for example, pregnancy, childbirth, illness, studies or work assignment in another country) is not a ground for losing the residence certificate, the transposition is not in conformity with the Directive. Article 48.5 R586 also includes as a consequence losing the registration card and, moreover, the rights to reside, not only a residence card. Latvia has transposed Article 16(3) of the Directive and has applied it in general to losing the right of residence and validity of all documents issued under the Directive. This seems to go beyond what the Directive requires. Therefore it is a more stringent and incorrect transposition.

(d) Retention of the right of residence in the event of death, departure, divorce, annulment or termination of partnership

- **Retention of the right of residence in the event of death or departure of the Union citizen (Article 12)**

General

Article 12 provides that family members retain the right to reside where the Union citizen dies or leaves the Member State. The Article deals with a number of different groups of people.

- Family members who are EU citizens (Article 12(1))

This Article of the Directive was transposed effectively. The national law (Article 32 R586) refers also to cases of divorce or annulment as per Article 13 of the Directive.

- Family members who are not EU citizens (Article 12(2))

The last part of the Article, stating “being members of a family already constituted in the host MS of a person satisfying the requirements”, has not been transposed.

- **Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership (Article 13)- ADD**

Article 13 is similar to Article 12 in that it provides that family members can retain their right of residence whether there is a divorce, annulment or termination of a civil partnership.

- Family members who are EU citizens (Article 13(1))

This article was transposed effectively into the national legislation by Article 32 R586.

- Family members who are not EU citizens (Article 13(2))

The Latvian legislation (Article 32 R586) provides the requirement that the person “prior to divorce or annulment has been married to a Union citizen for at least three years”, but the Directive states three years prior to **initiation** of the divorce or annulment proceedings. Thus the transposition is more favourable.

2.3.3 Retention of the right of residence (Article 14) and Article 15 (2)

General

Article 14 provides for the circumstances in which persons retain the rights of residence granted by Article 6 and Article 7 respectively.

(a) Residence for less than 3 months (Article 14(1))

Article 14(1) of the Directive provides that Union citizens and their family members shall have the right of residence up to three months, as long as they do not become an unreasonable burden on the social assistance system of the host Member State. The national transposing Article (Article 48.1) provides that Union citizens and their family members lose the right of residence if they become an unreasonable burden on the social assistance system. There is no residence type specified in the transposing Article (right of residence up to three months as provided for in Article 6 of the Directive).

As Article 48 refers this condition to registration certificate, permanent residence certificate, residence permit or permanent residence permit, it means that according to the Regulations this refers to the right to reside more than 90 days. As such, it does not concern the right of residence up to three months as prescribed by Article 14(1) of the Directive. There are also no conditions concerning unreasonable burden during the first three months. Therefore this transposition should be considered to be more favourable.

(b) Residence for more than 3 months (Article 14(2))

This article was transposed effectively in the national legislation.

(c) Protection against expulsion (Article 14(3)-(4))

- **General protection (Article 14(3))**

Article 14(3) provides that an expulsion measure shall not be the automatic consequence of a Union citizen's or her family member's recourse to the social assistance system of the host Member State.

This provision is not transposed in national legislation, which is significant lack of conformity as there is no protection against arbitrariness of institutions when deciding of expulsion.

- **Workers and self-employed persons, and jobseekers (Article 14(4))**

Article 14(4) provides that an expulsion order may not be adopted against Union citizens or their family members if the Union citizens are workers or self-employed persons or if the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged. Part of the Article concerning workers or self-employed persons has been correctly transposed by Article 48.1 R586. Nevertheless, the conditions concerning job-seekers have not been transposed, which is an important lack of conformity.

(d) Article 15(2) – expiry of document not a ground for expulsion

Article 15(2) provides that the expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card, shall not constitute a ground for expulsion. Article 15.2 of the Directive is not very precisely transposed in the national legislation. The transposing article implies that the expiry of the ID card or passport alone ('per se') shall not provide a ground for expulsion. However, this provides an opportunity to use this reason as an additional ground for expulsion. The condition that the host Member State may not impose a ban on entry in the context of an expulsion decision is not transposed in national legislation.

2.4 Right of permanent residence

2.4.1 General rule for Union citizens and their family members (Article 16: Eligibility)

Article 16 of the Directive provides that Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there.

Latvian transposing legislation does not expressly grant a **right** of permanent residence to EU citizens and their family members. Despite not expressly granting a right, this should be read together with other articles of Regulation (Article 18 R586 – if the Union citizen wishes to reside in Latvia longer than 90 days, he gets the registration certificate). In the expert's view this guarantees right of permanent residence.

In addition, the Latvian transposing provision does not transpose the obligation not to apply Chapter III to permanent residents.

Also, the Latvian provision does not transpose the obligation not to apply Chapter III to permanent residents. The "legality" requirement is replaced with compliance with paragraph 20, which transposes Article 7 of the Directive (the conditions to have the right of residence). Latvia has no power to establish that "legality" is "according to the R586" (paragraph 20).

Article 16(3) of the Directive - Continuity of residence

Although the structure of the Latvian transposing article is inaccurate, Article 16(3) of the Directive has been transposed correctly. It should be viewed together with other Articles – a Union citizen cannot receive a permanent residence certificate (which attests the rights to permanent residence) if he/she has resided outside the Republic of Latvia for longer than 6 months per year. It means that residence should not be considered to be permanent if such 'outside residence' occurs. This article of the Directive defines permanent residence and so does this transposing article.

Article 16(4) of the Directive provides that the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years. Latvian legislation provides that the right of permanent residence shall be lost if he or she has acquired the right to reside permanently in the Republic of Latvia and has resided outside the Republic of Latvia continuously for more than two years, except in cases where a person can provide documentary evidence that the absence has had a justifiable reason. Although national law is more favourable by allowing for proof of justifiable reason for absence exceeding two years, there are other conditions provided in national law (Article 48 R586) that state the possibility to lose the right of permanent residence.

2.4.2 Acquisition of the right of permanent residence for workers/self-employed people and their family members (Article 17)

In contrast with the Directive, national legislation includes a period of employment in another European Union Member State, European Economic Area State or the Swiss Confederation as

continuous residence in Latvia. This introduces a more favourable treatment than foreseen by the Directive.

Article 17(2) – length of residence and employment

Article 17(2) of the Directive provides that the conditions as to length of residence and employment shall not apply if the worker's or the self-employed person's spouse or partner as referred to in point 2(b) of Article 2 is a national of the host Member State or has lost the nationality of that Member State by marriage to that worker or self-employed person.

The national legislation (Article 26 R586) provides that the conditions regarding length of residence shall not apply if the spouse of a Union citizen is or has been a Latvian citizen, but has lost Latvian citizenship upon entering into marriage with a Union citizen.

Thus the Latvian legislation only transposes the exception regarding length of residence but not regarding length of employment. The transposing Article does not cover the worker's or the self-employed person's spouse.

Article 17(3) stating that family members of a worker or a self-employed person who are residing with him in the territory of the host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State, has not been transposed in national legislation.

2.4.3 Acquisition of the right of permanent residence by certain family members who are not nationals of a MS (Article 18)

This provision of the Directive stating that family members of a Union citizen shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State has been transposed effectively in the national legislation.

This Article of the Directive is transposed by Article 26 R586 which states that a family member of a Union citizen shall be entitled to reside permanently in the Republic of Latvia after five years of continuous legal residence in the Republic of Latvia. The Directive covers the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, but the transposing national Article is general and does not refer specifically to family members who retained the right of residence.

2.4.4 Documents certifying permanent residence for Union citizens (Article 19)

Article 19 provides for the permanent residence certificate for Union citizens. According to this Article Member State shall issue Union citizens entitled to permanent residence, after having verified duration of residence, with a document certifying permanent residence.

Although Latvian legislation transposes the requirement of verification of duration of residence, the transposition of the Directive is incorrect.

Article 19(1) of the Directive has been transposed in a stricter manner - Article 27.1 R586 asks for a specified form in conformity with regulatory enactments regarding residence permits. This form is a questionnaire containing different questions to person (for example, purpose of immigration, nationality, marital status, information of relatives (including brothers and sisters), knowledge of languages, employment, education a.o.).

Article 19 (2) – issuance of document certifying permanent residence as soon as possible

Latvian legislation provides 90 days instead of 'as soon as possible', which should be close to five days. This is a serious problem of conformity.

2.4.5 Permanent residence card for family members who are not nationals of a MS (Article 20)

Article 20 provides for the permanent residence certificate for family members who are not Union citizens. The Article provides that a permanent residence card should be issued within six months of the submission of the application and shall be renewable automatically every 10 years

This provision was not transposed completely into national legislation. The Latvian legislation does not include that the permanent residence card is automatically renewable every 10 years.

Article 20(1) of the Directive, providing that the residence card should be issued within six months of **the submission of the application** is transposed in a stricter manner. The transposing legislation for this part provides the issuance of the residence card after the submission of all the necessary documents. The submission of the application provided for in the Directive may or may not coincide with the submission of all documents as provided in national provision. Therefore the transposition is stricter and incorrect.

Moreover, the provision of the Directive stating that the residence card should be issued within 6 months upon submission of the application has not been transposed.

As mentioned above, the term “residence permit” is also used in the transposing legislation instead of “residence certification”, for which reason the transposition is not correct.

Article 20(3) of the Directive providing that interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card was not transposed correctly. The transposing legislation provides that a Union citizen and his/her family member lose **the right** to reside and the residence permit shall be annulled, if he/she has resided outside the Republic of Latvia continuously for more than two years. It means that if the interruption in residence does not exceed two consecutive years, then the right to reside shall not be lost. Still, the transposition is stricter and refers not only to the permanent residence card as the Directive does, but also to the right to reside as such.

2.4.6 Continuity of residence (Article 21)

Article 21 of the Directive provides that continuity of residence may be attested by any means of proof in use in the Member State. It is also provided that continuity of residence is broken by any expulsion decision duly enforced against the person concerned. This Article was not transposed in Latvian legislation. There are no provisions in the national legislation that provide for ways of proving the continuity of residence.

2.5 Common provisions (Articles 22-26)

2.5.1 Territorial scope (Article 22)

The national transposing legislation - Article 1 R586, provides that the transposing Regulations prescribe the procedures for the entry into and residence **in the Republic of Latvia** of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation and their family members, as well as the procedures by which the persons referred to are expelled from the Republic of Latvia. Article 22(1) of the Directive was transposed effectively as the transposing legislation prescribes the procedures for the entry into and residence in the Republic of Latvia.

Article 22 of the Directive stating that Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals, is not transposed in national legislation. There are no such provisions in national legislation. As no restrictions are imposed on Latvian nationals either, this does not create any problems of conformity.

2.5.2 Right to take up employment by family members (Article 23)

Latvian legislation (Article 4 R586) provides that a person does not need a work permit once working relations or a self-employed status are established, which does not comply with the Directive where it grants **the right** to work and be self-employed.

2.5.3 Equal treatment (Article 24)

The obligation for equal treatment according to the EC Treaty and ECJ praxis, have direct effect in Latvia. Some other transposing legislation tries to grant equal treatment to EU citizens and their family members for some of the particular situations covered by the Directive. For example, Article 12.5 of the Education Act states: "Fees payable for the provision of education to **citizens of European Union Member States** and their children who are being educated in Latvia shall be fixed and covered in accordance with the same procedures applicable to citizens of Latvia and permanent residents".

Article 17 of Medical Law provides that "the amount of medical assistance guaranteed by the State in accordance with the procedures prescribed by the Cabinet shall be provided also to **citizens of European Union Member States**, who reside in Latvia as workers or self-employed persons, and to **their family members**".

Article 3 of the Republic of Latvia Cabinet Regulation no. 220 „Procedures for the Allocation, Repayment and Cancellation of a Study Loan and Student Loan from the Resources of Credit Institutions with the Government Guarantee” provides that “Students – citizens of the Republic of Latvia and persons, who have an alien’s passport, as well as other **citizens of the European Union**, to whom a permanent residence permit or temporary residence permit have been issued – may apply for the receipt of a loan, if they successfully acquire state-accredited study programmes”.

The Law on Support for Unemployed Persons and Persons Seeking Employment determines the active employment measures and preventative measures for unemployment reduction, intended for unemployed persons, persons seeking employment and persons subject to the risk of unemployment. It also regulates the competence of the State and local governments in the implementation of these measures, as well as the status, rights and duties of unemployed persons and persons seeking employment. Article 2 of this law provides that not only citizens of the Republic of Latvia, but also a **citizen of the Member States of the European Union** or a state of the European Economic Zone, or the Swiss Confederation, **or a family member of the person referred to** who have a European Union citizen family member residence permit or European Union citizen family member permanent residence permit in Latvia, have the right to receive the support specified in this Law for unemployed persons, persons seeking employment and persons subject to the risk of unemployment.

These provisions do not always cover family members of EU citizens. In addition, as there is no specific transposition, Latvia cannot be considered as having correctly transposed the directive on this issue.

2.5.4 General provisions concerning residence documents (Article 25)

Article 25(1) provides that possession of a registration certificate as referred to in Article 8 of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, or of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof. Considering the importance of this article it would be necessary to have an explicit transposing text in the transposing legislation. However, Latvia has not transposed this Article.

As to Article 25(2) providing issuance of documents free of charge or for a charge not exceeding that imposed on nationals, Latvian transposing legislation (Article 10 R586) provides them to be issued free of charge. However, among these documents the “certificate attesting the submission of an application for a family member residence card” has not been mentioned, which makes the transposition of this Article incomplete.

2.5.5 Checks (Article 26)

Article 26 provides that Member States may carry out checks to ensure that beneficiaries of the Directive carry their residence cards in the same way as nationals carry their identity card. As there is no obligation on Latvian nationals to carry any form of identification with them, this provision has not been transposed in Latvia.

2.6 Restrictions on the right of entry and residence on grounds of public policy, public security and public health

2.6.1 General principles (Article 27)

Article 27(1) provides that Member States may restrict the freedom of movement and residence of Union citizens and their family members on grounds of public policy, public security or public health.

Latvian legislation provides that Union citizens and their family members should be expelled if a Union citizen or his or her family member, residing in the Republic of Latvia, poses a threat to State security or public order. According to the National Security Law the national security is a state, attained as a result of joint, purposeful measures implemented by the State and society, in which the independence of the State, its constitutional structure and territorial integrity, the prospect of free development of society, welfare and stability are guaranteed. This provision is very broad and wider than prescribed by the Directive. State security is not defined very precisely and it is hard to indicate which would be in praxis those reasons for expulsion. There is no any case-law interpreting this issue. As to the implementation, the Chief of the State Police or head of a State security institution is required to send a statement on the existence of the conditions concerning threats of public policy, public security or public health.

According to the Article 56 of the R586 “The Chief of the State Police or head of a State security institution shall send a statement regarding the existence of the condition specified in Article 56 of these Regulations to the Minister for the Interior to take a decision thereof.” It seems that it is a mistake that there is a reference to Article 56 in the text of Article 56; logically this would apply to Article 50 – meaning – if there is a threat for State security or public order, the Chief of the State Police or head of a State security institution shall send a statement (assessment) of the circumstances... as an opinion... and then the Minister for the Interior will take a decision...

Moreover, the national transposing legislation does not indicate that these grounds shall not be invoked to serve economic ends. Latvian legislation does not transpose requirements of proportionality and the requirement to base a decision exclusively on the personal conduct of the individual concerned. The Directive’s criteria stating that justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted, is not transposed.

Furthermore, the Latvian legislation has not transposed the obligation on the Latvian authorities to answer requests from other Member states within 2 months of the consultation.

These issues create serious problems of conformity of the transposing legislation with the Directive.

2.6.2 Protection against expulsion (Article 28)

Although the previous article was transposed ambiguously and incompletely, Article 28 is mostly correctly transposed in the national legislation.

However, there is a serious problem of conformity. Latvian legislation states that a Union citizen and his or her family member shall lose the right to reside in the Republic of Latvia and their permanent residence certificate if competent State authorities have provided information that a person poses a threat to State security, public order or public health thereof. It is therefore up to the responsible state authorities to decide whether these conditions are met. As there is no reference that this should be only on 'serious grounds', expulsion of permanent residence could possibly take place on the same grounds as for residents of less than 5 years. The reinforced protection against expulsion for permanent residence is not foreseen in the transposing legislation. This is a serious problem of conformity, violating one of the most important objectives of the Directive.

2.6.3 Public health (Article 29)

The Latvian law stops at referring to public health generally whereas the Directive refers to specific diseases. An Annex of the transposing regulations contains a list of diseases due to which Citizens of European Union Member States, European Economic Area States and the Swiss Confederation and Members of their Families shall be denied the right to receive a residence permit. In addition, these provisions on diseases are not the subject of protection provisions applying to nationals of the host Member State, thus creating unequal treatment of EU and Latvian citizens. Moreover, Article 29 (2) of the Directive provides that diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory. Though, the national transposing law (Article 47.5 R586) refers to illnesses occurring within 3 months from arrival.

2.7 Procedural safeguards against decisions restricting free movement (Article 15 (1), and Articles 30-31)

2.7.1 Article 15(1): procedural safeguards

The application of procedural safeguards to decisions restricting the right to move freely provided for in Article 15(1) of the Directive has not been directly adopted in transposing legislation. There are some relevant provisions in Administrative Procedure Law:

Administrative acts shall be issued **in writing**, except in some cases where it is provided by law that an administrative act can be issued orally. Administrative acts issued in writing shall include the following component parts:

- if the administrative case has been initiated on the basis of a complaint – the complainant's claim;
- opinions and arguments of the participants in the administrative proceedings, if such opinions have been expressed;
- determination of facts;
- basis for the administrative act, including in particular considerations of relevance;
- the legal liability imposed on the addressee (actions to be taken or prohibited actions) or the rights granted, approved or rejected in respect of the addressee;
- An indication as to where and within what time period the administrative act may be disputed or appealed.
- Authorities shall base administrative acts on the Constitution, legislative acts, Cabinet regulations or binding regulations of local governments, international legal provisions or legal provisions of the European Union (Community), and general principles of law. The substantiation shall include the section, paragraph, clause or sub-clause of the relevant external regulatory enactment.

Unless otherwise specified in an external regulatory enactment or the administrative act itself, an administrative act shall come into force at the time the addressee is notified.

Article 76 of the Act on Administrative Procedures states: Right to dispute administrative acts:

(2) An administrative act may be disputed at a higher institution in accordance with subordination procedures. Legislative acts or Cabinet regulations may assign a dispute relating to a given administrative act to another authority. If there is no such authority or this authority is the Cabinet, the administrative act may immediately be appealed in court.

Article 79 of the Act on Administrative Procedures states: Time periods for disputing administrative acts:

(1) An administrative act may be disputed within one month from the day it comes into force, but if a written administrative act does not specify where and within what time period it may be disputed this may be done within a one-year period from the day it comes into force.

(2) Private persons whose rights or legal interests are restricted by a given administrative act, and who were not invited to participate in the administrative proceedings as a third party, may dispute the administrative act within one month from the day when the individual becomes aware of the administrative act, but not later than within one year from the day the administrative act comes into force.

The principle of proportionality is provided in Article 13 of the Act on Administrative Procedures, which states: “The benefits which society derives from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society.

Although the Administrative Procedure Law provides such procedural conditions to all decisions of public institutions, Articles 15, 30 and 31 of the Directive were not transposed completely in the national legislation.

2.7.2 Notifications of the decisions (Article 30)

Although it is transposed in the national legislation that the persons shall be notified in writing of any decision taken under Article 27(1) (Article 30.1 of the Directive), there is no indication in national legislation about the “comprehensiveness” of the decision and what it implies for them, which makes the transposition incorrect.

The transposition of Article 30(2) of the Directive is not as precise as the Directive. Nevertheless, the transposition is correct if applied in combination with general administrative law that requires that all grounds (facts and law) are included in the final decision.

Article 30(3) of the Directive concerning the notification of decision where the notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State, has been transposed. Though part of the Article 30(3) of the Directive stating that the time allowed for leaving the territory shall be not less than one month from the date of notification, is transposed in the transposing legislation (Article 50 R586) as within one month generally. Less than a month in the transposing legislation is provided only in case of emergency.

Latvian legislation also provides for a list of persons expelled from Latvia. Article 61 R586 prescribes that “if a decision has been taken regarding the prohibition of entry to a Union citizen or to his or her family member, information regarding the person shall be included in the list of aliens for whom entry into the Republic of Latvia is prohibited”. This list is part of the Schengen Information System.

It has been stated that in case of issuing an administrative act (decision) of expulsion, it is necessary to assess the proportionality between the individual right for family life and public interests in the field of

immigration³. This was stated similarly in the Supreme Court of the Republic of Latvia. The court admitted that if the option for limitation of the fundamental human rights occurs, it is obligatory for the authority concerned to assess proportionality of the restrictions applied to person.⁴

2.7.3 Procedural safeguards under Article 31

Article 31(1) of the Directive providing that the persons shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health, has been effectively transposed in the national legislation by Article 57 R586 which grants the right to appeal against an expulsion order.

The two conditions of Article 31(2) - “where the expulsion decision is based on a previous judicial decision; or - where the persons concerned have had previous access to judicial review” has not been transposed into national legislation. Therefore the transposition is more favourable.

Article 31(3) of the Directive was transposed by the principles provided in Articles 5, 8, 11, 13, 65 and 66 of the Act on Administrative Procedures, which ensures the main aim of the Article 31(3) of the Directive (the principle of observing the rights of persons, principle of reasonable application of legal provisions, principle of a legal basis, principle of proportionality, the principle that the restriction of human rights is never proportionate where this essentially deprives the addressee of the rights in question).

According to the Article 5 of the AAP in administrative proceedings, especially in adopting decisions on the merits, institutions and courts shall, within the scope of the applicable norms of law, facilitate the protection of the rights and legal interests of private persons.

Article 8 of the AAP provides that institutions and courts, in applying the norms of law, shall use the basic methods of the interpretation of the norms of law (grammatical, systemic, historical and teleological methods) in order to achieve the most equitable and useful result.

Article 11 of the AAP defines the principle of lawful basis –according to this an institution may issue an administrative act or perform an actual action unfavourable to a private person on the basis of the Constitution (Satversme), laws or the provisions of international law. Cabinet regulations or binding regulations of local governments may be a basis for such administrative acts or action only if the Constitution (Satversme), law or the provisions of international law either directly or indirectly contain an authorisation for the Cabinet, in issuing regulations, or for local governments, in issuing binding regulations, to provide for such administrative acts or actual actions therein. If the Constitution (Satversme), law, or provisions of international law have authorised the Cabinet, then the Cabinet may, in its turn, authorise local governments via regulations.

Article 13 of the AAP provides that the benefits which society derives from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society.

Finally, Articles 65 and 66 of the AAP provides accordingly “Considerations in Taking a Decision to Issue an Administrative Act and Determining the Content Thereof” and “Substance of Considerations of Usefulness”. According to these Articles, if it is prescribed by the norm of law as is to be applied that an administrative act of specified content is to be issued (a mandatory administrative act), an institution shall issue such administrative act. If the norm of law to be applied allows an institution to decide whether to issue or not to issue an administrative act, but in the event it is issued, the institution prescribes the specific content thereof (issue choice administrative act), and it shall consider the usefulness of issue. If the institution comes to the conclusion that the administrative act is to be issued,

³ ECHR Case: *Tuquabo-Tekele and others v. The Netherlands*; 01-12-2005 and ECHR Case: *Rodrigues da Silva and Hoogkamer v. the Netherlands* (no. 50435/99); 31-01-2006

⁴ The Supreme Court of the Republic of Latvia, Case No. SKA-89/2007, 8 March 2008

it shall issue an administrative act of such content as is provided for by the norm of law to be applied. If the institution concludes that the issue of an administrative act is not useful, it shall terminate the matter.

If the norm of law to be applied prescribes that an administrative act is to be issued, but does not prescribe the specific content thereof (content choice administrative act), an institution shall issue such an act, observing the limits laid down by the norm of law, and, within this framework, on the basis of considerations of usefulness, shall determine the content of the administrative act in question.

If the norm of law to be applied allows an institution to decide whether to issue or not to issue an administrative act and, in the event of issue, does not determine its specific content (free administrative act), the institution shall first consider the usefulness of issue. If the institution concludes that the administrative act is to be issued, it shall issue such act, observing the limits laid down by norms of law and, within this framework, on the basis of considerations of usefulness, determine the content of the administrative act. If the institution concludes that the issue of the administrative act is not useful, it shall terminate the matter.

In considering the usefulness of the issue of, or of the content of an administrative act (Article 65 AAP), an institution shall take a decision regarding:

- 1) The necessity of the administrative act for the attaining of a legal (legitimate) goal;
 - 2) The suitability of the administrative act for the attaining of the relevant goal;
 - 3) the need for the administrative act, that is, whether it is possible to attain such a goal by means which are less restrictive of the rights and legal interests of participants in the administrative proceeding; and
 - 4) The conformity of the administrative act, comparing the infringement of the rights of a private person and the benefits for the public interest, as well as taking into account that substantial restriction of the rights of a private person may only be justified by a significant benefit to the public.
- (2) The restriction of human rights, if this in substance deprives the addressee of the relevant rights, is not proportionate in any case.

Article 31(4) of the Directive stating that Member State may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/ her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory, was not transposed. Under general procedural law there is no similar obligation, but as a right for a person to defend himself.

2.7.4 Exclusion orders (Article 32)

Part of Article 32 of the Directive providing that the persons excluded on grounds of public policy or public security shall have no right of entry to the territory of the Member State concerned while their application is being considered and the condition that the Member State concerned shall reach a decision on this application within six months of its submission is not transposed in the national legislation.

The part of Article 32 (1) of the Directive providing the possibility of lodging an application after a reasonable period has not been transposed.

2.7.5 Expulsion as a penalty or legal consequence (Article 33)

Article 33(1) of the Directive provides that expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29. This Article of the Directive has not been transposed. Latvian Criminal Law provides expulsion from the Republic of Latvia as a sanction. Article 24 of Latvian Criminal Law provides Expulsion from the Republic of Latvia as a sanction stating: “(1) A citizen of another state, or

a person who has a permanent residence permit of another state, may be deported from the Republic of Latvia if a court finds, that considering the circumstances of the matter and the personality of the offender, it is not permissible for him or her to remain in the Republic of Latvia ; (2) This punishment shall be adjudged as an additional sentence, not indicating its term and executing it only after the basic sentence has been served.”

There are no specific crimes defined by law for which an Expulsion sanction should be enforced. It is under the court’s decision for which crimes the Expulsion sanction should be relevant to use. The Court can consider this as additional sanction if the Court finds it relevant, but not as a basic punishment.

This may cause serious conformity problems as it is not defined into national legislation that the expulsion orders have to conform only to the requirements of Articles 27, 28 and 29 of the Directive (as prescribed in Article 33(1) of the Directive).

2.8 Final provisions (Chapter VII)

2.8.1 Publicity (Article 34)

This Article has not been transposed in Latvian legislation. On the government’s website there is only very general and irrelevant information. For example, concerning registration cards for EU citizens, there is only link to the transposing legislation provided. We are not aware of any publicity and campaigns.

2.8.2 Abuse of rights (Article 35)

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31. A decision on the abuse of rights is an administrative decision subject to the procedural guarantees applicable to all administrative decisions. Article 13 of the Act on Administrative Procedures establishes the principle of proportionality. It states that “the benefits derived by society from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society.” The measures against abuse of rights are subject to the procedural safeguards as provided in Articles. 30 and 31 since these are administrative decisions. However, administrative decisions are subject to the general safeguards and not the specific ones provided in Art 30 and 31. However, the transposition is incomplete since Articles 30 and 31 of the Directive were not transposed completely in the national legislation.

2.8.3 Sanctions (Article 36)

According to Latvian Code on Administrative Infringements, in case of breaches of the rules of R586 the following penalties apply:

- for failing to register - fine of between EUR 50 and EUR 70;
- for a failure to notify the Office of Citizenship and Migration Affairs of any changes in the information submitted in an application for a residence permit - fine of between EUR 140 and EUR 285;
- For residence in Latvia without a valid visa or residence permit - fine of between EUR 70 and EUR 357;
- For the intentional provision of the possibility for a person to reside illegally in Latvia - fine of between EUR 42 and EUR 214.

These penalties seem to be proportionate and non discriminatory, and therefore in conformity with the Directive.

2.8.4 More favourable provisions (Article 37)

This Article has not been transposed in Latvian legislation.

2.8.5 Transposition (Article 40)

Republic of Latvia Cabinet Regulation No. 586 “Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members” transposing the Directive entered into force 21 July 2006. The amendments to Immigration Law transposing the Directive entered into force on 23 January 2008.

Republic of Latvia Cabinet Regulation No. 108 “State fees for processing the necessary visa, residence permit or permanent European Community residence status application documents and related services”, transposing the Directive entered into force on 17 February 2007.

ANNEX I: Table of concordance for Directive 2004/38/EC

ANNEX II: List of relevant national legislation and administrative acts

The main transposing legislation:

- Ministru kabineta noteikumi “Kārtība, kādā Latvijas Republikā ieceļo un uzturas Eiropas Savienības dalībvalstu, Eiropas Ekonomikas zonas valstu un Šveices Konfederācijas pilsoņi un viņu ģimenes locekļi” (Republic of Latvia Cabinet Regulation No. 586 “Procedures for the Entry into and Residence in the Republic of Latvia of Citizens of European Union Member States, European Economic Area States and the Swiss Confederation, and their Family Members”), adopted 18 July 2006, enactment – 21 July 2006, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=140189>)
- Ministru kabineta noteikumi Nr. 222 “Noteikumi par valsts nodevu par vīzas, uzturēšanās atļaujas vai Eiropas Kopienas pastāvīgā iedzīvotāja statusa Latvijas Republikā pieprasīšanai nepieciešamo dokumentu izskatīšanu un ar to saistītajiem pakalpojumiem” (Republic of Latvia Cabinet Regulation No. 222 “State fees for processing the necessary visa, residence permit or permanent European Community residence status application documents and related services”), adopted 1 April 2008, enacted – 4 April 2008 – R222 (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=153122>).
- Imigrācijas likums (Immigration Law), adopted 31 October 2002, enactment – 1 May 2003, Latvijas Vēstnesis (the official Gazette of the Government of Latvia), (Amended 20 December 2007, enacted 23 January 2008) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=68522>)
- Bezdarbnieku un darba meklētāju likums (Support for Unemployed Persons and Persons Seeking Employment Law), amended 21 June 2007 (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=62539>)
- Ministru kabineta noteikumi Nr. 220 “Kārtība, kādā tiek piešķirts, atmaksāts un dzēsts studiju kredīts un studējošā kredīts no kredītiestādes līdzekļiem ar valsts vārdā sniegtu galvojumu” (Republic of Latvia Cabinet Regulation No. 220 “Procedures for the Allocation, Repayment and Cancellation of a Study Loan and Student Loan from the Resources of Credit Institutions with the Government Guarantee”, adopted 11 July 2001; amended 27 September 2005, enactment – 5 October 2005, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=25577>)
- Ārstniecības likums (Medical Treatment Law), adopted 12 June 1997, enactment – 1 October 1997, amended 08 June 2006, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=44108>) .

Other relevant legislation:

- Ministru kabineta noteikumi “Kārtība, kādā personas šķērso Latvijas Republikas valsts robežu” (Republic of Latvia Cabinet Regulation No. 310 “Procedures by which Persons Cross the State Border of the Republic of Latvia”), adopted 10 July 2001, enactment – 14 July 2001, Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=26169>).
- Personu apliecinājošu dokumentu likums (Personal Identification Documents Law), adopted 23 May 2002, enactment – 1 July 2002, Latvijas Vēstnesis (the official Gazette of the Government of Latvia), (Amended 02 June 2005, 09 February 2006, 19 October 2006., 1 November 2007) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=26169>)
- Ministru kabineta noteikumi “Pasu noteikumi” (Republic of Latvia Cabinet Regulation No. 755 “Passport Regulations”), adopted 13 November 2007, enactment – 20 November 2007,

Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication: <http://www.vestnesis.lv/index.php?menu=doc&id=166435>).

- Ministru kabineta noteikumi “Noteikumi par valsts nodevu par vīzas, uzturēšanās atļaujas vai Eiropas Kopienas pastāvīgā iedzīvotāja statusa Latvijas Republikā pieprasīšanai nepieciešamo dokumentu izskatīšanu un ar to saistītajiem pakalpojumiem” (Republic of Latvia Cabinet Regulation No. 108 “State fees for processing the necessary visa, residence permit or permanent European Community residence status application documents and related services”), adopted 13 February 2007, enactment – 17 February 2007 Latvijas Vēstnesis (the official Gazette of the Government of Latvia) (online publication <http://www.vestnesis.lv/index.php?menu=doc&id=153122>).

ANNEX III: Selected national case law

- The Supreme Court of the Republic of Latvia, Case No. SKA-89/2007, 8 March 2008 (<http://www.at.gov.lv/lv/info/archive/department3/2007/>)
In this decision The Supreme Court of the Republic of Latvia admitted that if the option for limitation of the fundamental human rights occurs, it is obligatory for the authority concerned to assess proportionality of the restrictions applied to person.