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Opening
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to unskilled
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workers:
A practical handbook

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Opening Europe's doors to unskilled and low-skilled workers: A practical handbook

Stefano Bertozzi (editor)



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ABBREVIATIONS

ACT	Autoridade para as Condições do Trabalho (Authority for Working Conditions) (Portugal)
Besch V	Verordnung über die Zulassung von neueinreisenden Ausländern zur Ausübung einer Beschäftigung (Ordinance on the admission of foreigners for the purpose of taking up employment) (Germany)
BEPA	Bureau of European Policy Advisors
BGN	Bulgarian Lev
CEF	Serviço de Estrangeiros e Fronteiras (The Aliens and Borders Service) (Portugal)
Coll.	Collection of Laws
CYP	Cypriot Pound
CZK	Czech Koruna
EC	European Community
ECC	Estonian Chamber of Commerce
EEA	European Economic Area
EEK	Estonian Kroon
ETC	Employment and Training Corporation (Malta)
EU	European Union
EUIF	Estonian Unemployment Insurance Fund
EUR	Euro
EURES	European Job Mobility Portal
FAS	Foras Áiseanna Saothair / Training and Employment Authority (Ireland)
FLG	Federal Law Gazette (Austria)
FYROM	Former Yugoslav Republic of Macedonia
GG	Government Gazette (Greece)
GNIB	Garda National Immigration Bureau
HGV	Heavy Goods Vehicle
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
LTL	Lithuanian Litas
LTO	Organization for Agricultural Business (Netherlands)
LVL	Latvian Lat
OIN	Office for Immigration and Nationality (Hungary)
PBS	Points-based system (UK)
PLN	Polish Zloty
RON	Romania New Lei
RTL	Riigi Teataja Lisa (addendum to State Gazette) (Estonia)
SAWS	Season Agricultural Workers Scheme (UK)
SBS	Sectors Based Scheme (UK)
SEF	Aliens and Borders Service (Portugal)
TIN	Trabajo e inmigracion (work and immigration) (Spain)
ULSWs	Unskilled and low-skilled workers

EXECUTIVE SUMMARY

This study was commissioned from IOM by the Bureau of European Policy Advisors (BEPA) in order to provide an inventory of the admission and residence procedures for unskilled and low-skilled third-country workers (ULSWs) entering the labour markets of the 27 EU Member States.

Each Member State has a vast array of admission and residence procedures, and thus it is important for the Commission to have a clear understanding of the situation before proceeding any further with its legislative proposals. In the post-war years, some EU countries brought in large numbers of low-skilled workers (such as the *Gastarbeiter* in Germany). The number of low-skilled workers, however, was gradually reduced and, in some countries, the arrival of unskilled migrants stopped with the oil crisis of the early 1970s. In today's Europe, there are programmes to bring in low-skilled workers, which are essentially employer-driven. The entry of a low-skilled migrant into a given EU country is usually contingent upon a job offer, which is generally for a temporary assignment (less than a year). Although temporary migration is large and growing, an increasing number of EU employers have difficulty in finding suitable candidates among temporary migrants for permanent "hard to fill" jobs. Even if some EU governments allow employers to rehire low-skilled migrants on renewable permits and to have more streamlined recruitment procedures, the costs of recruitment for employers continue to be high. This partly explains the growing number of irregular third-country nationals needed to cover the unmet demand for low-skilled workers in several EU countries. Many suitable candidates within the EU no longer apply for certain categories of work in spite of the economic crisis. In Italy, for example, there are as many as 30 000 low-skilled jobs unfilled. It is also important to stress two other aspects linked to low-skilled temporary migration. First, temporary low-skilled migrants are more prone to exploitation and rarely enjoy the protection of even minimal labour standards. Second, low-skilled migrants are more reluctant to return to their countries of origin where they have fewer job opportunities. Since the demand for low-skilled third-country nationals is likely to continue despite the severe economic crisis, the European Commission considered it useful to have an inventory of the entry and residence conditions for low-skilled third-country nationals in all twenty-seven EU Member States and to understand how this category of migrants is identified and recruited in order to fashion specific programmes that take full account of the needs of employers, reduce recruitment costs, ensure observance of EU labour laws and standards and are based on a careful assessment of national labour market needs. Programmes of this kind should be devised and, once approved, used across the European Union.

It is generally accepted that migration can be one of the potential remedies to Europe's aging population and shrinking labour force. The failure to acknowledge that labour needs exist at all skill levels and the failure of migration regimes to address the issue of recruitment of needed low-skilled third-country nationals could cause an increase in irregular migration and illegal employment.¹ In this situation, efficient economic migration policies that match the needs for and skills of migrants are needed at both the EU and national levels.

At the EU level, the Policy Plan on Legal Migration² characterizes the current attitude of the EU to economic migration as a “need” scenario. It recognizes that labour and skills shortages experienced by the EU Member States concern “the full range of qualifications – from unskilled workers to top academic professionals.” The Stockholm Programme urges the Union to “encourage the creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State and enable migrants to take full advantage of their skills and competence.”³ However, while the immigration of skilled workers is addressed in the EU *acquis*,⁴ there is no harmonized EU policy regarding unskilled and low-skilled migrants.

In the “EU 2020” Strategy,⁵ which will substitute the Lisbon strategy for growth and jobs, the Commission reiterates that “despite its substantial contribution to growth, the potential of migration is not fully factored into policy making at the EU or national level. Employment rates of immigrants can be improved, particularly for specific categories such as immigrants with low levels of education, women and those recently arrived.”

International law does not contain any provisions specifically addressed to migrant workers employed at unskilled or low-skilled jobs. At the same time such international instruments as, among others, *ILO Convention No. 97 concerning Migration for Employment* (Revised, 1949) and *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* of 1990 apply to all migrant workers, independently of the level of their skills. Under these instruments migrant workers should be afforded treatment no less favourable than the nationals of the receiving state.

Many of the country reports collected in the course of this research reveal that there is a need for third-country ULSWs. Despite this, none of the 27 EU Member States has specific institutional or legislative systems in place addressing

¹ International Migration Outlook, SOPEMI 2009, *Special Focus: Managing Labour Migration Beyond the Crisis*, OECD, p. 12

² COM(2005) 669 final.

³ Council of the European Union, The Stockholm Programme - an open and secure Europe serving and protecting the citizens, 17024/09, 2 December 2009, Brussels (The Stockholm Programme 2009).

⁴ See for example, the recently adopted *Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment*.

⁵ SEC(2010) 246 final, 4.3.2010.

their access to the national labour market. Instead, general immigration provisions are usually applied to third-country ULSWs. In a number of countries, admission procedures involve both potential third-country workers and employers. For employers, the administrative procedures for employing third-country ULSWs are usually long, bureaucratic, and, in some cases, also expensive; this can all be discouraging. The study shows that only one country has simplified rules for employing third-country workers. In most EU Member States, employment of third-country workers is subject to a labour market test,⁶ quota system, or both.

Although not directly aimed at third-country ULSWs, some national provisions serve as good examples for ULSW-specific policies that both contribute to the protection of third-country ULSWs and avoid burdening the social security systems of receiving states. These provisions include: (1) requiring that third-country workers have health insurance, covered by either the worker or the employer; (2) prohibiting the employment of third-country ULSWs if their pay is worse than that offered to nationals; (3) issuing work/residence permits for employment only after employment contracts are signed between the third-country workers and their EU employers; and (4) requiring guarantees that temporary third-country workers will leave the country after their contracts are finished.

This research concluded that, despite the existing need for an unskilled and low-skilled immigrant labour force, the immigration of unskilled and low-skilled workers is not addressed specifically at either EU level or at national levels in the 27 EU Member States. The research clearly indicates that actions need to be taken at national and EU levels in order to create effective and flexible mechanisms that would allow Member States to meet the existing need for third-country ULSWs.

⁶ Throughout this report, “labour market test” refers to a test designed to assess whether there are persons in the domestic labour market available for the work in question. The labour market test is based on the Community Preference Principle. According to a non-binding Council Resolution of 20 June 1994 (OJ 1996 C 274/3, 20 June 1994) the Community Preference Principle requires that “Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State’s regular labour market.” Thus, based on the Community Preference Principle, the “domestic labour market” comprises nationals of that EU country, other EU nationals and third-country nationals lawfully residing in that EU country. For more details on labour market tests in the EU Member States see: IOM, *Laws for Legal Immigration in the 27 EU Member States*, International Migration Law, No.16, 2009.

INTRODUCTION

Scope of the Study

With the adoption of Europe's Policy Plan on legal migration and the directive on highly skilled migrants, the Commission considers necessary to focus on how EU Member States admit low-skilled and unskilled migrants into their countries. For example, some EU countries, especially in the South of Europe, tend to need more unskilled and low-skilled migrants than highly skilled ones. Low-skilled migration is therefore a major phenomenon, which is not only carefully monitored by several EU governments but also measured in terms of GDP and public finances contributions. Low-skilled migrants already form an important part of the workforce in many EU countries (in 2006, just under 2.5 million temporary migrants arrived in OECD countries). This is mainly due to the fact that, as the education levels of native-born people rise in several EU countries, migrants from third countries play an ever increasing role in low-skilled occupations, including care for the elderly, construction, food processing, catering and household work. The most common problems associated with low-skilled migration, however, are difficulties in social integration and uncertain long-term job prospects. Over the years, EU Member States have looked for ways of addressing shortages in lesser skilled jobs through migration while trying to avoid problems of this kind.

In December 2009, the Bureau of European Policy Advisors therefore commissioned this study, *Inventory on the admission and residence procedures for unskilled and low-skilled third-country nationals to enter the labour markets of the 27 European Union Member States*, to the International Organization for Migration.

By providing a better picture of the EU Member States' national policies on unskilled and low-skilled third-country workers this study aims to contribute to the development of approach to comprehensive migration policy in the EU.

The scope of the present study covers third-country nationals who come to the EU as unskilled or low-skilled workers. There are no universally accepted definitions of "low-skilled" and "unskilled" workers. The IOM World Migration Report 2008 states: "In broad terms, a semi-skilled worker is considered to be a person who requires a degree of training or familiarization with the job before being able to operate at maximum/optimal efficiency, although this training is not of the length or intensity required for designation as a skilled (or craft) worker, being measured in weeks or days rather than years, nor is it normally at the tertiary level. Many so-called "manual workers" (e.g. production, construction workers) should therefore be classified as semi-skilled. A less or low-skilled

worker, on the other hand, is considered to be a person who has received less training than a semi-skilled worker or, having not received any training, has still acquired his or her competence in the job.”⁷ Sectors known to employ low-skilled and unskilled workers include caring for the elderly, the construction industry, food processing, hospitality and catering, and domestic work.⁸

Only legal migration for employment purposes is included in the present research. The employment of irregular migrants, family members, and other categories of migrants falls outside the remit of this study.

The territorial scope of this study covers the 27 EU Member States.

Methodology and Structure

The present study endeavours to provide an easy-to-use document containing practical information in a concise format. In other words, the research is structured in such a way as to make the information readily accessible to readers. For example, it tells us what documents third-country nationals need to start the admission procedures, what steps EU employers have to take and what fees they have to pay to hire unskilled and low-skilled migrants, which national offices are responsible for handling the admission of migrants and what the various validity periods of national residence and work permits are.

27 country studies were carried out by national experts – external consultants or IOM field offices – on the basis of a Questionnaire. The Questionnaire (Annex 1) was developed by the IOM and included 10 detailed questions. The country reports thus include each 10 sections.

Section 1 provides brief information on admission of third-country workers in general and ULSWs in particular, an overall evaluation of whether a need exists for third-country ULSWs, the general political attitude to their admission and statistics, where data is available. Section 2 indicates whether any specific provisions exist regarding ULSWs and specifies which legal provisions regulate their access to the national labour market. Section 3 lists institutions relevant to admission and residence procedures for third-country ULSWs. Section 4 provides information on whether any specific regulations, such as labour market tests, quotas or points-based systems, apply to third-country ULSWs. Section 5 explains which documents are required for third-country nationals to be employed and which steps EU employers must take to hire third-country ULSWs. Section 6 provides more details on requirements third-country ULSWs need to satisfy in order to receive visa/residence/work permits

⁷ See IOM, *World Migration 2008: Managing Labour Mobility in the Evolving Global Economy*, IOM, Geneva, p. 495.

⁸ See European Foundation for the Improvement of Living and Working Conditions, *Who needs up-skilling? Low-skilled and low-qualified workers in the European Union*, Dublin, 2008, p. 8.

from each Member State.⁹ Section 7 provides details on the validity periods and renewal of the first residence/work permits and on whether these permits tie third-country ULSWs to one employer and/or job. Section 8 outlines special procedures (if any) for certain unskilled and low-skilled occupations. Section 9 enumerates the fees the EU employers are required to pay to employ third-country ULSWs.¹⁰ Section 10 indicates whether there is a difference in the scope of rights of third-country ULSWs and third-country workers of other categories, such as highly-skilled workers.¹¹

Due to the difficulty of finding ULSW-specific information, some country studies provide less detailed information than the others.

The present study considers national legislation current as of January 2010.

⁹ According to EU legislation, a short-term visa is “an authorization issued by a Member State or a decision taken by such State which is required with a view to: entry for an intended stay in that Member State or in several Member States of no more than three months in total; entry for transit through the territory of that Member State or several Member States, except for transit at an airport” (Council Regulation 2001/539/EC of 15 March 2001, Art. 2). A long-term visa is granted for a period longer than three months. Residence permit is not defined in the EU acquis. IOM *Glossary on Migration* provides the following definition of residence permit: “A document issued by a state to an alien, confirming that the alien has the right to live in the State” (IOM, 2004). In country reports country-specific terminology is used for entry/residence/work authorization which does not always correspond to conventionally used terminology of ‘visa’ or ‘residence’ and ‘work’ permits. For example, Cyprus uses the term “entry permit” to describe a document which authorizes entry to the country, similar to a visa; in Spain, the term “residence and employment authorization” is, in essence, a residence and work permit; in France a “stay permit” is what is commonly referred to as “a short-term residence permit.”

¹⁰ The Euro is not the currency of all EU Member States. Where applicable, fees and other amounts expressed in local currencies have been converted into Euros on the basis of exchange rates current as of February 2010.

¹¹ Section 10 does not provide details on the rights of third-country ULSWs in each Member State. For details on particular rights of third-country workers, see International Organization for Migration, *Comparative Study of the Laws in the 27 EU Member States for Legal Immigration*, International Migration Law No 16, European Parliament and IOM (IOM 2009).

COUNTRY REPORTS

AUSTRIA

1. General Assessment of Immigration of Third-Country ULSWs

Access to the Austrian labour market for unskilled and low-skilled third-country workers is only open to special categories of workers within the quota specified in annual regulations (“settlement regulation”). For 2010, the settlement regulation provides for a maximum number of 7,500 persons for seasonal work.¹² ULSWs are employed only temporarily for periods not exceeding six months.¹³

There is demand for domestic workers who care for elderly and sick persons and for construction workers. This demand is primarily met by workers from the new EU Member States. For the nationals of these states, transitional provisions still apply; therefore, they do not yet have free access to Austrian labour market and can be employed only when there is a need.

Third-country ULSWs are not treated as a separate category for statistical purposes in Austria. Therefore, detailed statistical information is not available.

2. Legal Framework

The Settlement and Residence Act of 2005 provides the legal basis for the quota system. Provisions of the Settlement and Residence Act do not apply to third-country nationals staying in Austria for less than six months; thus they do not apply to third-country ULSWs. The Act on the Employment of Aliens of 1975 regulates access of third-country nationals, including ULSWs, to the labour market.¹⁴ The Alien Police Act of 2006 stipulates the conditions for ac-

¹² FLG II No. 438/2009.

¹³ Art. 2 (1) 8 of the Settlement and Residence Act of 2005 defines temporary employment as “an employment under which an authorization or other confirmation according to the Aliens Employment Act ..., has been issued and which validity does not exceed six months; or a gainful occupation which has been pursued for not more than six months within a period of twelve months, on grounds of an exemption pursuant to the Art. 1, Sections 2-4 of the Aliens Employment Act.” Settlement and Residence Act of 2005 An unofficial English translation is available at http://ec.europa.eu/ews/UDRW/images/items/docl_990_33236126.pdf (last visited February 2010).

¹⁴ The text (in German) is available at [http://www.jusline.at/Auslaenderbeschaeftigungsgesetz_\(AuslBG\).html](http://www.jusline.at/Auslaenderbeschaeftigungsgesetz_(AuslBG).html) (last visited February 2010).

cess to Austrian territory, including the issuance of visas to third-country nationals.¹⁵

3. Competent national authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Federal Government, the Ministry of Interior, and the Ministry of Labor are involved in general labour migration policy-making.
- The Labour Market Service (regional and federal offices) is in charge of work related permits.
- The provincial governor is in charge of issuing residence related permits for more than six months. However, s/he usually delegates this authority to District Administrative Authorities or to Urban Administrations in towns.
- Aliens' Police Authorities are responsible for authorization of the entry and residence of third-country nationals.
- Austrian diplomatic and consular offices issue visas upon decision of Aliens' Police Authorities.

4. Regulations Regarding Access to the National Labour Market

A quota system applies to third-country workers. The Federal Government, upon the proposal of the Federal Minister of the Interior and in agreement with the Executive Committee of the National Council, issues settlement regulations on an annual basis. Quotas are set for each Federal State. The regulations indicate the maximum number of work permits valid for the year, as well as the maximum number of work permits for temporarily-employed third-country nationals. Only seasonal workers in agriculture and tourism (hotel and restaurant industry) may be employed.

The employment of third-country nationals is also subject to a labour market test.

Third-country ULSWs may be employed in Austria for no more than six out of 12 months.

5. Necessary Procedures to be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Austria, the following is needed:

- A visa ("travel and residence visa") issued by the embassy/consular office abroad upon the third-country national's application; and

¹⁵ An unofficial English translation is available at <http://www.unhcr.org/refworld/type,LEGISLATION,,AUT,46adc4932,0.html> (last visited February 2010).

- A work authorization issued by the Offices of the Labour Market Service upon the prospective employer's application.

The employer has to receive a work authorization in order to employ a third-country ULSW. In order to receive the work authorization, the employer needs to provide the following to the Labour Market Service: (1) an application; (2) the third-country national's passport; (3) certificates of qualifications and/or certificates about vocational practice of the third-country national; (4) if the third-country national enjoys a visa-free entry, a certificate issued by authorities of the country of origin that s/he has no criminal record; and (5) information on the third-country national's previous employment in Austria. Issuance of a work authorization is contingent upon the Labour Market Service's confirmation that no Austrian national registered as a job seeker and no national of a Member State of the EU (where still transitional rules apply) is available for the position. There is no requirement that the employer announce the vacancy for a certain period.

Health insurance is obligatory. Everybody employed in Austria has to be covered by the health insurance system. Health insurance fees are paid by employers and then deducted from employees' salary. Employers have to comply with the labour and social security law requirements.

6. Conditions Third-Country ULSWs Have to Fulfil to Be Admitted for Work

In order to obtain a visa, a third-country national must submit the following: (1) an application; (2) a valid travel document; (3) a special health certificate; and (4) a certificate (attestation) which confirms that permit for the employment of this persons will be granted to the employer. In addition, the issuance of a visa should not be in conflict with the public interests of Austria.

7. First Residence and Work Permit

In case of ULSWs, visas serve as both entry and residence permits.¹⁶ Work authorization, which is issued upon the application of the employer, is required separately.

Visas for third-country ULSWs are granted for a maximum period of six months within 12 months with no possibility for extension. New permissions for entry and work need to be obtained for new employment.

Work authorizations are issued to employers for a maximum of six months. The maximum duration may be extended to 12 months if allowed in the settlement regulation. In the case of harvest labourers, work authorizations are issued for a maximum of six weeks.

¹⁶ For residence lasting more than six months, a residence permit is required. In this case, general procedures in the Settlement and Residence Act apply, and a separate work permit is required in addition to the residence permit. Third-country ULSWs are not entitled to residence permits according the Settlement and Residence Act.

Work authorizations are issued for a specific employees and specific jobs; visas are issued for specific employers and jobs as well.

8. Specific Schemes for Third-Country ULSWs

Currently, only seasonal workers in agriculture and tourism (hotel and restaurant industry) may be employed. All procedures described in this report apply to them. There are no other specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

Employers are required to pay EUR 23.20 for work authorizations (EUR 13.20 for applications, EUR 6.50 for issuance, and EUR 2.10 for each additional copy of the certificate).¹⁷

10. Rights of Third-Country ULSWs

The rights and social benefits of third-country workers do not depend on their skill level or employment status but rather on the duration of their residence.

¹⁷ The third-country workers must pay a fee of EUR 75 for their visas.

BELGIUM

1. General Assessment of Immigration of Third-Country ULSWs

In Belgium, the migration halt, which was officially proclaimed in 1973, continues. While numerous exceptions are made for highly-skilled or highly-qualified third-country nationals, official labour migration of unskilled or low-skilled third-country nationals to Belgium is almost non-existent. On an annual basis some thousands of new labour permits are granted to third-country nationals, about 25% of which are granted to women.¹⁸

2. Legal Framework

There are no specific provisions regarding third-country ULSWs. Employment and residence of third-country nationals in general are addressed in separate regulations. The Law on the Access of Aliens to the Territory, Their Residence, Establishment and Removal of 1980 regulates the entry, residence, settlement and removal of third-country nationals.¹⁹ The Law on the Employment of Foreign Workers of 1999 contains the main regulations regarding the employment of third-country workers.²⁰ Belgium has specific bilateral agreements regulating access to its labour market by third-country nationals.²¹

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs in Belgium:

- The Immigration Department is responsible for overall policy regarding the entry, stay, settlement and removal of foreigners.
- The regional Labour Migration Administrations process labour migration applications and issue work permits.²²
- Municipalities issue residence permits.
- The consulates issue visas.

¹⁸ *L'Immigration en Belgique: Effectifs, Mouvements et Marché du Travail (Immigration in Belgium: Numbers, Movement and Labour Market)*, Federal Public Service of Employment, Labour and Social Dialogue, 2008.

¹⁹ The French text is available at http://www.dofi.fgov.be/fr/reglementering/belgische/wet/Loi_derniere_version.pdf; the Flemish text is available at http://www.dofi.fgov.be/nl/reglementering/belgische/wet/Wet_laatste_versie.pdf (both links last visited February 2010).

²⁰ The French text is available at <http://www.emploi.belgique.be/WorkArea/showcontent.aspx?id=7168> (last visited February 2010).

²¹ Such agreements have been concluded with the following countries: Algeria, Morocco, Tunisia, Turkey, Croatia, Bosnia and Herzegovina.

²² Four administrations are currently authorised to issue work permits, each in their own territory: the Flemish, Brussels-Capital and Walloon Regions and the German-speaking Community.

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test, except in the cases of au-pair workers,²³ highly-skilled workers and some other excepted categories.

As a rule, only nationals from the third countries with which Belgium has bilateral agreements on employment can be admitted to the Belgian labour market.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Belgium, the following must be obtained:

- A visa (type D) issued by the consulate upon the third-country national's application and presentation of work permit;
- A residence permit issued by the municipality, who may but is not obliged to seek the advice of the Immigration Department, upon the third-country national's application submitted after arrival to Belgium; and
- A work permit (category B) issued by the regional Labor Migration Administration upon the employer's application to the the local employment service. The work permit must be issued before the third-country national applies for a visa.

To employ a third-country national, an employer has to apply to one of the four regional labour migration departments for an employment authorization. The application is made before applying for a work permit and before the third-country worker comes to Belgium. In addition, the employer has to cover the cost of the third-country worker's travel to Belgium and is required to comply with salary requirements and conditions of employment that apply to Belgian workers.

In order for an employer to obtain a category B work permit for a third-country national, the following are required: (1) The worker should still be abroad. (2) An employment contract has already been concluded. (3) A medical certificate stating, "there are no indications that in the near future the worker will become incapacitated for work as a result of his/her state of health" must be provided. (4) A certificate of good conduct indicating that the worker will not pose a danger to public order or public safety issued by the authorities in the country of origin must be provided.

²³ Au pair workers are not regarded as low-skilled domestic and household workers in Belgium because an employment contract in the proper sense of the word does not exist, it cannot really be considered work, and one of the eligibility criteria is that the au pair has completed secondary education which gives access to higher (tertiary) education or has been to school until s/he is at least 17 years old (article 25.3 of Law on the Employment of Foreign Workers of 1999 as amended).

6. Conditions Third-Country ULSWs Have to Fulfil to Be Admitted for Work

In order to obtain a D visa (for employment), the following are required from a third-country national: (1) a passport that it is valid for at least one year; (2) a recent certificate of good conduct issued by authorities of the country of origin, covering the last five years; (3) a medical certificate stating, “there are no indications that in the near future the worker will become incapacitated for work as a result of his/her state of health”; and (4) the work permit.

In order to obtain a residence permit, a third-country national is required to register with the municipal administration within eight days of arrival, presenting the passport, D visa and the work permit. The duration of the residence permit corresponds to that of the work permit plus 15 days.

7. First Residence and Work Permits

Residence and work permits are two separate permits.

Category B work permits are valid for a maximum period of one year. Residence permits are valid for as long as the work permit plus 15 days. Both permits can be renewed annually for up to four years.

Category B work permits are for third-country workers to one employer and one specific position. If a new employer or position is found, a new work permit is required. Residence permits does not have to be changed if a new employer or position is found, and they can be renewed as long as the third-country national has a valid work permit.

8. Specific Schemes for Third-Country ULSWs

There is no specific scheme for the employment of third-country ULSWs. In principle, employment of third-country nationals is possible only if a bilateral agreement exists between Belgium and the third country.

9. Obligatory Administrative Costs Incurred by EU Employers

There are no obligatory administrative costs paid by employers.²⁴

(Minimal) estimated costs for employers to hire a third-country ULSW, including salary, social security contributions and benefits, amount to approximately EUR 26,223 for one year. These costs are the same regardless of whether the worker is recruited from another EU Member State or from a third country.

10. Rights of Third-Country ULSWs

All third-country nationals legally employed in Belgium have the same rights, regardless their skill level.

²⁴ Third-country workers have to pay EUR 180 for their visas and EUR 10 for their residence permits.

BULGARIA

1. General Assessment of Immigration of Third-Country ULSWs

Generally, the number of unskilled and low-skilled third-country workers admitted to Bulgaria is quite low due to high rates of unemployment among the local population, the general economic situation and low standards of living in the country. ULSWs who do come to Bulgaria are mostly concentrated in construction, food processing, hospitality and catering, and domestic and household work. Official statistics on third-country ULSWs are not available at present.

2. Legal Framework

Policy on the employment of third-country nationals, including ULSWs, is regulated by: the Law on Foreigners in the Republic of Bulgaria of 1998, the Employment Promotion Act of 2001, the Ordinance for the Conditions and Procedures of Issuing, Refusal and Confiscation of the Work Permits of Foreigners in the Republic of Bulgaria of 2002, the Ordinance for the Conditions and Procedures for Issuing Permits for the Performance of Free-Lance Activity by Foreigners in the Republic of Bulgaria of 2002, and other relevant legislation.²⁵

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Labor and Social Policy is in charge of general admission policies for third-country nationals.
- The National Employment Agency (through the Labour Office Directorates) is in charge of issuing work-related permits.
- The Migration Directorate of the Ministry of Interior is in charge of issuing residence-related permits.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test.

Although there is no official quota system, work permits for third-country nationals can only be issued if, inter alia, the total number of third-country workers employed by a specific domestic employer did not exceed 10% of the average number of the people on the payroll in the preceding 12 months.

²⁵ Instruction for Applying the Ordinance for the Conditions and the Procedures of Issuing, Refusal and Confiscation of Work Permits for Foreigners in the Republic of Bulgaria of 2002; Instructions to the Directorates of Employments for Accepting Documents and Issuing Work Permits to Foreigners; the Social Security Code of 1999; and the Labour Code of 1986.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Bulgaria, the following must be obtained:

- A long-term visa issued by the consulate abroad upon the third-country national's application, which application should be made after the work permit has already been issued;
- A long-term residence permit issued by the Migration Directorate upon the third-country national's application, which application should be submitted before the expiry of the long-term visa; and
- A work permit issued on the employer's application to the Labour Office Directorate.

To employ a third-country national, an employer is required to: (1) present the evidence that s/he has actively sought, for a period not less than 15 days, a specialist already available at the national labour market (Bulgarian/EU national, permanent resident, or other person enjoying equal rights for employment) through the Employment Bureau of the Agency for Employment and through announcements in the national and local mass media; (2) prove that the third-country national has specific professional qualifications/education/experience, though this might be irrelevant in case of ULSWs; (3) apply to the Labour Office Directorate for a work permit for the third-country national; and (4) guarantee to the third-country national labour conditions and payment terms equal with the conditions of Bulgarian nationals in the respective sector.

The application for a work permit, which is submitted by the employer, includes: (1) a request-declaration; (2) substantiation of the request; (3) three photos of the third-country national; (4) documents attesting to the degree of education/speciality/acquired professional qualifications, skills and experience of the third-country national; (5) a reference-declaration from the employer on numbers of employees recruited for the last 12 months; (6) an employment contract; and (7) a copy of the third-country national's passport.

6. Conditions Third-Country ULSWs Must Fulfill to Be Admitted for Work

To obtain a long-term visa, a third-country national must present: (1) a travel document; (2) a certified copy of the work permit; (3) two copies of an application along with two photographs; (4) proof of available accommodation in Bulgaria; (5) proof of sufficient financial means to cover the living expenses in Bulgaria; and (6) compulsory social insurance (including health insurance) for the duration of residence in Bulgaria.

The documents required for issuance of a long-term residence permit are as follows: (1) a certified copy of a work permit; (2) an application; (3) a valid international passport; (4) proof of accommodation in Bulgaria (e.g. rental contracts); (5) evidence of payment of the required fees; and (6) evidence of sufficient financial means to meet the costs of living in Bulgaria.

7. First Residence and Work Permits

In Bulgaria, work and long-term residence permits are two separate documents. Work permits are the basis for issuing long-term visas and long-term residence permits.

Work permits are issued for terms up to one year and may be extended if the conditions for the original issuance have not changed. The maximum period, including extensions, of work permits is three years. After this, a new work permit is to be issued following an interruption of at least one month.

The duration of long-term residence permits depends on the duration of the corresponding work permits. Long-term residence permits can be renewed if the grounds for their issuance still exist, but they cannot be renewed beyond the three-year maximum of the work permit.

Work permits tie the third-country worker to the particular work, position and employer for which they were originally issued.

8. Specific Schemes for Third-Country ULSWs

Work permits for seasonal workers are issued for up to six months in one calendar year. There are no other specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers are required to pay the following administrative fees:

- BGN 600 (EUR 300) for issuing or renewing a work permit;
- BGN 300 (EUR 150) for seasonal jobs lasting up to six months per calendar year.

10. Rights of Third-Country ULSWs

The rights of third-country workers do not depend on their skill level but on their residence status. Long-term residents have rights equivalent to the rights of Bulgarian nationals.

CYPRUS

1. General Assessment of Immigration of Third-Country ULSWs

In general, third-country workers in Cyprus are employed in manual, unskilled and low-paid jobs in which Cypriots show no interest.²⁶ Most of the third-country workers are employed in services, tourism, construction, agriculture, and livestock farming. The vast majority of migrant women work as domestic workers. Most third-country nationals who reside in Cyprus for long periods come for employment purposes: in 2003, out of a total of 16,779 third-country nationals 9,185 (55%) came for employment, of whom 4,104 were women; in 2004, out of a total of 22,003 third-country nationals 12,801 (58%) came for employment, of whom 5,948 were women.²⁷ The government favours unskilled immigration only where there is a strong demand for workers that cannot be satisfied by nationals.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. Their status is regulated by the following general legislation applicable to third-country nationals: the Aliens and Immigration Act of 1952,²⁸ the Aliens and Immigration Regulations of 1972,²⁹ and the Aliens and Immigration (Visas) Regulations of 2004.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Council of Ministers, the Minister of Interior and the Ministry of Foreign Affairs formulate the general admission policies for third-country nationals, including ULSWs.
- The Department of Labour of the Ministry of Labour and Social Insurance monitors whether the conditions of labour market test are met and issues recommendations for the employment of third-country nationals.
- The Director of Civil Registry and Migration Department is the competent immigration authority for ULSWs' work-related and residence-related issues.

²⁶ More information about third-country workers in Cyprus can be found at <http://www.eurofound.europa.eu/ewco/studies/tn0701038s/cy0701039q.htm> and in Stavrou, P., *Impact of migrant workers on Cypriot labour force*, 10 July 2009 (available at <http://www.eurofound.europa.eu/ewco/2009/04/CY0904019I.htm>). Information on the employment of third-country nationals is available at the Ministry of Labour web-site http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/dmlgeneralinf_en/dmlgeneralinf_en?OpenDocument (all links last visited February 2010).

²⁷ Trimikliniotis, N., Fulas-Souroulla, M., *Mapping of policies affecting female migrants and policy analysis: the Cyprus case*, Working Paper No. 11 – WP1, December 2006 (available at http://www.femipol.uni-frankfurt.de/docs/working_papers/wp1/Cyprus.pdf) (last visited February 2010).

²⁸ Available at <http://www.unhcr.org/refworld/country,LEGAL,NATLEGBOD,,CYP,4562d8b62,3fbde7762,0.html> (last visited February 2010).

²⁹ Available at <http://www.unhcr.org/refworld/type,LEGISLATION,,CYP,3ae6b4df30,0.html> (last visited February 2010).

4. Regulation Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test (see Section 5).

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Cyprus, the following must be obtained:

- An entry permit issued by Civil Registry and Migration Department upon the employer's application;
- A residence permit issued by Civil Registry and Migration Department upon the third-country national's application, which is submitted after arrival in Cyprus; and
- A work permit issued by Civil Registry and Migration Department in collaboration with the Employment Services of the District Labour Office upon the employer's application.

Employers are responsible for applying for entry and work permits for third-country nationals they want to employ. In order to receive permission to employ a third-country national, an employer has to satisfy the labour market test. For this, s/he is required to publish a vacancy notice in daily newspapers through the Employment Services of District Labour Offices and guarantee that the terms and conditions of employment of the third-country national will be the same as those for Cypriots.

In order to obtain an entry permit and a work permit for a third-country national, the employer has to provide the following: (1) an application; (2) a photocopy of the third-country national's passport; (3) proof that the third-country national has a clean criminal record; (4) certificates that the third-country national is in good health; (5) letter from a bank guaranteeing CYP 200-500 (EUR 350-800) to cover possible repatriation expenses; (6) a work contract stamped by the Department of Labour of the Ministry of Labor and social insurance and also stamped with a revenue stamp from the Revenue Stamps Registrar; and (7) CYP 20 (EUR 35) fee for submission of the application.³⁰

Health insurance is mandatory and paid for by employers.

³⁰ When employing domestic workers, the employer-family is also required to submit the birth certificates of the children of employer (where applicable); a certificate from the Social Securities Department that both parents work and make contributions (where applicable); a certificate from the Inland Revenue Department that the annual income of the applicant's family exceeds the amount of CYP 30,000 (EUR 51,300) (where applicable); medical certificates and other documents regarding persons incapable of taking care of themselves (where applicable – i.e. for taking care of old persons); and documents regarding pensioners and aged people, such as particulars about pension, date of birth, etc. (where applicable).

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

Third-country workers obtain a residence permits after entry to Cyprus and registration with the Civil Registry and Migration Department (within 7 days after arrival). The following are required in order to obtain a residence permit: (1) an application and three photographs; (2) a passport; and (3) a work permit. Information in the application is compared with the information provided by the employer for the entry and work permits before the residence permit can be issued.

7. First Residence and Work Permits

Residence permits and work permits are two separate documents, although the issuance of one is strictly connected to the other.

Residence permits and work permits can be issued initially for up to two years, although they are normally issued for one year, and they can be renewed for another two years. These permits can be issued for a maximum of four years altogether, depending on the employment contract or the needs of the employer.

The work permit ties the employee to one employer.

8. Specific Schemes for Third-Country ULSWs

Seasonal workers can be employed for the maximum of three months. The procedures are the same as standard employment procedures for third-country nationals. In the case of domestic workers there are certain additional requirements to be met by the employing family along with standard requirements for employing third-country nationals (see Section 5 and footnote 30). There are no other specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers are required to pay the following administrative fees:

- CYP 10 (EUR 17) for application for entry and residence permit or extension thereof;
- CYP 200-500 (EUR 350-800) for a bank letter of guarantee to cover possible repatriation expenses;
- CYP 10 (EUR 17) for issuing a certificate of registration of the third-country worker;
- CYP 20 (EUR 35) for submission of an application for a work permit;
- CYP 20 (EUR 34) for renewing a work permit; and

- CYP 4.50 (EUR 7.70) for employing a domestic worker for one year (if applicable).

10. Rights of Third-Country ULSWs

There is no difference in the scope of rights granted by the state to all third-country workers.

CZECH REPUBLIC

1. General Assessment of Immigration of Third-Country ULSWs

There were 436,116 migrants (178,223 women) in the Czech Republic as of 31 October 2009. However, there is no specific assessment of immigration of ULSWs. Generally, ULSWs occupy positions in the primary and secondary sectors and, in particular, low-level jobs in the tertiary sector.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The two main general laws addressing admission of third-country workers to the Czech labour market are Act No. 435/2004 Coll. on Employment of 2004³¹ and Act no. 326/1999 Coll. on the Residence of Foreign Nationals in the Territory of the Czech Republic of 1999.³²

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Labour Office (Ministry of Labor and Social Affairs) and the Alien Police (Ministry of the Interior) are responsible for issuing work-related permits.
- The Alien Police (Ministry of the Interior) is responsible for issuing residence-related permits and for general admission policy.
- The consulates issue visas.

4. Regulation Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test (see Section 5).

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in the Czech Republic, the following must be obtained:

- A long-term visa for the purpose of employment issued by the consulate abroad upon the third country national's application of the third-country national; and
- A work permit issued before arrival of a third-country national to the Czech Republic upon application to the Labour Office by either the third-country national or the employer.

³¹ Available at http://portal.mpsv.cz/sz/zahr_zam/pravnipredpisy_zz/zoz_en_0.doc (last visited February 2010).

³² Available at <http://www.mvcr.cz/mvcren/article/permanent-residence.aspx> (last visited February 2010).

An employer has to post a vacancy notice in order to find a suitable candidate among nationals of the Czech Republic/EU or permanent residents. The Labour Office determines the duration for which each vacancy is posted; this duration is not predetermined in legislation. If no suitable candidate is found among the Czech /EU and other persons registered in the Czech labour market, a third-country national may be employed. The Labour Office issues permission for such employment.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

The following are required to obtain a visa: (1) a valid travel document; (2) one photograph; (3) an application; (4) a copy of the work permit issued by a local Labour Office in the Czech Republic, the telephone number and the address of the Labour Office in the Czech Republic which reviews the application for work permit, or a document issued by a Labour Office in the Czech Republic proving that the third-country worker's employment does not require a work permit; (5) a document confirming the availability of accommodation for the period of stay in the territory of the Czech Republic; (6) an excerpt from the Penal Register (or another similar document) issued by the authorities of the country of origin certifying that the person does not have a criminal record; (7) a medical report certifying that the third-country national does not suffer from a serious disease; and (8) proof of medical insurance.

The following are required to obtain a work permit: (1) identification information of the third-country national; (2) address in the country of permanent residence and mailing address; (3) travel document number and name of the issuing authority; (4) identification information of the future employer; (5) type, place and term for which the work should be performed; and (6) the following enclosures:

- photocopy of a page of a travel document containing the basic identification information about the third-country national;
- declaration of the employer that s/he will employ the third-country national;
- a certified copy of a document of professional competence for the field in which the foreigner is to work in the Czech Republic (vocational certificate, certificate of matriculation, university diploma, etc.);
- a certificate of a clean bill of health;
- other documents if required; and
- administrative fee of CZK 500 (EUR 19).

7. First Residence and Work Permit

Residence and work permits are two separate documents; third-country nationals must possess both in order to work in the Czech Republic. The residence permit can be in the form of a long-term visa when issued for the first time by the consulate of the Czech Republic abroad.

After the validity of a long-term visa comes to an end it can be changed for a residence permit within the territory of the Czech Republic. The duration of a residence permit depends on the duration of a work permit.

Work permits are issued for one year and can be renewed continuously for one-year periods so long as the conditions of initial employment are still valid. The validity of the residence permit depends on the validity of the work permit.

Work permits tie employees to the specific employer for whom they were issued. Separate work permits are needed in case there is more than one employer.

8. Specific Schemes for Third-Country ULSWs

The only scheme relevant to third-country ULSWs is the Green Card Project. Green cards combine the residence permit and the work permit in one document and are issued for three types of workers: a) qualified workers with university education and key personnel; b) workers in jobs with a minimum educational requirement; and c) for other workers, including ULSWs.³³

Bilateral agreements on seasonal work have been concluded with Mongolia, Russia, Ukraine and Vietnam.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers must pay an Administrative fee of CZK 500 (EUR 19) to apply for a work permit.

10. Rights of Third-Country ULSW

In general, the rights of ULSWs are the same as for all migrant workers. However, selected qualified workers are given the opportunity to apply for permanent residence within a shorter period.

³³ For more information on the Green Card Project, see the website of the Ministry of the Interior of the Czech Republic at <http://www.mvcr.cz/mvcren/docDetail.aspx?docid=44841&docType=&chnum=4> (last visited February 2010).

DENMARK

1. General Assessment of Immigration of Third-Country ULSWs

Generally, third-country unskilled and low-skilled workers are not admitted into Denmark. The legislative exceptions concern short-term au-pairs and interns.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The two main documents affecting admission and residence of third-country workers in Denmark are the Aliens Act of 10 August 2009,³⁴ which regulates issuance of residence permits, and the Aliens Order of 24 June 2008, which sets administrative rules for entry and residence.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Danish Immigration Service sets policies on employment of third-country nationals and deals with the permit-related procedures.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals, including interns, is subject to a labour market test.³⁵

5. Necessary procedures to be followed by third-country ULSWs and/or EU employers

With respect to employment of a third-country national in Denmark, the following must be obtained:

- A residence permit issued upon the third-country national's application to the consulate of Denmark abroad, on approval of Danish Immigration Service; and
- A work permit issued upon the third-country national's application to the consulate of Denmark abroad, on approval of Danish Immigration Service.

³⁴ Available at

http://www.nyidanmark.dk/NR/rdonlyres/C2A9678D-73B3-41B0-A076-67C6660E482B/0/alens_consolidation_act_english.pdf (last visited February 2010).

³⁵ When examining applications for residence and work permits, the Danish Immigration Service pays particular attention to the following: whether there is a Danish or foreign employee already residing in Denmark who is qualified to perform the job in question; and whether the job in question is of such a special character that a residence and work permit can be recommended (normally, permits are not granted to applicants seeking ordinary unskilled positions, such as pizza-bakers or messengers). In some cases, the Danish Immigration Service will require an opinion from the relevant branch organization or a Regional Labour Market Council in order to process an application.

Responsibility for acquiring the permits rests with applicants not with their employers. However, employers of interns must complete and sign a special information form, which includes a list of intern tasks.

Employers are required to provide to third-country workers with salary and employment conditions corresponding to Danish standards.

6. Conditions Third-Country ULSWs Must Fulfill to Be Admitted for Work

Applications for residence and work permits for salaried work require the following: (1) a valid passport or travel document; (2) photograph; (3) an employment contract providing a job description as well as the conditions of employment, such as wage, job duties, place of employment and working hours; and (4) job description, including a description of the applicant's educational and professional qualifications. In addition, the following are required for internships: (1) information on the training programme in Denmark; (2) information on the function the trainee will later serve in his or her country of origin; and (3) a description of the project's expected financial, labour-related or professional impact on the company in Denmark.

There are no specific rules regarding health insurance coverage, but third-country workers must not take advantage of the Danish social system.

7. First Residence and Work Permits

Residence and work permits for employment are two separate documents but have to be granted together.

Residence permits allow temporary stays in Denmark and are issued for a limited period of time. If a person has a permanent employment contract, they may be able to obtain a permanent residence permit.

The initial temporary residence permit is issued for no more than one year, as an exception – up to three years. It may be extended up to three years. Interns normally receive a residence permits for the length of the internship, which must not exceed 18 months.

Work permits allow persons who also possess residence permits to work in Denmark; they are normally valid for the same period as the corresponding residence permit.

Work permits are issued for employment in a particular job and bind the worker to that particular position and employer. If the position and/or employer changes, a new permit has to be issued. The Danish Immigration Service may alter the permit for employment in another job under certain circumstances.

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

No obligatory administrative costs are imposed on employers.

10. Rights of Third-Country ULSWs

Rights of third-country nationals working in Denmark do not depend on their skill level but rather on the length of stay in the country. For example, persons with only short-term permission to stay (most ULSWs) do not have the right to family reunification but do have access to the basic services (e.g. health services).

ESTONIA

1. General Assessment of Immigration of Third-Country ULSWs

In 2008, the Ministry of Economics and Communication projected that 14,100 people per year would leave the national labour market through 2015, putting particular pressure on production, mining, energy, agriculture, fisheries, public health and education sectors.³⁶ The labour need per year is expected to be 14,500 persons, including foreign labour. At the same time, the USLWs have only a minor share in the total amount of the third-country workers: 12% of the total from 2000 to 2007 (2% males and 9% females in the elementary occupations;³⁷ 2% males and 4% females in the service sector).³⁸ It is perceived that the need for USLWs remains low in the foreseeable future. According to the Estonian Chamber of Commerce (ECC), the hiring of third-country USLWs is not common among Estonian entrepreneurs, primarily because of the state policy of restricting their immigration and because of de-motivating wage criteria.³⁹

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The main legislative acts relevant to economic migration of third-country nationals include the Aliens Act of 2009, which regulates entry to Estonia⁴⁰ and the Employment Contracts Act of 2008,⁴¹ which regulates access to labour market and employment relations.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Minister / Ministry of the Interior guides the general migration policy.
- The Police and Border Guard Board⁴² is primarily responsible for residence-related permits.

³⁶ *Majandus- ja Kommunikatsiooniministeerium. Tööjõu vajaduse prognoos aastani 2015*. Tallinn 2008, p. 4-5 (Ministry of Economics and Communication. Labour Need Forecast Until 2015. Tallinn 2008. p 4-5). Text (in Estonian) available at: http://www.mkm.ee/failid/T_j_u_vajaduse_prognoos_aastani_2015.pdf (last visited January 2010).

³⁷ The International Labour Organization defines elementary occupations as occupations consisting of "simple and routine tasks which mainly require the use of hand-held tools and often some physical effort." See <http://www.ilo.org/public/english/bureau/stat/isco/isco88/9.htm> (last visited January 2010).

³⁸ *Krusell, Siim. Välismaalased Eesti tööturul. Ränne/Migration. Statistikaamet* (Krusell, Siim. Foreigners in the Estonian Labour Market. Statistical Board). (publication is bilingual Estonian/English). Tallinn 2009. Text available at <http://www.stat.ee/publications?id=11754&year=2009> (last visited January 2010).

³⁹ Employers are required to guarantee third-country workers minimum salaries of at least 1.24 times the average salary in Estonia. This requirement will almost certainly rule out the hiring of ULSWs, as the salary requirement is not determined sector-by-sector but is based on the overall average salary. Therefore, the scheme of residence for work might be called a qualified or highly-qualified labour migration scheme.

⁴⁰ Available at <https://www.riigiteataja.ee/ert/act.jsp?id=13252321> (last visited January 2010). An explanatory memorandum to the draft law is available on the Parliament's website.

⁴¹ Available at <https://www.riigiteataja.ee/ert/act.jsp?id=13198475> (last visited January 2010). An unofficial English translation is available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=XXXX042&keel=en&pg=1&ptyyp=RT&tyyp=X&query=t%F6%F6lepingu+seadu> (last visited January 2010).

⁴² See <http://www.politse.ee/et/>. Information regarding residence, etc. is currently unavailable on-line because the site is still under construction.

- The Estonian Unemployment Insurance Fund (EUIF) grants permission to hire third-country workers and has a key role in policy development on matters of residence for the purposes of employment.
- The consulates issue the visas.

4. Regulations Regarding Access to the National Labour Market

There is a general immigration quota (0.1% of permanent residents annually), but there are no sector-based quotas even though the Minister of the Interior has the right to establish them.

Employment of third-country nationals is subject to a labour market test (see Section 5).

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Estonia, the following must be obtained:

- A long-term visa (category D) for registered employment issued upon the third-country national's application to the consulate of Estonia abroad or to the Police and Border Guard Board in Estonia; and
- A residence permit for employment issued upon the third-country national's application to Police and Border Guard Board via the consulate of Estonia abroad or at the local office of the Police and Border Guard Board upon arrival.

In the case of short-term employment, which does not exceed six months per one year, an employer has to apply to the local office of the Police and Border Guard Board or prefecture for a registration for work for a third-country national.⁴³ This kind of employment is called "registered employment".

An employer has to satisfy a labour market test prior to the application for the residence permit for employment by a third-country national. A vacancy notice must be posted for two months in a nation-wide newspaper or internet job portal. If the position cannot be filled with a suitably qualified Estonian/EU citizen or a resident of Estonia, the permission to employ a third-country national has to be obtained from the local Estonian Unemployment Insurance Fund office in order to employ a third-country national. Employers are also obliged to satisfy a minimum salary requirement.⁴⁴

⁴³ Requirements for applications are provided for in the Minister of Interior Regulation No. 30 of 21 April 2008 ("*Registration of Short-Term Work in Estonia*"). The text (in Estonian) is available at <https://www.riigiteataja.ee/ert/act.jsp?id=12955776> (last visited March 2010).

⁴⁴ See footnote 47, *supra*.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to receive a category D (long-term) visa for registered employment, third-country nationals must submit the following: (1) an application; (2) registration of the work by employer, issued by the Police and Border Guard Board; (3) a valid travel document; (4) sufficient means and accommodation in Estonia; and (5) health insurance.

In order to obtain a residence permit for employment, third-country nationals must submit the following: (1) a valid travel document; (2) an application (including a photograph); (3) document certifying that the employer has paid the fee (EUR 95); (4) information on employer, address of the workplace, occupation/profession where he/she will work, salary, possible start of the contract, and an explanation of why the applicant wants to reside and work in Estonia; (5) permission to work from the Estonian Unemployment Insurance Fund (obtained by employer); and (6) employer's guarantee of work (containing applicant's personal data, applicant's education/profession, data on the place of work, employer's data, data regarding character of work and data regarding contract (but not contract itself)).⁴⁵

7. First Residence and Work Permits

A residence permit for employment authorizes both residence and employment in Estonia under the conditions provided for in the permit.⁴⁶ Long-term visas for registered employment allow third-country workers to stay and work in the country for up to six months within one calendar year.

Residence permits for employment are granted for a maximum of five years but no longer than the contract or permission to work or the length of validity of the travel document. They can be renewed for up to five years, as long as the conditions for employment remain the same.

Residence permits for employment and long-term visas for registered employment are strictly tied to the employer, place and position for which they were issued. If any of these circumstances change, a new permit must be obtained.

8. Specific Schemes for Third-Country ULSWs

The registered employment scheme, described in Section 5 above also applies to seasonal workers processing agricultural products, baby-sitters and domestic help workers.

⁴⁵ Regulation of the Government of the Republic No. 364 of 2002. Available at: <https://www.riigiteataja.ee/ert/act.jsp?id=13259339> (last visited February 2010). The Regulation is valid until 1 October 2010, when the new Aliens Act enters into force.

⁴⁶ Students who have residence permits for the purpose of studying can apply for separate work permits, which give them authorization to work. The work permits are connected to the residence permits for the purpose of studying and are not a basis for residence. The duration of the work permits depends on the duration of the residence permits for the purpose of studying.

9. Obligatory Administrative Costs Incurred by EU Employers

The following fees must be paid:

- EEK 1,250 (EUR 80) for a long-term visa (D visa);
- EEK 750 (EUR 48) for application under the registered employment scheme;
- EEK 1,500 (EUR 95) for a residence permit for employment.

Legislation does not specify, however, whether the employer or the worker is responsible for the payment of these fees.

10. Rights of Third-Country ULSWs

Estonian legislation does not differentiate between the rights of third-country workers and nationals on the basis of sector or qualification. There may be differences in social benefits according to the length of residence (i.e. between permanent residents and temporary residents).

FINLAND

1. General Assessment of Immigration of Third-Country ULSWs

Recruiting ULSWs for the Finnish labour market is uncommon.⁴⁷ It involves slow bureaucratic procedures and is expensive. The Finnish labour market aims to recruit highly skilled educated workforce. ULSWs are most often recruited from abroad to work in berry-picking, farms and as restaurant cleaners.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The main legal act relevant to third-country nationals in general is the Finnish Aliens Act of 1 May 2004 (last amended 29 June 2009)⁴⁸, which also contains norms concerning seasonal workers. The provisions of the Police Act of 7 April 1995 (last amended 1 January 2010) apply to the requirements for aliens' entry into, residence in and removal from the country.⁴⁹ The Employment Contract Act of 1 June 2001 (last amended 1 January 2010)⁵⁰ specifies labour conditions.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Employment and the Economy develops general employment policy, including employment of third-country nationals:
 - The Employment and Entrepreneurship Department evaluates the need for third-country workers;
 - Local Employment and Economic Development Offices (Employment Offices) issues residence permits for employed persons.
- The Finnish Migration Service investigates whether the requirements for entering the country have been fulfilled.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test (see Section 5).

⁴⁷ The Action Plan on Labour Migration recommends that employers seek workers in the EU/EEA area due to the difficulties of recruiting third-country nationals, See *Työvoiman maahanmuuton toimenpideohjelma*, 5 November 2009 Sisäasiainministeriön julkaisut 23/2009 (*Action Plan on Labour Migration*, Ministry of the Interior's Publications 23/2009), p. 23.

⁴⁸ Available at <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf> (last visited February 2010).

⁴⁹ Available at <http://www.finlex.fi/en/laki/kaannokset/1995/en19950493.pdf> (last visited February 2010).

⁵⁰ Available at <http://www.finlex.fi/en/laki/kaannokset/2001/en20010055.pdf> (last visited February 2010).

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

In order to work in Finland, a residence permit for an employed person must be obtained. This permit is issued by Finnish Immigration Service if a third-country worker applies abroad through the Finnish consulate/embassy, by District Police or a local Employment Office if a third-country worker or employer applies in Finland. The Employment Office decides on the “employment side” of the permit, while the Immigration Service or District Police – on the “residence side”.

In order to invite a third-country worker to Finland, an employer has to satisfy a labour market test by showing that it was impossible to find a suitable Finnish/EU national or permanent resident for an open position. The employer has to post the vacancy notice on the general internet site of the Ministry of Labor.⁵¹ Positions for ULSWs should be posted for 14 days. An employer is also required to submit an application for a residence permit for an employed person to an Employment Office and provide relevant information on the principal terms of work. An assurance must be given that the terms of employment comply with the legislation and the relevant collective agreement or, that the terms of employment correspond to those applied to employees in the labour market doing similar work. Workers employed in Finland must be guaranteed the minimum wage agreed upon in the collective agreement for the sector.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to obtain a residence permit for an employed person, a third-country national or employer is required to submit the following: (1) an application; (2) a valid travel document; (3) proof of health insurance; (4) documents, requested from employer (see Section 5); and (5) a receipt proving that the fee for the first permit was paid (see Section 9). In addition, the third-country national must not be considered a danger to public order, security, health or international relations of Finland.

7. First Residence and Work Permits

A residence permit for an employed person is a single document valid for both residence and work in Finland. Such residence permit can be temporary or continuous.

The duration of an initial residence permit for an employed person cannot exceed two years. It can be renewed after two years of continuous residence if all other conditions for issuing the initial residence permit are met. Duration of the extended (continuous) residence permit is the same as the duration of the

⁵¹ Available at www.mol.fi (last visited March 2010).

initial permit. After four years of continuous residence and if the conditions for issuing and renewing previous permits are still valid, a third-country national may apply for a permanent residence permit.

A temporary residence permit for an employed person entitles the holder to work in one sector of employment, but s/he may change employers within the one employment sector for which the permit was issued.

8. Specific Schemes for Third-Country ULSWs

Residence permits are not necessary for third-country nationals who arrive in the country as seasonal workers to pick or harvest berries, fruits, specialty crops, vegetables or to work on a fur farm for a maximum of three months. They only need to obtain a visa for seasonal work in the Finnish embassy/consulate.

Finland has signed bilateral agreements on working holiday arrangements with Australia⁵² and New Zealand.⁵³ According to these agreements young people, aged from 18 to 30, can live and work in the contracting country. The main purpose of the residence should be spending holidays. Work is allowed for maximum 9 months per year. No more than three months can be spent with the same employer. These bilateral agreements do not specify possible sectors of employment.

9. Obligatory Administrative Costs Incurred by EU Employers

The following fees must be paid:

- EUR 60 for issuing a visa for seasonal workers; or
- EUR 250 for issuing a first residence permit for an employed person.

The costs are paid either by the employer or the third-country worker.

10. Rights of Third-Country ULSWs

Rights of third-country nationals do not depend upon their skill level but rather on their residence status. A third-country worker with a residence permit for an employed person may not be entitled to family reunion and access to social security benefits. However, any person working longer than four months receives health insurance and is included in the unemployment security system.

⁵² Memorandum of Understanding between the Government of Finland and the Government of Australia Relating to Working Holiday Makers of 29 April 2002. Available at <http://formin.finland.fi/public/download.aspx?ID=17491&GUID={CB3487A8-9A5D-4AED-9D1E-C1F85A65BEFF}> (last visited March 2010).

⁵³ Arrangement on a Working Holiday Scheme between the Government of Finland and the Government of New Zealand of 2002. Available at <http://formin.finland.fi/public/?contentid=50905&contentlan=2&culture=en-US> (last visited March 2010).

FRANCE

1. General Assessment of Immigration of Third-Country ULSWs

According to the most recent statistics, 3.5 million foreigners resided in France in 2006, 42.9% of whom were nationals from African countries and 40.3% from European countries. There were approximately 846,000 third-country workers.⁵⁴ Evidence shows that third-country workers are more likely than native French nationals to perform low-skilled jobs. It is also widely recognized that the demand for low-skilled labour is frequently filled by irregular migrant workers.

2. Legal Framework

The principal relevant laws and regulations are codified in the Code Regarding Entry, Residence and Asylum of 1 January 2010 (consolidated version)⁵⁵ and the Labour Code of 2008.⁵⁶ There are no specific provisions on third-country ULSWs.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Immigration, Integration, National Identity and Co-Development develops general immigration policies.
- The Directorate of Labour, Employment and Professional Training supervises matters relating to the labour market test.
- Prefects, representatives of the government at local levels, are responsible for granting stay permits and work authorizations. The latter can be delegated to the departmental Director of Labour, Employment and Professional Training.
- The French Office for Immigration and Integration is in charge of receiving newly-arrived third-country nationals, primarily through arranging medical exams and obtaining signatures on the reception and integration contract.
- The consulates issue visas.

⁵⁴ Ministry of Immigration, Integration, National Identity and Development Partnership at http://www.immigration.gouv.fr/spip.php?page=dossiers_det_res&numrubrique=232&numarticle=1855 (last visited February 2010).

⁵⁵ Available at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20100202> (last visited February 2010).

⁵⁶ Available at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072050&dateTexte=20100202> (last visited February 2010).

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test (see Section 5).⁵⁷

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in France, the following must be obtained:

- A long-term visa for professional activity issued by the consulate abroad; and
- A stay permit that includes a work authorization issued by the competent prefecture upon the application by the third-country national during the first two months of their stay in France.

As of June 2009, workers who are granted a long-term visa mentioning “salaried employment” or “temporary work” do not need to apply for a stay permit at their arrival in France. The long-term visa functions as a first stay permit.

Employers have to sign employment contracts with third-country workers and apply to the competent Directorate of Labour, Employment and Professional Training for work authorizations for the third-country workers. The delivery of a work authorization is subject to satisfaction of the labour market test, guarantee of equal treatment with national workers regarding conditions of employment and remuneration, and provision of housing to the worker.

To satisfy a labour market test, the employer must publish a vacancy notice through one of the legally recognized placement organizations, e.g. state employment services, the National Association for Adult Vocational Training, local authorities, temporary employment and recruitment agencies, etc. Legislation does not specify the length of time for which the vacancy notice should be published.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to obtain a long-term visa, third-country nationals must submit: (1) proof of the purpose of the intended stay and the work authorization; (2) the identity documents of the applicant in order to ensure that s/he doesn't constitute a risk of irregular migration or a threat to public security; and (3) valid travel documents.

⁵⁷ French legislation provides exceptions to the labour market test for professional activities or geographic areas experiencing difficulties in recruitment. These professions have been compiled in a list designated for the 22 French metropolitan regions of France. While the list includes some low-skilled occupations, most are higher-level technical jobs.

Once on French territory, third-country nationals who have been granted a long-term visa mentioning “paid employment” or “temporary work” need to obtain validation of the visa by the French Office for Immigration and Integration and must undergo a health assessment organized by French Office for Immigration and Integration. In addition, those with visas mentioning “paid employment” must pay a EUR 70 fee.

7. First Residence and Work Permits

A single permit authorizes both residence and employment in France. Two types of permits are applicable to employment: temporary stay permits for “paid employment” (for employment of 12 months or more) and temporary stay permits for “temporary work” (for employment of less than 12 months).

Since June 2009, the long-term visa mentioning “paid employment” or “temporary work” constitutes the first permit granted to third-country nationals. It is valid for a period not exceeding one year.

In order to obtain a temporary stay permit, the applicant must present a request during the second or third month prior to the expiry date of the long-term visa and must present a work contract or a work contract offer. When involuntarily deprived of his or her work at the moment of the renewal, the applicant is granted a one year temporary stay permit mentioning “paid employment.” If the third-country worker is still unemployed at the end of the first extended period, subsequent extensions may be denied. For workers holding a temporary stay permit mentioning “temporary work,” renewal depends on the existence of a work contract or a promise of employment.

The temporary stay permit mentioning “paid employment” may include territorial or professional restrictions. However, it does not tie the worker to the employer. The temporary stay permit mentioning “temporary work” limits the employment of its holder to a single employer.

The temporary stay permit mentioning “paid employment” may include territorial or professional restrictions. However, it does not tie the worker to the employer. The temporary stay permit mentioning “temporary work” limits the employment of its holder to a single employer.

8. Specific Schemes for Third-Country ULSWs

A temporary stay permit for a “seasonal worker” permits seasonal work for a period not exceeding six months per year. It is valid for three years maximum and is renewable. Two procedures coexist. When the employer wishes to employ known workers, the common procedure for employment of third-country nationals applies. It is also possible to conclude anonymous contracts with nationals from countries where the French Office for Immigration and Integration has a mission and organizes the recruitment.

France has bilateral agreements with Benin, Congo, Gabon, Tunisia and Senegal on concerted management of migration flows. Under these agreements, the labour market test does not apply to the nationals of the participating countries with respect to certain occupations, including low-skilled jobs.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers are required to pay the following fees:

- For “paid employment” permit (visa):
 - EUR 900 if the salary is equal to or lower than 1.5 times the monthly minimum salary; or
 - EUR 1600 if the salary is greater than 1.5 times the monthly minimum salary.
- For “temporary work” permit (visa):
 - EUR 70 if the salary is equal to or lower than the monthly minimal salary;
 - EUR 200 if the salary is greater than the monthly minimal salary and below 1.5 times the full monthly salary; or
 - EUR 300 if the salary is greater than 1.5 times the monthly minimal salary.
- EUR 50 for seasonal workers per month of work.

10. Rights of Third-Country ULSWs

In general, third-country nationals enjoy the same rights without prejudice to whether they are skilled or unskilled. However, the temporary stay permit for seasonal workers does not provide for family reunification.

GERMANY

1. General Assessment of Immigration of Third-Country ULSWs

Access to German labour market by non-EU, non-EEA and non-Swiss nationals is highly restricted as a result of the 1973 “Anwerbestopp” policy, which places a hold on recruitment, and the current high unemployment levels. Access is, in principle, limited to certain professional groups and requires the prior approval of the employment authorities. There are some specific schemes that allow ULSWs to take up employment in Germany for fixed periods of time rarely exceeding a year (see Section 8).

2. Legal Framework

The Residence Act of 2004 applies to the entry and residence of all third-country nationals, including seasonal workers, fairground workers and au-pairs.⁵⁸ The main statutory instrument regulating access to the German labour market for non-EU, non-EEA and non-Swiss nationals is the Employment Regulation on the Admission of Foreigners for the Purpose of Taking up Employment of 2004.⁵⁹ Bilateral agreements regulate the employment of contract workers (see Section 8).

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Federal Ministry of the Interior, the Federal Ministry of Justice, the Federal Ministry of Labor and Social Affairs, and the Federal Ministry of Economics and Technology are responsible for developing general policy on labour immigration.
- The Federal Employment Office approves employment of third-country nationals, where such approval is required.
- The Local Employment Agencies grant work permits.
- The Aliens Registration Offices issue work and residence permits.
- Consulates in the countries of origin issue visas.

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test, with the exception of contract workers (see Section 8). The Local Employment Agen-

⁵⁸ Available at

http://www.en.bmi.bund.de/Internet/Content/Common/Anlagen/Gesetze/Gesetze__Sprachen/AufenthG__en,templateId=raw,property=publicationFile.pdf/AufenthG (last visited February 2010).

⁵⁹ Available in German at <http://bundesrecht.juris.de/beschv/index.html> (last visited February 2010).

cies carry out the labour market test. After a third-country national applies for a visa for employment purposes in the country of origin, the German consulate forwards the application to a local Aliens Registration Office in Germany. The local Aliens Registration Office requests a labour market opinion from a Local Employment Agency. The latter assesses the labour market situation in the region and communicates its opinion to the local Aliens Registration Office.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Germany, the following must be obtained:

- A visa for employment purposes is issued by the consulate upon the third-country national's application after the application has been approved by the Aliens Registration Office in consultation with Federal or Local Employment Agency; and
- A residence permit for the purpose of gainful employment issued by the local Aliens Registration Office upon the third-country national's application after arrival to Germany.

Only a visa is needed for employment in Germany as an au-pair. The Germany embassy issues the visa, which specifically states that the purpose of the stay is to work as an au-pair.

The procedures an employer has to complete and requirements s/he has to fulfil depend on the type of employment contract with the third-country worker.

In order to recruit contract workers (see Section 8), an employer has to file an application ("Promise of employment/employment contract") with the Central Agency for Foreign and Specialists Employment, which is part of the Federal Employment Agency and has several regional offices. The employer has to submit the proposed employment contract, the work schedule and a letter from the recruiting agency in the country of origin of the contract worker, which certifies that the quota is respected.

In order to recruit seasonal and fairground workers, an employer has to submit an application ("Promise of employment/employment contract") to the Local Employment Agency.⁶⁰ The application contains proposed contracts that specify wages and working conditions as well as provisions for employer-provided housing, meals and travel arrangements. Approval of the recruitment of third-country workers is contingent upon the labour market test and a review of the contracts. The approval of Local Employment Agency is sent to the German embassy/consulate, who then issues the visa.

⁶⁰ See Besch V §18 (available in German at http://bundesrecht.juris.de/beschv/_18.html) and §19 (available in German at http://bundesrecht.juris.de/beschv/_19.html) (both links last visited February 2010). Employment of seasonal workers and fairground workers is intended to fill vacancies, particularly in agriculture, saw mills, forestry, seasonal hotels and fairground operations.

An employer-family who recruits a third-country au-pair needs to obtain the approval of Local Employment Agency.

If a third-country worker does not have medical insurance, the employer is obliged to guarantee coverage of any medical costs.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

To apply for the residence permit for the purpose of gainful employment and in order to receive a visa for employment purposes, third-country nationals are required to submit: (1) an employment contract or a promise of employment with a German employer; (2) a valid travel document; (3) three copies of the application and four photographs; and (4) proof of medical insurance (guaranteed either by employer in the employment contract or by the applicant).

An au-pair visa is issued upon presentation of: (1) a passport; (2) an application; (3) approval from the Local Employment Agency of the employer-family's request for employment of a third-country au-pair worker or certificate that such approval will be issued; (4) a certificate of minimum knowledge of German language (e.g. A2 from Goethe institute); and (5) an employment contract.

7. First Residence and Work Permits

Residence permits for the purpose of gainful employment and au-pair visas entitle holders to live and work in Germany.

The maximum duration of visas for au-pair workers is one year. Residence permits for seasonal workers are valid for a maximum of six months, for fairground workers for nine months and for contract workers for up to two years. Contract workers whose employment lasted less than nine months have to observe a waiting period of three months after the expiry of their permit before entering Germany again for employment. If their employment lasted between nine months and the maximum of two years, the waiting period will last as long as the employment.

Au-pair workers can change employers. Seasonal and fairground workers are usually and contract workers are always tied to their initial employer for the duration of their visa/residence permit.

8. Specific Schemes for Third-Country ULSWs

According to bilateral agreements with Bosnia, Croatia, the former Yugoslav Republic of Macedonia (FYROM), Serbia and Turkey, workers from these countries may contract for temporary work in Germany, notably in construction. Certain quotas are defined in each agreement. The employment of contract workers is banned in districts with more than 30% unemployment.

Only nationals of those third-countries with which Germany has bilateral agreements may be employed as seasonal or fairground workers.

9. Obligatory Administrative Costs Incurred by EU Employers

When employing contract workers, employers must pay the local employment agency in charge of approving the hiring of contract workers:

- EUR 200 for every new contract; and
- EUR 75 for every worker per month.

Employers must pay a fee of EUR 60 per worker for the employment of seasonal workers.

10. Rights of Third-Country ULSWs

All third-country workers have to be employed on equal terms with German employees. Because ULSWs are only admitted for fixed periods of time and lose their right to reside in Germany when their contracts run out, access to social security, vocational training and other similar benefits is not provided. Health insurance is compulsory and covered by the employer.

GREECE

1. General Assessment of Immigration of Third-Country ULSWs

For years Greece has been facing a severe shortage of unskilled and low-skilled labour in important sectors of the economy (construction, agriculture, travel industry, etc) and also in other areas (e.g. domestic help). The shortage is filled by migrants, who are often irregular. According to the population census of 2001⁶¹ there were 762,191 immigrants, of whom 391,632 were employed (51.4%).⁶² More specifically, there were 415,552 male migrants, of whom 270,731 were employed (65.1%), and 346,639 female migrants, of whom 120,901 were employed (34.9%).

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The basic law on migration is Act 3386/2005 of 2005.⁶³

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Directorate General on Migration Policy and Social Integration at the Ministry of Interior is the principal governmental authority responsible for policy in the migration sector.
- The Regional Committees draw up a report for each calendar year on the needs of each region's labour force and the vacancies third-country nationals of all skill levels might fill.
- The Secretary General of the Region makes decisions on issuing/renewing residence permits.
- The Advisory (Consultative) Committee on Migration, if requested, furnishes advisory opinions on applications for residence permits in light of public security, public order and public health.
- The Ministry of Employment and Social Protection and the Ministry of Interior adopt, on the basis of the regional reports, Joint Ministerial Decisions dictating the maximum number of residence permits that will be issued in the following calendar year to third-country nationals for the purposes of paid employment and seasonal work. These Joint Ministerial Decisions are forwarded to Greek consular offices.
- The consulates issue entry visas.

⁶¹ National Statistical Service of Greece, 2001

⁶² It is widely believed that the total number of immigrants has exceeded 1 million.

⁶³ Available in English at <http://www.yypes.gr/el/Foreigner/Laws> (last visited January 2010).

4. Regulations Regarding Access to the National Labour Market

There are no specific regulations regarding access to the Greek labour market that apply to ULSWs; there are no specific quotas per sector, labour market tests or points systems.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Greece, the following must be obtained:

- A visa for employment purposes issued by the consular office abroad upon the third-country national's application; and
- A residence permit, which includes the work permit, issued by the prefecture/commune of the worker's residence upon the third-country national's application, submitted after arrival to Greece.⁶⁴

Employers usually are not involved in the procedure of requesting or renewing residence permits. However, s/he is obliged to inform the Aliens and Migration Service of the relevant region upon hiring a third-country national or upon changing the work status of a third-country national, such as prolonging the employment contract, ending the employment contract, etc.

Different provisions apply when hiring seasonal workers⁶⁵ and fishermen. In these cases, an employer is obliged to: (1) secure the necessary permission to hire such workers from the Secretary General of the region where his/her residence is located;⁶⁶ (2) conclude an employment contract with the worker and submit a certified copy of the employment contract to the consular office for the entry visa to be issued; and (3) deposit a surety (EUR 720).

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

The following are required to obtain a visa for employment purposes:⁶⁷ (1) a valid passport; (2) a certificate that the applicant does not have a criminal record; (3) a certificate issued by a medical professional certifying that the applicant does not suffer from an illness that could pose a risk to public health; (4) that the person has not been registered in the List of Undesirable Persons, which is maintained by the Greek authorities; and (5) that the person not be

⁶⁴ Specific details concerning the procedure for granting residence permits for the purpose of, inter alia, employment have been set out in Ministerial Decision 933/2009 of 2009.

⁶⁵ Article 16 of Act 3386/2005, defines "seasonal work" as the employment of a third-country national lasting for a maximum period of six months in any calendar year and in a sector of the labour market that is characterized by seasonality.

⁶⁶ The type of the employment requested by the employer must be envisaged in the Joint Ministerial Decision (Section 3 above). The Secretary General may only grant permission if the position available within the quota has not yet been filled.

⁶⁷ The details on the applicable conditions and the administrative procedures applicable to entry visas have been set out in Joint Ministerial Decision 3497.3/550/AS4000/2005 of 2005.

regarded as posing a potential threat to public health, public order or public security or to Greece's international relations.

The following are required for the initial residence permit for employment purposes: (1) an application form and three recent colour photographs; (2) a copy of a valid passport or other travel document bearing the entry visa; (3) a medical certificate issued by a Greek public hospital certifying that the person is not a threat to public health; (4) possession of adequate means to cover the cost of returning to her/his country of origin; and (5) a signed contract with the employer, which indicates the salary⁶⁸ and the duration of employment.

7. First Residence and Work Permits

Residence purposes for the purpose of employment serve as both work permits and residence permits. Residence permits for the purposes of employment are intended for: (a) persons who have been invited to work in paid employment for a specific employer; (b) persons who are engaged in paid employment; and (c) persons engaged in seasonal work.

Usually, the initial residence permit is valid for one year, and each subsequent renewal is valid for two years. Residence permits for seasonal workers cannot be renewed.

Under the permit for a specific employer (bullet point (a) above) the third-country national is generally not allowed to change an employer or region of work. After one year with this permit the third-country national may apply for the permit for paid employment, which allows provision of services or choosing the employer/region.

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs, except in the case of seasonal workers and fishermen (see Section 5 above). Greece has bilateral agreements regarding the employment of seasonal workers with Albania and Bulgaria⁶⁹ and regarding migration issues with Egypt.⁷⁰

9. Obligatory Administrative Costs Incurred by EU Employers⁷¹

Employers must deposit a surety of EUR 720 for each seasonal worker as a guarantee that the worker will leave Greece after expiry of the employment contract. The surety deposit is to be returned if the seasonal worker leaves the Greek territory within the stipulated period of time. EUR 720 equals the monthly salary of an unskilled worker.

⁶⁸ The remuneration of third-country workers should be at least equivalent to the monthly salary of unskilled workers in Greece.

⁶⁹ Act 2482/1997 of 1997 and Act 2407/1996 of 1996.

⁷⁰ Act 1453/1984 of 1984.

⁷¹ Third-country nationals are obliged to pay the fee of EUR 150 for the initial residence permit and EUR 300 for each renewal.

The employer is also obliged to pay contributions, part of which are deducted from workers' salaries, to a social security organization, which covers health insurance, inter alia, for third-country workers. The employer is also obliged to pay contributions, part of which are deducted from workers' salaries, to a social security organization, which covers health insurance, inter alia, for third-country workers.

10. Rights of Third-Country ULSWs

Under Greek law, the rights of third-country workers do not depend upon their skill level.

HUNGARY

1. General Assessment of Immigration of Third-Country ULSWs

Hungary does not have a well-structured labour migration policy oriented on assessment of economic and labour market demands, cost and benefits. The existing statistics on migration are not sufficient for an in-depth analysis of the labour migration of ULSWs, yet they do indicate high numbers of this category of workers (40-60% of total third-country workers, with a rather balanced gender distribution).⁷²

The procedure for obtaining work permits for third-country nationals is lengthy and bureaucratic for the employers. Employment of third-country nationals is uncommon, with the exception of seasonal work.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The main legal act relevant to admission of third-country nationals, including the ULSWs, is Act II of 2007 on Entry and Stay of Third-Country Nationals.⁷³ Act IV of 1991 on Employment and Benefits for Unemployed Persons defines how third-country nationals may be lawfully employed.⁷⁴ Act CLII of 2009 on Simplified Employment, which provides a new system for admission of unskilled, low- and semi-skilled workers, including foreigners, will enter into force on 1 April 2010.⁷⁵

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Labour and Social Affairs and the Government, in consultation with the Labour Council, sets the general procedures and annual quota for admission of third-country workers.
- The Office for Immigration and Nationality (OIN), which is under the Ministry of Justice and Law Enforcement, and its Regional Directorates issue residence authorizations and visas, with exception of seasonal workers' visas.
- The Labour Service County Directorates issue work permits.
- The capital/country Labour Offices register vacancy notices from potential employers.
- The consulates abroad deliver visas issued by OIN. Consulates also issue visas for seasonal work.

⁷² Demographic Yearbook, 2007. Central Statistical Office, Budapest 2008.

⁷³ Available at <http://www.bmbah.hu/jogszabalyok.php?id=43> (last visited February 2010).

⁷⁴ Available in Hungarian at <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=a0900004.tv> (last visited February 2010).

⁷⁵ This Act brings under the state regulation previously "unregulated" jobs such as domestic and seasonal labour.

4. Regulations Regarding Access to the National Labour Market

The Minister of Labour sets an annual quota on third-country workers.⁷⁶

Employment of third-country nationals is subject to a labour market test, except in the case of workers hired within quotas determined in bilateral agreements. In certain positions and jobs, a labour market test is not necessary.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Hungary, the following must be obtained:

- A long-term visa for the purpose of employment issued by the Regional Directorate of OIN upon the third-country national's application to the consulate abroad);
- A residence permit for the purpose of gainful employment issued by the Regional Directorate of OIN upon the third-country national's application submitted before the expiration of a long-term visa for the purpose of employment; and
- A work permit issued by the Labour Office upon the employer's application.⁷⁷

Employers are required to submit applications for work permits to the capital/county Labour Office with the following documents: (1) a copy and Hungarian translation of the certificate on the qualifications of the third-country worker, if it is required for the position; (2) a certificate of the health condition of the foreign worker; and (3) copy of the employer's registration documents.

15-60 days before the submission of formal application for work permit employers have to register the vacancy notice and the labour force request (specifying qualification, language knowledge, labour experience, and other requirements of the prospective worker) at the Labour Office. The Labour Office will determine whether a suitable candidate is already available in the national labour market and grant the work permit only if such a candidate cannot be found.

In addition, employers have to guarantee that the monthly salary will be no less than 80% of the national average in the given sector.

⁷⁶ The Ministerial Communication is published in the Official Gazette on 1 February of each calendar year. For instance, in 2007 the quota was 83,000 and in 2008 it was 65,000.

⁷⁷ The ministerial decree on the work permit is available in Hungarian at http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99900008.SCM (last visited February 2010).

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

For the visas as well as for the residence permit for the purpose of gainful employment the following are required from the third-country national: (1) an application; (2) a valid travel document; (3) justification of the purpose of entry and stay; (4) proof of sufficient means of support; (5) possession of necessary permits for return; (5) proof of accommodation and means for accommodation; (6) healthcare insurance or sufficient financial resources for healthcare services; (7) that the applicant not be subject to expulsion or an entry ban and not be considered a threat to public policy, public security or public health, or to national security; (8) that the applicant not be subject to alert warning in the Schengen Information System (SIS) for the purposes of refusing entry; and (9) a work permit obtained by employer.

In case of residence permit an applicant should be in possession of long-term visa.

After the visa/residence permit is obtained by a third-country national, an employment contract is signed between her/him and the employer.

7. First Residence and Work Permits

Residence and work permits are separate documents and are issued by different institutions. In the case of seasonal workers, seasonal employment visas serve as the basis for both residence and employment (see Section 8).

Initial work permits are issued for up to two years and may be extended if employment continues. The period of validity of the residence permit or long-term visa granted for the purpose of employment corresponds to the duration of the work permit.

Work permits are issued only for employment with one employer and in one particular job.

8. Specific Schemes for Third-Country ULSWs

In order to meet labour needs in the agriculture sector, including crop production, stock-raising and fisheries, a simplified scheme exists for the employment of seasonal workers. Such workers need to obtain a seasonal employment visa and a seasonal work permit. The visa can be for single or multiple entries and is issued for a maximum duration three months within six months. The seasonal work permit is valid for a maximum of 150 days within a twelve-month period. These permits are subject to annual quota. Under this type of work permit, seasonal workers may change employers and interrupt their stay in Hungary without losing their work permits.

A simplified employment scheme will be introduced by the new Act CLII of 2009, which will take effect in April 2010. This scheme will introduce more flexible rules for the employment of some categories of third-country nationals, particularly in agriculture and domestic work. The details of this scheme are not yet available.

A framework permit is a permit issued for a group of third-country workers on the basis of a civil contract between a local employer requiring employment of foreign workers and a foreign-based company. It is not based on labour market test but on the validity and applicability of the civil law contract.

9. Obligatory Administrative Costs Incurred by EU Employers

Obligatory fees for employers consist of the following:

- EUR 10 for a work permit;
- EUR 10 for registering the labour force request; and
- EUR 10 for posting a vacancy announcement.

10. Rights of Third-Country ULSWs

Generally the scope of the rights of third-country workers does not depend on the level of their skill but on the duration of their residency and their legal status in Hungary. For instance, unemployment benefits are only provided to third-country nationals who can be employed without a work permit and have been working in Hungary for at least one year.

IRELAND

1. General Assessment of Immigration of Third-Country ULSWs

With an unemployment rate of 12.6% in 2009, an increase from 6.3% in 2008 and 4.5% in 2007, the number of employment permits issued in Ireland has dramatically declined.⁷⁸ In 2004, a total of 47,551 employment permits were issued. In 2006, the numbers had fallen to 23,898, and, by 2009, the numbers had dropped to 7,962. The vast majority of employment permits issued are in the service industry, medical/nursing and catering sectors, with very few permits being issued in the agricultural and fishing industries, domestic services and entertainment sector.⁷⁹ Since 2000, women have represented around 40% of overall work permit holders.⁸⁰

2. Legal Framework

General immigration provisions applicable also to ULSW are laid down in the Employment Permits Acts of 2003 to 2006 and relevant secondary legislation⁸¹ and in the Immigration Acts of 1999 to 2004, which address issues of permission to enter and remain in the State.⁸²

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Economic Migration Policy Unit (Ministry for Enterprise, Trade and Employment) is responsible for the development and coordination of overall policy on economic migration.⁸³
- The Minister for Enterprise, Trade and Employment grants employment permits to third-country nationals.
- The Employment Permit Section of the Department of Enterprise, Trade and Employment processes applications for employment permits.⁸⁴

⁷⁸ Central Statistics Office, http://www.cso.ie/releasespublications/documents/labour_market/current/lregeo.pdf (last visited February 2010).

⁷⁹ The Department of Enterprise, Trade and Employment, <http://www.entemp.ie/labour/workpermits/statistics.htm> (last visited February 2010). The Department of Enterprise, Trade and Employment publishes statistics regarding the number of employment permits issued on an annual basis, and this data is disaggregated on the basis of nationality, employment sector and geographical location.

⁸⁰ Pillinger, J., *The Feminisation of Migration: Experiences and Opportunities in Ireland*, ICI, 2007.

⁸¹ On legislation regarding employment permits, see <http://www.entemp.ie/labour/workpermits/legislation.htm> (last visited February 2010).

⁸² The Immigration Act 2004 is the most relevant primary legislation; see

http://www.inis.gov.ie/en/INIS/Immigration_Act_2004.pdf/Files/Immigration_Act_2004.pdf. For information on the administrative procedures and guidelines regarding visas, see <http://www.inis.gov.ie/en/INIS/Pages/Irish%20Visa%20Information>. For a list of which third-country nationals are currently required to apply for visas prior to seeking entry, see [http://www.inis.gov.ie/en/INIS/S.I.%20453%20of%202009%20\(Size%20110%20KB.\)pdf/Files/S.I.%20453%20of%202009%20\(Size%20110%20KB.\)pdf](http://www.inis.gov.ie/en/INIS/S.I.%20453%20of%202009%20(Size%20110%20KB.)pdf/Files/S.I.%20453%20of%202009%20(Size%20110%20KB.)pdf) (all links last visited February 2010).

⁸³ <http://www.entemp.ie/labour/migration/index.htm> (last visited February 2010).

⁸⁴ See <http://www.entemp.ie/labour/workpermits/> (last visited February 2010).

- The Minister for Justice, Equality and Law Reform grants visas, permission to enter and residence permits.⁸⁵
- The Irish Naturalisation and Immigration Service (INIS)⁸⁶ carries out the operational functions of the Minister for Justice, Equality and Law Reform, including processing of visa applications and residence permit applications.
- The Garda National Immigration Bureau (GNIB) registers of third-country foreign nationals who are granted residence in the State.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

Employment permits can only be issued for eligible categories of jobs.⁸⁷ The Minister for Enterprise, Trade and Employment may make regulations specifying, for a period not exceeding two years, the maximum number of employment permits that may be granted in a specified economic sector during that period. In addition, employment of third-country nationals is subject to a labour market test (see Section 5).⁸⁸

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Ireland, the following must be obtained:

- An entry visa, if required, issued by the consulate upon the third-country national's application;
- A residence permit ("certificate of registration") issued by the GNIB upon the third-country national's application after arrival in Ireland; and
- An employment permit issued by the Department of Enterprise, Trade and Employment upon the employer's application.

Before applying for employment permits, employers must satisfy a labour market test. The labour market test requires employers to advertise the vacancy with the national unemployment agency's FAS/EURES employment network for at least eight weeks and additionally in local and national newspapers for six days. The Minister for Enterprise, Trade and Employment, when determining which applications for employment permits should be granted, also gives

⁸⁵ Certain powers are delegated to immigration officers and/or immigration police acting on behalf of the Minister for Justice, Equality and Law Reform.

⁸⁶ See www.inis.gov.ie (last visited February 2010).

⁸⁷ On 16 April 2009, a ban was imposed on granting employment permits in specific job sectors, including all clerical and administrative positions, all general operatives/labourers, all operator and production staff, all domestic workers (including caretakers in the home and child minders), all work riders (horse racing), all retail sales vacancies, sales reps, all transport staff, including HGV drivers, childcare workers, all staff in hotel tourism and catering (except chefs) and all craft workers and apprentice/trainee craft workers (bookbinding, bricklaying, carpentry, electricians, tiller/floorers, mechanics, motor engineers, painters and decorators, sheet metal workers, refrigeration, tool makers, etc.).

⁸⁸ See www.entemp.ie/labour/workpermits/labourmarketneedstest.htm (last visited February 2010).

“community preference” to applications received for employment of Bulgarian and Romanian nationals.

The employers are usually responsible for applying for employment permits for third-country nationals.⁸⁹ The application must provide the following information: (1) a full and accurate description of the employment, the terms and conditions, the hours of work each week and the proposed duration of the employment; (2) information and supporting documentation of the qualifications, skills and experience required for the position; (3) details of the immigration history, if any, of the proposed employee; and (4) any other information as may materially assist in making a decision. The remuneration to be paid to the third-country national cannot be less than the standard working week remuneration.⁹⁰

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

A third-country national must then apply for an entry visa, if a visa is required, after his/her employment permit is issued.⁹¹ In addition to the visa application form and required fees, the third-country national must submit: (1) a passport valid for 12 months; (2) the employment permit; (3) the employment contract or a letter from the employer confirming the position and salary; and (4) evidence of qualifications and previous work experience. After arrival in the State, the third-country national is required to apply for the residence permit. The applicant will be required to produce a passport for this purpose and is usually required to provide evidence of the employment permit, particularly especially if no visa was required for entry.

7. First Residence and Work Permits

Third-country nationals are issued with two separate permits: an employment permit and a residence permit.

Employment permits may be issued for periods from six months to two years. The duration of the residence permit corresponds with the duration of the employment up to one year. Thus, if the employment permit is valid for two years, the residence permit is only issued for one year, and is renewable thereafter.

Employment permits may be renewed for a maximum of three years. After five years of employment on temporary renewable permits, it is possible for an employment permit of unlimited duration to be issued.

⁸⁹ The prospective employee or employer may make the application, although usually in respect of unskilled and low-skilled positions, the employer makes the application.

⁹⁰ *Guide to Work Permits*. Available at <http://www.entemp.ie/publications/labour/2009/guidelines-workpermits-oct2009.pdf> (last visited February 2010).

⁹¹ For a list of which third-country nationals need visas, see [http://www.inis.gov.ie/en/INIS/S.I.%20453%20of%202009%20\(Size%20110%20KB.\)pdf/Files/S.I.%20453%20of%202009%20\(Size%20110%20KB.\)pdf](http://www.inis.gov.ie/en/INIS/S.I.%20453%20of%202009%20(Size%20110%20KB.)pdf/Files/S.I.%20453%20of%202009%20(Size%20110%20KB.)pdf) (last visited February 2010).

First employment permits generally require holders to remain with their initial employers.

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

The following fees may be paid either by the employer or the third-country worker:⁹²

- EUR 500-1000 for the first applications for an employment permit, with the precise fee dependant upon the duration of the employment permit; and
- EUR 500-1500 for renewing the employment permit, with the precise fee dependant upon the duration of the employment permit.

10. Rights of Third-Country ULSWs

There are three significant differences in the rights and entitlements of ULSWs and highly skilled third-country nationals. First, ULSWs can only apply for family reunification after 12 months of employment, provided that the employment permit has been renewed for a further period of at least 12 months and that the worker has sufficient funds to support family members without recourse to Family Income Supplement/public funds.⁹³ Second, ULSWs can only apply for long-term residence (with free access to the labour market) after five years of legal residence on employment conditions.⁹⁴ Finally, eligibility for social security/welfare benefits is subject to satisfying a residence condition,⁹⁵ and third-country national migrant workers, regardless of category, are not eligible for vocational education and training.

⁹² Third-country workers are responsible for paying EUR 60-100 for their visas and a residence permit fee of EUR 150 per year.

⁹³ Family members may accompany highly skilled third-country nationals at the moment of first entry or join later, provided immigration rules are satisfied.

⁹⁴ Highly skilled third-country nationals are permitted to change residence status in-country and enjoy free access to the labour market after two years.

⁹⁵ See <http://www.welfare.ie/EN/Publications/SW108/Pages/1WhatistheHabitualResidencecondition.aspx> (last visited February 2010).

ITALY

1. General Assessment of Immigration of Third-Country ULSWs

In Italy, jobs for ULSWs are often not regulated, not only for third-country nationals but also for Italian workers. This makes it difficult for third-country ULSWs to find regular employment in Italy. Most ULSWs are engaged in seasonal (agriculture and tourism) and domestic work. Seasonal work is the only sector in which third-country ULSWs are employed that is covered by legal provisions. The quota established in the “Quota Decree” (*Decreto Flussi*) of third-country seasonal workers for 2009 was 80,000 persons, the same quota as in 2007 and 2008).

All the other sectors and jobs lack state regulation. Meanwhile the need for ULSWs is proved by periodic regularizations⁹⁶ of irregular migrants carried out by Italian Government.

2. Legal Framework

The Unified Immigration Text of 2002 establishes general rules in the field of migration and is applicable to all third-country nationals coming to Italy.⁹⁷ Specific provisions on quota for seasonal workers are set in the “Quota Decree”, issued annually in conformity with the Unified Immigration Text. There are no further specific regulations on third-country ULSWs.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Council of Ministers formally issues all decrees/laws upon initiative of and in consultation with the relevant Ministry.
- The Ministry of Interior develops general immigration policy.
- The Immigration Office decides on issuing of authorizations to employers to hire third-country nationals.
- The Ministry of Labour collects, on an annual basis, the numbers of third-country workers needed and identifies occupations where there are shortages in the labour force.
- The Police issue permits.
- The regional employment commissions provide advice regarding the annual number of seasonal workers needed from abroad.
- The consulates issue visas.

⁹⁶ In 2009, 294,744 applications for regularization were submitted by domestic workers. The number of regularized individuals is not yet known because, due to IT problems, the Ministry of Interior allowed applicants to re-file on-line in December 2009.

⁹⁷ Available in Italian at <http://www.camera.it/parlam/leggi/02189l.htm> (latest amendment available at <http://www.parlamento.it/parlam/leggi/09094l.htm>) (both links last visited February 2010).

4. Regulations Regarding Access to the National Labour Market

A quota system exists in Italy regarding employment of third-country nationals. The Council of Ministers issues annually a “Quota Decree” on the basis of labour market indicators provided by the Ministry of Labor and the number of non-EU citizens to be employed. The decree takes full account of data on the labour demand in the regions. The regions transmit relevant data by 30 November each year. The quota issued by the “Quota Decree” includes nationals of Serbia-Montenegro, Croatia, Bosnia-Herzegovina, FYROM, Bulgaria and Romania and of countries with which Italy has bilateral agreements: Albania, Egypt, Moldova, Morocco and Tunisia.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Italy, the following procedures must be obtained:

- An entry visa issued by the consulate abroad upon the third-country national's application;
- A residence permit for paid employment issued by the Police upon the third-country national's application after her/his arrival in Italy; and
- A work permit issued by the Police upon the third-country national's application after her/his arrival in Italy.

In order to employ a third-country national and before the third-country national enters Italy, an employer must be authorised to employ a third-country worker. The following documents must be submitted by the employer for this purpose to the local Immigration Office: (1) a request for a work permit bearing the name of the future employee; (2) proof of adequate housing for the employee; (3) the proposed contract with details of conditions, including salary; (4) proof of covered return journey; and (5) declaration of the obligation to report every possible change regarding the employment. The Immigration Office must communicate its decision within 40 days and transmit the necessary documentation to the relevant consulate abroad, so that the third-country national in question may be issued a visa.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

As the residence and work permits are issued upon arrival to Italy, visas are the only document needed to enter the country. Visas exceeding 90 days are issued for specific purposes, such as employment. To receive a visa, a third-country national must submit: (1) an application; (2) a valid travel document;

and (3) supporting documents showing the purpose for which the third-country national is travelling to Italy.

In order to be granted residence and work permits, a third-country national is required to submit the following documents: (1) an application; (2) an employment contract; (3) a valid travel document; (4) proof of adequate housing; and (5) proof of covered return journey.

7. First Residence and Work Permits

Although separate documents, residence and work permits are issued simultaneously.

The duration of both permits depends upon the duration of work; the duration of the permits cannot exceed one year for contracts of limited duration or two years for contracts of unlimited duration.

Residences permit for seasonal work can be issued for periods from 20 days to nine months. A multiple-entry residence permit for seasonal work valid for up to three years may be issued to a third-country national who can prove that: (1) s/he come to Italy for the purpose of performing seasonal work during at least two previous years; (2) the seasonal employment was repeated; and (3) s/he returned to his country of origin upon the termination of the seasonal work. A worker who has a multiple-entry residence permit has to leave each time the seasonal work is over, which means that the stay cannot be longer than certain limited period per year. Such permits can only be issued within the quota. Visa in the case of multiple-entry residence permit for seasonal work is still issued on an annual basis.

Renewed permits are usually granted for the same duration as the initial permits.

A work permit does not bind employers and employees to one another. In the event of a loss of job, it gives its holder the right to look for work for the remaining time of the permit but no longer than for six months.

8. Specific Schemes for Third-Country ULSWs

Specific provisions on the employment of third-country ULSWs relate to seasonal workers⁹⁸ and to the regularization of irregular migrants. In 2009, specific regularization of domestic workers took place. Under this scheme, employers needed to present a request for regularization and prove that the person who was to be regularized had been irregularly employed for at least three months before the date of request in a position of domestic aid.

⁹⁸ Seasonal workers need to obtain a residence permit for seasonal work issued by the Ministry of Interior represented by the Police upon the third-country national's application. Procedures for obtaining this work permit are expedited.

Italy has bilateral agreements on cooperation in the field of migration with Albania, Egypt, Moldova, Morocco and Tunisia. Employment lists are drawn up in these countries especially for the purpose of seasonal work.

9. Obligatory Administrative Costs Incurred by EU Employers

The cost of regularization has been set to EUR 500 and had to be covered by the employer. Otherwise no specific fees are required from the employer.

10. Rights of Third-Country ULSWs

The rights of third-country workers do not depend upon their skill level, and residence permits give rights to social assistance on a par with nationals, including the right to health care.

LATVIA

1. General Assessment of Immigration of Third-Country ULSWs

Since joining the EU, approximately 80,000 people have left Latvia for jobs in other EU Member States.⁹⁹ The Bank of Latvia estimates that 200,000 economically active residents might leave the country gradually over the next ten years. Moreover, Latvia is experiencing a natural decrease in its population. This means there will be a need for third-country workers, including low-skilled workers in the future. For the moment there is no long-term approach or flexible policies with respect to labour immigration in Latvia.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The key documents regulating the immigration of workers in general are the Law on Immigration of 2003 and the Cabinet of Ministers Regulation No. 44 of 2004.¹⁰⁰

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:¹⁰¹

- The Cabinet of Ministers is responsible for general migration policy.
- The Office of the Citizenship and Migration Affairs issues work permits, short-term visas and temporary residence permits.
- The State Employment Agency registers vacancies and approves work invitations.
- The consulates of the Republic of Latvia issue visas and (after approval by the Office of the Citizenship and Migration Affairs) work permits.

4. Regulation Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test (see Section 5).

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Latvia, the following must be obtained:

- An entry visa issued by the consulates upon application of a third-country national;

⁹⁹ Ministry of Special Assignments, Department of Social Integration, 2007.

¹⁰⁰ Other relevant documents include: (1) Regulation No. 217 of 2003; (2) Regulation No. 813 of 2006; and (3) Regulation No. 733 of 2009.

¹⁰¹ For detailed scheme on the work of authorities involved in issuing work permits, see http://www.nva.gov.lv/docs/11_47e232e69a0506.78251163.doc (last visited February 2010).

- A temporary residence permit applied for by a third-country national at the consulates abroad and picked up in Latvia at the Office of Citizenship and Migration Affairs; and
- A work permit issued by the consulates after the Office of Citizenship and Migration Affairs processes the application of a third-country national.

To satisfy the labour market test, an employer has to submit an invitation of a prospective employee for approval to the State Employment Agency. The State Employment Agency approves the invitation only if within one month no citizen of Latvia or the EU with appropriate qualifications was found for the vacancy.

Employers have to provide third-country workers with remuneration of at least LVL 480 (EUR 800) per month, which is the average salary in Latvia.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

To obtain a visa to enter Latvia for employment, the following are required from a third-country national: (1) a valid travel document; (2) proof of financial resources sufficient for residence in Latvia and return to the country of domicile or exit to a third country; and (3) a work permit and submitted application for a temporary residence permit.

The temporary residence permit for employment requires the following: (1) a passport or valid identification document; (2) an application form and two photographs; (3) an issued work permit; (4) a medical certificate that the foreigner does not have any health disorders or diseases; (5) proof of valid medical insurance coverage (at least equal to EUR 30,000);¹⁰² (6) certificate that the third-country national does not have a criminal record, issued by a competent body in the country of citizenship or residence; (7) proof of sufficient financial resources; (8) proof of available accommodation in Latvia; and (9) proof of payment of the required fees.

To obtain a work permit, the following are required: (1) a passport or valid identification document; (2) proof of health insurance coverage; (3) an employer's invitation certified by the Latvian State Employment Agency; and (4) an employment contract.

7. First Residence and Work Permits

In Latvia, temporary residence permits for the purpose of employment can only be issued together with work permits. The duration and validity of temporary residence permit depends on the employment contract; it can be issued for up to five years and extended by the Office of the Citizenship and Migration

¹⁰² The medical insurance policy has to guarantee at least the following medical services: (1) medical service in case of emergencies; (2) in-patient treatment for conditions that are critical or dangerous for life; (3) transportation to the nearest medical establishment in both above mentioned cases; and (4) transportation back to the home country in case of severe disease or death.

Affairs. Temporary residence permit that exceeds one year has to be registered with the Office of the Citizenship and Migration Affairs each year.

Work permits oblige holders to work for the employers who invited them. For renewal with the same employer, the employer must submit an application to the State Employment Agency justifying the need to employ the third-country worker again. If the third-country worker finds a new employer in Latvia, a new application for a work permit has to be submitted.

Holders of permanent residence permits have unlimited access to the labour market and do not need work permits.

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

Employers bear all expenses for work permits and temporary residence permits for third-country workers issued for the purposes of employment. Such expenses consist of the following:

- LVL 3 or 5 (EUR 5-7) for examination of documents and for approval of work invitation;
- LVL 35 (EUR 50) per year of duration of the work permit - for examination of the documents necessary for requesting a work permit;
- LVL 47.20 (EUR 70) for confirmation of education and professional qualifications regarding regulated professions;
- LVL 70 (EUR 120), LVL 170 (EUR 260), or LVL 220 (EUR 350) for examination of the documents necessary for requesting a residence permit, with the precise fee dependant upon the duration of the residence permit.

Latvian employers complain that fees of this kind make it unattractive for them to hire foreign workers.

10. Rights of Third-Country ULSWs

The rights of third-country nationals do not depend on the level of their skill but on the type of permit they are entitled to. Temporary residence permits, for example, does not give the right to state-guaranteed healthcare, unemployment benefits, social care and state-guaranteed legal assistance. Holders of permanent residence permits are entitled to receive these benefits as well to attend state-funded requalification courses.

LITHUANIA

1. General Assessment of Immigration of Third-Country ULSWs

Lithuania has been facing a negative net migration for years. As the work force has shrunk, the Lithuanian government has established a simplified procedure for issuing work permits to workers with the most requested qualifications, which are determined biannually. This list has included, inter alia, low-skilled professions. In 2009, 2,239 work permits were issued in Lithuania, only 1.6% of which were issued to women. This was a 65% decrease from the number of permits issued in 2008. In 2009, the majority of work permits were issued in service industry (49%), industrial sectors (31%), and construction (20%). Only one permit was issued in the field of agriculture.¹⁰³

2. Legal Framework

There are no specific regulations regarding ULSWs. The following address all third-country nationals in general: (1) Law on the Legal Status of Aliens of 2004;¹⁰⁴ (2) the Order of the Minister of Internal Affairs “On the Adoption of the Procedure Regulating the Issuance of Temporary Residence Permits and Assessment of Marriage of Convenience” of 2005;¹⁰⁵ (3) the Order of the Minister of Social Security and Labour “On the Adoption of the Procedure Regulating the Issue of Work Permits for Aliens” of 2009;¹⁰⁶ and (4) the Order of the Minister of Social Security and Labour “On the Adoption of the Procedure Regulating the Issue of Work Permits for Aliens During Their Stay in the Republic of Lithuania” of 2004.¹⁰⁷

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Interior sets out general policies regarding admission to the country, residence, departure etc. of third-country nationals;
 - o The Migration Department approves applications for temporary residence permits.
 - o Territorial migration service issues temporary residence permits, upon approval of the Migration Department.

¹⁰³ Lithuanian Labour Exchange Information, www.ldb.lt (last visited January 2010).

¹⁰⁴ Available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=356478 (last visited January 2010).

¹⁰⁵ Available in Lithuanian at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=344752&p_query=&p_tr2= (last visited January 2010).

¹⁰⁶ Available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=350928&p_query=&p_tr2= (last visited January 2010).

¹⁰⁷ Available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=238223&p_query=&p_tr2= (last visited January 2010).

- The Ministry of Social Security and Labour is in charge of work permits, social guarantees etc;
 - o The Labour Exchange Office approves applications for work permits.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour-market test (see Section 5). In addition, the Minister of Social Security and Labour biannually adopts an order containing the list of the most requested qualifications of workers in Lithuania, which may include low-qualification professions. These categories of workers enjoy a simplified procedure for obtaining work and residence permits.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Lithuania, the following must be obtained:

- A national visa (D type) issued by the consulates abroad upon application of a third-country national for a temporary residence permit and upon decision of the Migration Department about granting of such residence permit;
- A temporary residence permit applied for at the consulates abroad and issued by the territorial migration service upon the approval of the Migration Department and after arrival in Lithuania; and
- A work permit issued by the Lithuanian Labour Exchange Office upon the employer's application.

An employer must register a vacancy at the Territorial Labour Exchange Office. If the place has not been filled within one month by citizens of Lithuania and the European Union, the employer may submit an application to the Territorial Labour Exchange for a work permit. Except under limited circumstances, the work permit should be issued while the worker is still abroad.

An employer must submit to the Territorial Labour Exchange Office the following documents in order to obtain an initial work permit for a third-country national: (1) an application to employ a third-country worker; (2) copies of the personal documents of the third-country worker; (3) copies of documents identifying the qualifications of the third-country worker; (4) copies of the documents on recognition of the qualification of the third-country worker; (5) copies of the documents establishing that the third-country worker has had at least two years of professional experience in the last three years; (6) documents of

qualification courses and training (if applicable); and (7) a certificate issued by the employer stating:

- That it is necessary to employ the third-country national;
- The number of dismissed persons in the last six months, reasons for dismissal, and qualifications of the dismissed personnel; and
- That the employee is not under a valid administrative sanction.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to obtain a national visa allowing a third-country national to stay in Lithuania for up to three months, a third-country national needs to submit the following to the consulate abroad: (1) a valid travel document; (2) an application and one photograph; (3) a receipt proving payment of the consular fee; (4) proof of health insurance; and (5) a letter from the Migration Department confirming that the third-country national has been granted the right to temporarily reside in Lithuania.

The following are needed to obtain a temporary residence permit for employment purposes: (1) a work permit; (2) a valid health insurance document; (3) possession of at least one minimum monthly salary (currently LTL 800 (EUR 232)); (4) a list of visits and stays in foreign countries; and (5) proof of possession of accommodation, contract for leasing accommodation for a period at least as long as the temporary residence permit, or proof that a third party will provide such place of residence. Application for a temporary residence permit is submitted after a work permit has been obtained, although it is possible to examine applications for work permit and temporary residence permit at the same time.¹⁰⁸

7. First Residence and Work Permits

Work permits and temporary residence permits are two separate permits.

Work permits may be granted for periods of up to two years. Temporary residence permits may be granted for up to one year. Each can be renewed for similar periods.

Third-country workers can have only one work permit, which indicates the following information: the third-country worker's personal data, his/her qualification, duration of the permit, place of work (name and address of the employer) and work duties. None of these conditions may be changed without obtaining a new work permit.

¹⁰⁸ The scheme for issuing residence permits can be found in *The Migration Yearbook* 2008, p. 52 of the Migration Department of Lithuania at [http://www.migracija.lt/index.php? -484440258](http://www.migracija.lt/index.php?-484440258) (last visited January 2010).

8. Specific Schemes for Third-Country ULSWs

Preferential provisions exist when hiring workers whose qualifications are included in the list of most required professions, as listed in the order of the Minister of Social Security and Labour (see Section 4). In such cases, the examination of applications for issuing of work permits for third-country nationals is expedited: the application may be submitted when the third-country worker is already in Lithuania, which avoids the wait of up to six months for the Migration Department's decision regarding the temporary residence permit, and the worker may be issued a national D visa valid for up to one year rather than the normal three month period. However, subsequent applications for residence permits are processed in the normal manner described above.

9. Obligatory Administrative Costs Incurred by EU Employers

The following fees must be paid by either the employer or the worker:

- For a work permit:
 - LTL 420 (EUR 122) for a work permit valid for one year: or
 - LTL 520 (EUR 151) for a work permit valid for two years; and
 - LTL 180 (EUR 52) for the extension of work permit for one year.
- For a temporary residence permit:
 - LTL 207 (EUR 60) for the national visa (D);
 - LTL 320 (EUR 93) for the first temporary residence permit; and
 - LTL 320 (EUR 93) for subsequent temporary residence permits.

10. Rights of Third-Country ULSWs

Under Lithuanian law, all third-country nationals enjoy the same rights and the same privileges without prejudice as to whether they are skilled or unskilled.

LUXEMBOURG

1. General Assessment of Immigration of Third-Country ULSWs

Luxembourg has a high number of third-country nationals. In 2009, approximately 215,500 third-country nationals lived in Luxembourg, representing 43.7% of the country's population. The vast majority of foreign nationals come from the EU (87%) and has high level of education. However, a significant proportion of third-country workers are employed in low-skilled positions. Third-country workers are overrepresented in the hotel and restaurant sectors—almost 75% of all workers employed in these sectors are third-country nationals—as well as, to a lesser extent, in industry and agriculture.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The national legal framework is primarily composed of the Law of 28 August 2008 on Free Movement of Persons and Immigration, and related regulations.¹⁰⁹

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Foreign Affairs and Immigration (Directorate of Immigration) coordinates immigration issues on a general level. It is also responsible for issuing stay authorizations and stay permits.
- The Employment Administration conducts the labour market test.
- The consulates issue visas.¹¹⁰

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour-market test (see Section 5).

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Luxembourg, the following must be obtained:

- An entry visa issued by the consulate abroad upon confirmation of stay authorization by the Minister of Foreign Affairs and Immigration's Directorate of Immigration;

¹⁰⁹ Available at <http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf> (last visited March 2010).

¹¹⁰ Visas may also be issued by consulates of Belgium and the Netherlands on behalf of Luxembourg.

- A stay authorization for employment purposes issued upon the third-country national's application to the Minister of Foreign Affairs and Immigration through the consulate abroad; and
- A stay permit authorizing employment issued upon the third-country national's application to the Directorate of Immigration after the third-country national arrives in Luxembourg and registers with the local authorities.

The employer does not play a significant role in the procedure. He is required to submit a vacancy notice for the position to the Employment Administration. When reviewing an application for a stay authorization, the Minister of Foreign Affairs and Immigration seeks confirmation from the Employment Administration that the labour market test requirements were met. The Employment Administration must submit its opinion within three weeks.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

Before entering the country, a third-country national must request a stay authorization for the purpose of employment from the Minister of Foreign Affairs and Immigration, for which the following documents are required: (1) a copy of a passport; (2) a birth certificate; (3) a clean criminal record extract; (4) a curriculum vitae; (5) copies of diplomas and professional certificates; (6) a work contract; and (7) cover letter justifying the request.

The stay authorization for the purpose of employment will only be granted if the following conditions are met: (1) The labour market test is satisfied. (2) The applicant has adequate qualifications for the occupation. (3) The applicant has an employment contract. (4) The applicant has adequate housing.

Visas are then issued by the consulate (if necessary) to authorize entry to Luxembourg.

Once in the country, third-country workers have three months to request a stay permit that authorizes employment from the Ministry of Foreign Affairs and Immigration's Directorate of Immigration. The following documents must be presented: (1) the visa, if needed; (2) a copy of the stay authorization; (3) a copy of the arrival declaration delivered upon registration of a third-country national by the local authorities; (4) a medical certificate; (5) a proof of adequate housing; (6) photographs; and (7) proof of payment of a EUR 30 fee to the Ministry of Foreign Affairs and Immigration's Directorate of Immigration. In addition, a "reception and integration contract" is required from third-country nationals seeking long-term residency.

7. First Residence and Work Permits

Stay authorization and permit authorize both residence and employment in Luxembourg.

The first stay permit is granted for a period of one year. It can be renewed, if the employment contract is still valid, for two years. A third permit may be issued for a period of three years.

The first and second stay permits limit third-country workers to a single sector of activity and specific occupation; however, they do not tie the worker to one employer. The third stay permit does not contain any restrictions.

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

No fees are charged to the employer.

10. Rights of Third-Country ULSWs

Third-country nationals enjoy equal rights without prejudice as to whether they are skilled or unskilled.

MALTA

1. General Assessment of Immigration of Third-Country ULSWs

There is no structured approach regarding recruitment of third-country ULSWs in Malta, nor is the recruitment of third-country ULSWs common in the Maltese labour market. Those third-country ULSWs who are employed in Malta most often work in construction, restaurants and the hotel industry, but, more often than not, they do so without an employment contract. No statistical information is available on numbers of third-country nationals, including ULSWs, entering Malta for employment.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. General provisions of the Immigration Act of 1970,¹¹¹ the Immigration Regulation of 2004¹¹² and Legal Notice 254/2009¹¹³ apply.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Justice and Home Affairs sets out general admission policies for third-country nationals.
- The Employment and Training Corporation (ETC) issues work permits.
- The Directorate Citizenship and Expatriate Affairs issues residence permits.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

Employment of all third-country nationals is subject to a labour market test (see Section 5).

There must also be significant demand in the particular field in which a third-country national wishes to work, which demand is determined by the ETC.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Malta, the following must be obtained:

- A visa issued by the consulate abroad upon the third-country national's application;

¹¹¹ Available at http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt217.pdf (last visited February 2010).

¹¹² Available at <http://www.doi.gov.mt/EN/legalnotices/2004/04/LN205.pdf> (last visited February 2010).

¹¹³ Available at <http://www.doi.gov.mt/EN/legalnotices/2009/09/LN%20254%20E.pdf> (last visited February 2010).

- A residence permit for employment purposes issued by the Directorate of Citizenship and Expatriate Affairs upon the third-country national's application after arrival in Malta;¹¹⁴ and
- An employment permit issued by the ETC upon the employer's application while the third-country national is either in Malta or abroad.¹¹⁵

In order to hire a third-country worker, an employer must satisfy a labour market test and apply for an employment permit. The labour market test includes verification of the ratio of Maltese/EU workers, including EEA and Swiss workers, to foreign workers employed in that particular sector; as well as assessment of general employment situation in the sector. It is up to the employer—and not the ETC—to confirm that the labour market test has been carried out. The choice of a worker who is not a Maltese, EU, EEA or Swiss national must be justified.

In order to obtain an employment permit, an employer is required to submit four copies of the following documents to the ETC: (1) a cover letter; (2) a job description; (3) the third-country national's curriculum vitae or other qualification certificates; (4) a copy of the third-country national's passport and valid visa; and (5) a photograph.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

A third-country national may enter Malta with a tourist visa or with an employment permit obtained by the employer. If a third-country national entered the country with a tourist visa, an employment licence needs to be obtained for her/him before the visa expires.

In order to obtain a visa, a third-country national must submit the following: (1) justification of the purpose of the visit (e.g. a letter of invitation, a summons, an organized trip, etc.); (2) proof of the return journey (i.e. a valid return ticket or a certificate of reserved and prepaid journey); (3) proof of means of subsistence during the journey and stay (EUR 48 per day); (4) proof of available accommodation; and (5) proof of health insurance with minimum coverage of EUR 30,000. This coverage should be sufficient to pay for a Local Hospital Plan, which provides in-patient or out-patient care at public or private hospitals.

In order to obtain a residence permit for employment purposes, a third-country national must submit the following after arrival in Malta: (1) an application and two photographs; (2) a passport; (3) a copy of the employment permit; and (4) a statement of earnings.¹¹⁶

¹¹⁴ More information on residence permits is available at <http://www.mfa.gov.mt/Library/Citizenship%20Forms%20and%20Templates/CEA8-URP.pdf> (last visited February 2010).

¹¹⁵ See <http://www.etc.gov.mt/docs/NewThirdCountryNationalApplication30092009.pdf> (last visited February 2010).

¹¹⁶ See http://www.mfa.gov.mt/Library/Citizenship%20Forms%20and%20Templates/CEA20%20-%203rdCountry_Euros.pdf (last visited 2010).

7. First Residence and Work Permits

In order for third-country nationals to live and work in Malta, they must have both a residence and a employment permit. These are two separate documents.

Residence permits are valid for the duration of the employment license. Employment permits are granted for one year and may be renewed up to three times. Residence permits are renewed automatically, following renewal of the corresponding employment permit.

During the first year, the employment permit ties the third-country national to a particular occupation and a particular employer.

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers are required to pay the following fees:

- EUR 150 for applying for an employment permit;
- EUR 80 for issuing an employment permit valid for one year;
- EUR 150 for applying for a renewal of an employment permit; and
- EUR 80 for renewing an employment permit.

10. Rights of Third-Country ULSWs

The rights of third-country workers do not depend upon their skill level but on their residency status.

NETHERLANDS

1. General Assessment of Immigration of Third-Country ULSWs

In general, third-country ULSWs are not admitted to the Netherlands. An exception is made for seasonal workers, mostly those employed in agriculture but also those employed in the hospitality sector (hotels and restaurants). Discussions are underway to regularize the residence status of irregular domestic workers or to create an admission policy for domestic workers. At present, however, regularization does not seem likely.

In 2008, 3,874 applications for work permits were rejected and 15,374 were approved. Of the approved applications, 6,504 were approved following a labour market test. Most of these (4,138) were for a period of less than 24 weeks, most likely for seasonal labour. Most of these temporary work permits were granted to workers from Rumania and Bulgaria.¹¹⁷

Current work permit statistics do not specify the gender of third-country workers.

2. Legal Framework

There are no specific provisions regarding third-country ULSWs. General provisions of the Aliens Employment Act and the Aliens Act of 2000 apply.¹¹⁸

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Social Affairs and Employment - the Executive Institute for Employee Benefits at the Department for Employment - makes decisions regarding work permit applications.
- The Organization for Agricultural Business (LTO), a private organization working on the basis of an agreement with the Executive Institute for Employee Benefits, processes applications for work permits for seasonal workers.¹¹⁹
- The Immigration and Naturalization Department of the Ministry of Justice processes applications residence permits.¹²⁰
- The consulates issue visas.

¹¹⁷ Annual report of UWV Werkbedrijf (the Executive Institute for Employee Benefits), 2008.

¹¹⁸ Both acts, along with subordinate regulations, policy guidelines and circulars, available at <http://wetten.overheid.nl/zoeken/> (last visited February 2010).

¹¹⁹ Joint website of Executive Institute for Employee Benefits and LTO: www.seasonalwork.nl

¹²⁰ The Immigration and Naturalization Department and the Executive Institute for Employee Benefits share a website and a work and residence permit application tool (in Dutch): <http://www.arbeidsmigratie.nl/CWIIND331/CWIINDWebapplicatie/kennisbank?init=true> (last visited February 2010).

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test (see Section 5). For highly skilled third-country workers the labour market test is often waived.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in the Netherlands, the following must be obtained:

- An entry visa issued by the consulate upon the third-country national's application;
- A residence permit for stays of more than three months issued by the Immigration and Naturalization Department upon the third-country national's application; and
- A work permit issued by the Executive Institute for Employee Benefits upon the employer's application.

In order to obtain a work permit for a third-country national, an employer needs to meet the following requirements: (1) File the work permit application with the Executive Institute for Employee Benefits. (2) Report the vacancy to the Executive Institute for Employee Benefits at least five weeks prior to filing the application for a work permit and prove that s/he has extensively searched for a candidate permitted to work on the national and EU labour market but was not able to find one (labour market test). (3) The monthly salary offered to the third-country national is not less than the one month minimum wage in the Netherlands or is in line with common salaries for similar work on the Dutch labour market. (4) The third-country national in question has submitted an application for an entry visa and a residence permit.

The employer needs to show that he has arranged for decent housing for the third-country worker.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

The visa and residence permit may be granted only after the work permit is granted.

Visas can be obtained at the Dutch embassy or consulate in the country of origin. In addition to a work permit, the applicant needs to submit the following: (1) a valid passport; (2) proof of sufficient financial means for travel and hotel costs; (3) an invitation from the employer; (4) documents showing the applicant will return to his country of origin (employment contract in the country of origin, ownership of house etc); and (5) proof of traveler's health insurance. In

addition, the applicant should not pose a threat to public order or the national safety of the Netherlands.

In order to obtain a residence permit, third-country nationals must provide the following: (1) entry visa; (2) a valid passport; (3) proof of sufficient income;¹²¹ (3) proof of willingness to undergo a TBC check; (4) evidence that s/he does not pose a threat to public order or national safety; (5) proof of health insurance; and (6) a signed employment contract.

7. First Residence and Work Permits

Work and residence permits are two separate documents.

For employment of less than three months, visas are sufficient and residence permits are not required. Such visas authorize third-country nationals to work in the Netherlands for three months within a six-month period.

Residence permits are granted for the duration of the corresponding work permits. Work permits are granted for the duration of the employment contracts. If the employment contract does not provide for any end date, the work permit is granted for three years. After this period, if employment continues and the third-country national has sufficient income, the third-country national can be employed without a work permit. If a work permit is requested for a period less than three years, extension requires another labour market test, unless the total duration of the first and subsequent work permits does not exceed three years.

For temporary work, typically seasonal work, work permits can be granted for a maximum of 24 weeks. This temporary work permit cannot be extended. A new temporary work permit may be applied for after at least 28 weeks have passed after expiry of the first temporary work permit. Third-country nationals have to leave the Netherlands for this period.

Work permits tie holders linked to the specific employers for whom they were issued.¹²²

8. Specific Schemes for Third-Country ULSWs

Currently there is no specific admission policy for third-country ULSWs. However, the Netherlands has initiated a small circular migration project for a maximum of 80 migrants from South-Africa and possibly Indonesia. The project is not aimed at unskilled workers but may also include low-skilled workers.

¹²¹ Currently the required income for a single person is at least EUR 649.52, for a single parent it is EUR 909.33 and for a couple it is EUR 1,299.04. See

http://www.ind.nl/nl/inbedrijf/actueel/met_ingang_van_1_januari_2010_nieuwe_normbedragen_middelenvereiste.asp (last visited February 2010). Although this income may be adequate for a residence permit, it is not sufficient for a work permit, for which the salary must be not less than one month minimum wage or in line with common salaries for similar work on the Dutch labour market.

¹²² If a third-country national loses his or her job, s/he is entitled to search for a new job for the remaining duration of the work permit. However, if the new job continues after the expiration of the work permit, the new employer will need to comply with the labour market test and go through all the procedure for a new work permit.

Under this project, third-country workers will be employed in a Dutch company or an institution for two years in order to gain experience in addition to a basic (practical) education received in the country of origin. The labour market test is waived. The first group is expected to arrive in summer 2010. The goal of the project is not to fill vacancies in the Dutch labour market but to contribute to development in the country of origin. The project was initiated by the Minister of Development at the Ministry of Foreign Affairs.

9. Obligatory Administrative Costs Incurred by EU Employers

Normally, employers do not have to pay administrative costs for employment of third-country nationals. However, it often happens that the employer covers the fees, which are required from the worker:

- EUR 433 for an entry visa;
- EUR 188 for a residence permit.

Employers must pay EUR 60 for urgent requests to the Organization for Agricultural Business for work permits for seasonal workers.

10. Rights of Third-Country ULSWs

The rights of third-country workers do not depend upon their skill level but rather than the type of their residence permit. Temporary residence permits, which most ULSWs have, do not grant the right to family reunification. Otherwise the rights are the same for all third-country workers.

POLAND

1. General Assessment of Immigration of Third-Country ULSWs

Employment for seasonal work of nationals of neighboring third countries and countries that have signed mobility partnerships with the European Union (the Ukraine, Belarus, Russia, Moldova, and Georgia) constitutes the major share of employment of third-country ULSWs in Poland.

Between January and June 2009, 14,891 work permits (3,891 to women), and 3,144 promises to issue a work permit (742 to women) were issued to third-country nationals in general.^{123, 124} Of those, 2,758 were in the processing industry, 1,546 in construction, 3,595 in retail and wholesale trade, and 1,490 in hotels and the restaurant industry. In addition, in the first half of 2009, Polish employers registered their written declarations of intent to employ 123,983 workers, of whom 87,042 would be employed in agriculture, 10,998 in construction, 4,730 in domestic work, 3,322 in manufacturing, 1,806 in trade, 1,680 in transportation, 1,012 in catering, and 860 in the hotel industry.¹²⁵

2. Legal Framework

General provisions concerning work permits apply to all categories of third-country workers, including ULSWs. Legislation regarding employment of third-country nationals includes the Act on Aliens of 2003;¹²⁶ (2) the Act on the Promotion of Employment and the Labour Market Institutions of 2004;¹²⁷ (3) the Regulation of the Minister of Labour and Social Policy on the “Performance of Work by Foreign Nationals without the Necessity to Obtain a Work Permit” of 2006;¹²⁸ (4) the Regulation of the Minister of Labour and Social Policy “Concerning Issuance of a Residence Permit to a Foreign National” of 2009;¹²⁹ and (5) others.¹³⁰

¹²³ Statistical data of the Ministry of Labour and Social Policy available at <http://www.mpips.gov.pl/index.php?gid=1286> (last visited February 2010).

¹²⁴ Until 31 January 2009 the procedure for granting work permits consisted of two stages: issuing a promise to issue a work permit and then issuing the work permit. As of 1 February 2009 the procedure was simplified and involves only one stage: issuing a work permit.

¹²⁵ This represents a significant increase in the number of registrations; in 2008, 156,105 declarations were registered throughout the whole year.

¹²⁶ Available at <http://isap.sejm.gov.pl/Download?id=WDU20031281175+2008%2405%2429&type=3> (last visited February 2010).

¹²⁷ Available at <http://isap.sejm.gov.pl/Download?id=WDU20040991001+art.+90+ust.+4&type=3> (last visited February 2010).

¹²⁸ Available at <http://isap.sejm.gov.pl/Download?id=WDU20061561116&type=2>, with amendments available at

<http://isap.sejm.gov.pl/Download?id=WDU20071200824&type=2>,

<http://isap.sejm.gov.pl/Download?id=WDU20080170106&type=2>, and

<http://isap.sejm.gov.pl/Download?id=WDU20090210114&type=2> (all links last visited February 2010).

¹²⁹ Available at <http://isap.sejm.gov.pl/Download?id=WDU20090160084&type=2> (last visited February 2010).

¹³⁰ The Regulation of the Minister of Labour and Social Policy “Concerning the Fees Charged in Connection with the Application to Issue a Work Permit to a Foreign National” of 2007 (available at <http://isap.sejm.gov.pl/Download?id=WDU20071951409&type=2>) and the Regulation of the Minister of Labour and Social Policy on “Establishing the Cases When a Work Permit is Issued to a Foreign National Regardless of Specific Conditions Concerning Issuance of Work Permits to Foreign Nationals of 2009 (available at <http://isap.sejm.gov.pl/Download?id=WDU20090160085&type=2>) (both links last visited February 2010).

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Migration Policy Department of the Ministry of Interior and Administration is responsible for developing national migration policy.
- The Division on Labour Migration within the Labour Market Department of the Ministry of Labour and Social Policy participates in development of labour migration policy.
- The *wojewoda*¹³¹ issues residence and work permits.¹³²
- The County (*Powiat*) Labour Office registers declarations to employ citizens of Russia, the Ukraine, Belarus, Moldova and Georgia for periods not exceeding six months.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

A labour market test usually applies to all third-country workers. Some categories of third-country nationals, including ULSWs from the countries bordering Poland and the countries within the EU mobility partnerships, are exempted from the labour market test.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Poland, the following must be obtained:

- A visa for employment purposes issued by the consulate upon the third-country national's application; or
- A residence permit for a fixed period of time for employment issued by the *voivod* upon the third-country national's application to the consulate; and
- A work permit issued by the *voivod* upon the employer's application.

In order to receive the work permit for a third-country national, an employer is required to meet the following conditions: (1) provide a salary to the third-country national not lower than the salary of Polish workers performing comparable work or holding comparable positions; (2) submit the offer of employment to the Country Labour Office; (3) obtain confirmation from the *starosta*¹³³ that the

¹³¹ *Wojewoda* is a government-appointed governor in *województwo* (a voivodship or a province), one of 16 regions into which Poland is divided.

¹³² The permits are issued within the structure of the Voivodship Offices, either by the Foreigners' and Citizens' Issues Departments or by Departments of Social Policy.

¹³³ *Starosta* has the executive power at the second-level unit of local government and administration in Poland, called *powiat* (county).

labour market test is satisfied;¹³⁴ and (4) submit documents proving the establishment of the company or, in the case of individual employers, a copy of an identity card or a travel document.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to obtain a visa for employment purposes, a third-country national is required to provide the following: (1) an application; (2) a valid travel document or documents authorizing them to cross the border; (3) proof of health insurance covering medical expenses of at least EUR 30,000; (4) a work permit or, where a work permit is not required, an employer's written declaration of intent to employ him/her; and (5) proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin, or proof that s/he is in a position to acquire such means lawfully.

In order to be granted a residence permit for a fixed period of time for employment, a third-country national must provide the following: (1) an application with four photographs; (2) justification of the stay in Poland for a period exceeding three months, which may be satisfied by showing a work permit or, where a work permit is not required, an employer's written declaration of intent to employ her/him; (3) proof of health insurance or documents confirming that the costs of medical treatment in Poland shall be covered by an insurer; (4) proof of a stable and regular source of income sufficient to cover the living expenses;¹³⁵ and (5) a legal title (e.g. a lease agreement) to accommodation.

To receive both a visa and a residence permit, a third-country national should not: (1) be registered in the index of third-country nationals whose residence in Poland is undesirable or in the Schengen Information System for the purpose of entry refusal; (2) be a threat to state security, public order, or interests; or (3) have an illness or infection that is subject to obligatory treatment in Poland.

7. First Residence and Work Permits

Residence permits and work permits are two separate documents.

Work permits are issued for a maximum period of three years. Residence permits are issued for a maximum period of two years. A visa for employment purposes can be issued as either as Schengen visa (C type) or a national visa (D type). A third country national who has a valid uniform Schengen visa (issued by Poland or another Schengen country) and a work permit (or is allowed to work without a work permit) can work in Poland, although there are some ex-

¹³⁴ In order to satisfy the labour market test implies that the employer has to submit the offer of employment to the Poviata Labour Office. The starosta analyzes the registers of the unemployed and job seekers and makes a conclusion on whether there appropriate candidates for the relevant post among those already present in the labour market.

¹³⁵ The income must exceed, after accommodation costs are deducted, the income which constitutes a basis for granting social assistance (currently PLN 477 (EUR 119.25) per month for a person in a single household).

ceptions (e.g. holders of a Schengen tourist visa, a transit visa or a visa issued for humanitarian purposes cannot work). The national visa for employment purposes for seasonal workers (D visa) can be issued for a maximum period of six months within a year. Otherwise, visas for employment purposes can be valid as long as all other visas: three months within six months in the case of C visas and a one year within five years in the case of D visas.

Work permits can be renewed for periods up to three years. Residence permits for a fixed period of time cannot be renewed; however, new permits can be granted if employment continues. Visas usually cannot be extended.

Work permits bind the holders to the particular employer for whom they were issued, as well as to the particular post or type of work.

8. Specific Schemes for Third-Country ULSWs

No residence or work permits are required under the “simplified” procedure applicable to the citizens of Russia, Belarus, the Ukraine, Moldova and Georgia for employment in Poland for six months within 12 consecutive months. Only a national visa and a written declaration by an employer of his/her intent to employ a third-country national are needed. These third-country workers are also excluded from the labour market test.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers are required to pay the following obligatory administrative costs:¹³⁶

- PLN 50 (EUR 12.50) to apply for a work permit valid for up to three months; or
- PLN 100 (EUR 25) to apply for a work permit for more than three months; and
- Half of the above sums (PLN 25 and PLN 50 (EUR 6.25 and EUR 12.50, respectively) to extend a work permit.

10. Rights of Third-Country ULSWs

The rights of ULSW, do not depend upon their skill level.

¹³⁶ Third-country workers must cover the costs of their visa application (EUR 60 or EUR 35), a residence permit for a fixed period of time (PLN 340 (EUR 85)), and issuance of a residence card (PLN 50 (EUR 12.5)).

PORTUGAL

1. General Assessment of Immigration of Third-Country ULSWs

Immigration of ULSWs is common in Portugal. Third-country ULSWs are concentrated in agriculture, the construction industry, restaurant and hospitality services, cleaning, and commerce, all of which are traditionally vulnerable to economic downturns and labour market contractions. For these reason, third-country ULSWs are mostly employed on temporary bases and/or, in many cases, without employment contracts. In 2008, women represented 48% of the total foreign resident population.¹³⁷ Migrant women are primarily employed in housekeeping/cleaning and restaurant services.

The government acknowledges the need for ULSWs, particularly seasonal workers. However, due to the recent economic crisis and the growing unemployment rate, the government promotes the employment of either low-qualified Portuguese nationals or unskilled/low skilled migrants who are already residing in the territory and are currently unemployed.

2. Legal Framework

There are no specific regulations regarding ULSWs. Instead, ULSWs fall under the general immigration rules. The legislative act most relevant to third-country nationals is Act 23/2007 of 2007.¹³⁸ Portugal has signed bilateral agreements on temporary labour migration with Cape Verde¹³⁹ and Ukraine¹⁴⁰.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Institute for Employment and Professional Training and the Inspectorate-General for Labour, which are a part of the Ministry of Labour and Social Security, develop general policies on the employment of third-country nationals.
- The Aliens and Borders Service (SEF) issues residence and work permits.
- The Authority for Working Conditions (ACT) monitors and inspects contracts and working conditions of third-country nationals.
- The consulates issue visas.

¹³⁷ Commission for Gender Equality, 2010.

¹³⁸ Available at <http://www.sef.pt/documentos/56/Nova%20Lei%20de%20EstrangeirosEN.pdf> (last visited February 2010). Other relevant legislation includes Regulatory Decree 84/2007 of 2007; Ordinance No.1563/2007 of 2007 and Ordinance No. 760/2009 of 2007; Ordinance No.727/2007 of 2007; Resolution No.28/2008 of 2008; and Council of Ministers Resolution No.50/2009 of 2009.

¹³⁹ Decree 60/97 of 1997 (currently under revision).

¹⁴⁰ Decree 3/2005 of 2005.

4. Regulations Regarding Access to the National Labour Market

Employment of third-country nationals is subject to a labour market test. The “global quota of occupational needs” applies to third-country nationals employed for more than six months. This quota is set annually in the Resolution of the Council of Ministers. The decision of the Council of Ministers is based on the Ministry of Labour and Social Security’s analysis of the labour market needs. In 2008, the number of third-country nationals admitted to work under employment contracts was limited to 8,500. In 2009, this number was reduced considerably to 3,800.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Portugal, the following must be obtained:

- A temporary work visa (valid for up to six months) issued by the consulate upon the third-country national’s application; or
- A residence visa for obtaining a residence permit issued by the consulate upon the third-country national’s application; and
- A residence permit (for employment purposes) issued by SEF upon the third-country national’s application after arrival in Portugal.

In order to employ a third-country worker, an employer has to: (1) satisfy the labour market test;¹⁴¹ and (2) send to the worker an employment contract endorsed by the Institute for Employment and Professional Training. This endorsement certifies that the contract complies with the national labour legislation and meets the labour market test requirements. In addition, if a third-country worker applies for a residence visa, the Institute for Employment and Professional Training must certify that the job offer is included in the “global quota of occupational needs.” Employers do not participate in the application process for visas or residence permits.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to obtain a temporary work visa or a residence visa, third-country nationals are required to provide the following documents to the embassy/consulate: (1) an application; (2) a valid travel document; (3) proof that they do not have a criminal record; (4) proof of a travel insurance, which includes health

¹⁴¹ In order to satisfy the labour market test, the employer has to submit a vacancy notice to the Institute for Employment and Professional Training. The Institute publishes the vacancy notice on its internet page for 30 days (available at <http://www.netemprego.imigrante.gov.pt/IEFP/estrangeiros/index.jsp>). If no national or EU citizen applies for that job within 30 days, the offer is made available to third-country nationals through a specific Section of the “NetEmprego Imigrante.” Embassies and consulates access the information and make it available to third-country nationals, who then apply directly to the employer.

insurance;¹⁴² (5) proof of sufficient means for subsistence; and (6) an employment contract/offer from the employer or an expression of interest from the employer based on the competences/skills/qualifications of the third-country national.

The following documents and/or prerequisites are necessary to obtain the first residence permit: (1) a residence visa; (2) presence in Portuguese territory; (3) proof of sufficient means of subsistence; (4) absence of criminal record in Portugal; (5) proof of housing; and (6) proof that the person is not registered in the alert list of the Schengen Information System or National Information System.

7. First Residence and Work Permits

Temporary work visas, residence visas and residence permits (temporary or permanent) each provide a basis for stay and work in Portugal.

Temporary work visas are issued for seasonal work and/or temporary work contracts of no more than six months. They can only be renewed for a maximum of 90 days, so long as the employment contract is renewed and the applicant is covered by the National Health Service insurance or possesses health insurance.

Residence visas for obtaining residence permits are issued for employment contracts longer than six months. Residence visas are valid for four months, during which the visa holder must apply for a residence permit in order to be able to reside and work in the country for a longer period. While applying for the residence permit, the visa can be renewed for a maximum of 90 days.

Temporary residence permits are initially issued for no more than one year but are renewable for successive periods of two years. After holding temporary residence permits for five years, third-country nationals can apply for permanent residence permits.

Portuguese legislation does not specify whether work visas or residence permits tie third-country nationals to any specific employer, job or position.

8. Specific Schemes for Third-Country ULSWs

For third-country workers employed within the framework of the bilateral agreements with the Cape Verde and Ukraine, the labour market test does not apply.

¹⁴² See Regulatory Decree 84/2007. Art.12 also allows waiver of the health insurance requirement in justified cases. However, despite the exemption foreseen in the law, all consular posts require the health insurance coverage for issuing any types of visa. They do so to comply with the "Common Consular Instructions" adopted at the EU level in 2005.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers are not responsible for any administrative costs.

10. Rights of Third-Country ULSWs

The rights of third-country workers do not depend upon their skill level.

ROMANIA

1. General Assessment of Immigration of Third-Country ULSWs

Romania is primarily considered a source and transit state for international migration, and only secondarily a country of destination. The net migration is negative. There are no specific policies on third-country ULSWs. Unskilled and low-skilled jobs for which work permits were approved in the construction industry include: woodworkers, builders (12%) and blacksmiths specializing in ferro-concrete (4%).¹⁴³ The need for ULSWs in the near future remains low.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The two main acts regulating the status and employment of third-country nationals in general are Ordinance No. 56/2007 of 2007¹⁴⁴ and Ordinance No. 194/2002 of 2002.¹⁴⁵ Government Decision No. 1577/2009 of 2009 establishes a quota for work permits to be issued to third-country nationals in 2010.¹⁴⁶

3. Competent national authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Romanian Office for Immigration, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Labour, Family and Social Protection, and the National Agency for Employment cooperate on the development of general immigration policy, including labour migration policy.
- The Romanian Office for Immigration issues work and residence permits.
- The Labour Inspectorate registers employment contracts.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

The government establishes a quota for work permits for third-country nationals on annual basis. The quota is subdivided by duration of employment (permanent, cross-border, seasonal, etc.) but not by sector or level of skills. 8,000 work permits are allocated for 2010, 400 of which are for seasonal workers. If the number of applications for work permits is greater than the quota set in the

¹⁴³ Romanian Immigration Service, Statistical Report, 2009.

¹⁴⁴ Available at

<http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/OUG%2056%20din%202007%20privind%20incadrarea%20in%20munca%20si%20detasarea%20strainilor%20pe%20teritoriul%20Romaniei.pdf> (last visited 2010).

¹⁴⁵ Available at

<http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/OUG%20194%20din%202002%20privind%20regimul%20strainilor%20in%20Romania.pdf> (last visited 2010).

¹⁴⁶ Published in Official Monitor No. 894, on 21 December 2009.

Government Decision, the government may increase the quota on the recommendation of the Ministry of Labour, Family and Social Protection.

Employment of third-country nationals is also subject to a labour market test.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Romania, the following must be obtained:

- A long-term visa for employment issued by the consulate upon the third-country national's application;
- A residence permit issued by the territorial units of the Office on Immigration upon the third-country national's application after arrival and 30 days before expiry of his/her visa; and
- A work permit issued by the territorial units of the Office of Immigration upon the employer's application.

In order to apply for a work permit, an employer has to submit the following to the Office of Immigration: (1) an application; (2) registration documents of the company; (3) registration certificate issued by the Trade Register Office showing that the company did not commit any violations; (4) a letter from the bank where the employer has an account certifying the creditworthiness of the employer; (5) tax certificate; (6) certificate issued by the Agency for Employment stating that no suitable employee was available in Romania (labour market test); (7) job description along with an organizational chart of the enterprise indicating filled and vacant positions; (8) proof that the vacancy notice was published in a newspaper of wide circulation; and (9) documents from the third-country national. Required documents are (1) his/her curriculum vitae; (2) certificate showing that the third-country national has no criminal record; (3) certificate proving that the person is medically fit to be employed for the job in question; (4) certificate of minimum knowledge of Romanian; (5) proof of required qualifications/experience; (6) copy of a valid travel document; and (7) two photographs.

The employer must register the employment contract concluded with a third-country national at the Labor Inspectorate. The salary offered to a third-country worker cannot be lower than the minimum salary in the country.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to obtain a long-term visa for employment, a third-country national must provide the following: (1) an application; (2) a valid travel document; (3) a work permit; and (4) proof of medical insurance.

To obtain a temporary residence permit after arrival in Romania, a third-country national must submit the following: (1) an application; (2) a valid travel document; (3) proof of health insurance; (4) proof of accommodation; (5) proof of adequate means of support/guaranteed minimum wage level; (6) certificate that s/he has no criminal record; and (7) a work permit.

7. First Residence and Work Permit

Residence and work permits are two separate documents.

Work permits are granted for a period not exceeding one year. Temporary residence permits can be valid for one to five years.

Work permits are automatically extended for additional periods of up to one year, provided employment continues. Temporary residence permits are extended for periods equal to the work permit. Seasonal work permits authorize employment for periods not exceeding six months during 12 months. They cannot be extended.

Work permits bind third-country workers to the employer and occupation for which they were issued. Only third-country nationals with permanent residence permits, which can be obtained after five years of continuous residence, are free to choose an employer.¹⁴⁷

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

Employers must pay the following obligatory costs:¹⁴⁸

- RON 826 (EUR 200) for issuing a work permit; or
- RON 206 (EUR 50) for issuing a work permit for students and seasonal workers.

10. Rights of Third-Country ULSW

The scope of rights afforded to the third-country workers does not depend on their skill level but on the type of residence permit, i.e. temporary or permanent.

¹⁴⁷ Under the Association Agreement concluded between the European Union with Turkey, Turkish nationals in Romania can change employer and occupation after three years and have free access to labour market after four years of work.

¹⁴⁸ Third-country workers must pay RON 494 (EUR 120) for a visa and RON 230 (EUR 56) for a residence permit.

SLOVAKIA

1. General Assessment of Immigration of Third-Country ULSWs

Recent increases in the unemployment rate due to the global economic crisis have led to stronger restrictions on issuing work permits to ULSWs. As of November 2009, there are 3,903 third-country workers in the Slovak labour market, of whom 924 are women.¹⁴⁹ 2,623 third-country workers are employed in Slovakia on the basis of work permits, of whom 590 are women.¹⁵⁰

Statistics regarding ULSWs are not available because the competent authorities in charge of issuing work permits do not collect statistical data regarding third-country workers' education/training levels.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. Admission to the country is governed by Act No. 48/2002 of 2002.¹⁵¹ Admission to the labour market, including work permits, is governed by Act No. 5/2004 of 2004.¹⁵² The procedure for issuing work permits is set out in more detail in the internal document "Procedure and conditions for granting a work permit to a foreign nationals," issued by the Ministry of Labor, Social Affairs and Family.

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The local and regional Labour Offices, which operate under the Center for Labor, Social Affairs and Family, are responsible for work permits.
- The Alien Police Departments (local level) and the Alien Police Headquarters (regional level), which operate under the Bureau of Alien and Border Police of the Ministry of Interior, issue residence permits.
- The Ministry of Labour, Social Affairs and Family issues work permits.
- The consulates receive applications for temporary residence permits and for deliver residence permits issued by Alien Police Departments to third-country ULSW.

¹⁴⁹ The Center for Labor, Social Affairs and Family, 2009

¹⁵⁰ Other third-country nationals are allowed to work without work permits. They include, among others, students, long-term residents, and refugees.

¹⁵¹ Available at <http://www.indonesia.sk/wni/uu/act48.htm> (last visited February 2010).

¹⁵² Available at http://www.sario.sk/swift_data/source/dokumenty/Investicie/pravidla/Act_on_employment_services.pdf (last visited February 2010).

4. Regulations Regarding Access to the National Labour Market

Employment of third-party nationals is subject to a labour market test (see Section 5).

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Slovakia, the following must be obtained:

- A work permit issued by the local Office of Labour upon the application of the third-country national or the employer, so long as the ULSW grants power of attorney to the employer; and
- A temporary residence permit for the purpose of employment issued by the Alien Police Department upon the third-country national's application to the consulate abroad.

To satisfy the labour market test, an employer is obliged to post an official vacancy announcement at the Office of Labour, Social Affairs and Family. When evaluating an application for work permit, the Labour Office should (1) determine if there are any Slovak job-seekers that would be suitable for the position, having in view the principle of Community preference for Slovak and EU job-seekers; and (2) evaluate the employer's explanation of why preference should be given to a third-country worker rather than a Slovak or EU national.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

To obtain a work permit, a third-country worker must submit (1) proof that his/her employer is willing to employ him/her, which the employer must confirm on the application form; and (2) education records. The Labour Office may request additional documents regarding the employer, such as proof that the employer has met all his tax obligations etc.

To obtain a residence permit, third-country workers must submit: (1) their work permit; (2) a certificate showing that they do not have a criminal record; (3) documents showing that they have sufficient financial resources of at least "living minimum" per month, which is currently EUR 185.19/month; and (4) documents showing that they have accommodation in Slovakia.

After arriving in Slovakia, the third-country nationals undergo a medical exam. Third-country nationals then submit to the Alien Police documents showing that they do not suffer from any illness that threatens public health and documents showing that they have health insurance in Slovakia.

7. First Residence and Work Permits

There are two different permits in Slovakia: the work permit and the residence permit.

Work permits can be granted for up to two years or in case of seasonal work, for up to six months. Temporary residence permits are granted for the same period as the work permit.

Both permits may be renewed repeatedly; the number of renewals is not limited. Temporary residence permits can be renewed for a maximum of three years (but only for the time of validity of the work permit).

Work permits are only valid for one employer and only for the type and place of work for which they were granted. If an ULSW wants to pursue a secondary occupation with a different employer, s/he needs to apply for an additional, separate work permit.

8. Specific Schemes for Third-Country ULSWs

Under the bilateral agreement on employment of Slovak citizens and citizens of Russian Federation, the Office of Labour, Social Affairs and Family may grant work permits to a relatively small number of Russian workers without taking into account the Slovak labour market situation. Under this bilateral agreement, work permits for ULSWs may be granted only for maximum period of six months per year.

A temporary residence permit for the purpose of seasonal employment is issued for a maximum of 180 days per calendar year and cannot be renewed. A third-country worker has to pay a reduced fee of EUR 33 for such residence permit.

There are no further specific schemes for ULSWs.

9. Obligatory Administrative Costs Incurred by EU Employers

No fees are charged to the employer.¹⁵³

10. Rights of Third-Country ULSWs

All third-country workers have equal rights and obligations after admission, regardless of their skill level.

¹⁵³ The third-country ULSWs must pay the fee of EUR 165.50 for the residence permit application.

SLOVENIA

1. General Assessment of Immigration of Third-Country ULSWs

Economic migration constitutes 80 percent of all migration to Slovenia. In 2008, the economic recession caused a decrease in demand for third-country workers, including in sectors where ULSWs are most frequently employed (e.g. construction, textile, metal and machine manufacturing). The quota for third-country workers in Slovenia, which has been decreasing since 2008, was scaled back from 32,000 work permits in the first half of 2009 to 24,000 in the second half of 2009, while for 2010 the set quota is 12,000 work permits. 93 percent of third-country workers in Slovenia are men.¹⁵⁴

If any facilitated provisions exist in the migration regime, they only concern highly-skilled migrants.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. The following laws and decrees regulate the employment of third-country nationals: (1) Aliens Act of 08 July 1999;¹⁵⁵ (2) Employment and Work of Aliens Act 2000;¹⁵⁶ (3) Decree Establishing the Work Permit Quota for 2009 to Limit the Number of Aliens in the Labour Market of 2009; (4) Decree on Restrictions and Prohibition of Employment and Work of Aliens of 2009, and (5) Decree Establishing the Work Permit Quota for 2010 Limit the Number of Aliens in the Labour Market (to be adopted).

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Labour, Family and Social Affairs is responsible for the overall employment policy regarding third-country nationals.
- The Employment Service, a division of the Ministry of Labour, Family and Social Affairs, issues work permits.
- The Departments for Foreigners at administrative units, a division of the Ministry of Interior, issue residence permits.

¹⁵⁴ Statistics were presented in the speech of the representative of the Ministry of Labour, Family and Social Affairs at the symposium on the European Migration Network on 19 January 2010, organized by the Ministry of Interior of Slovenia.

¹⁵⁵ Available at

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=3ae6b59c14&skip=0&coi=SVN&querysi=Act&searchin=title&display=10&sort=date> (last visited March 2010).

¹⁵⁶ Available at http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zzdt_upb1_en.pdf (last visited March 2010).

- The consulates receive applications for residence permit and for deliver residence permits issued by the Departments for Foreigners of Administrative Units to third-country nationals.

4. Regulations Regarding Access to the National Labour Market

Quotas for issuing work permits are set every year by the Government Decree. As a general rule, the number of third-country workers cannot exceed 5 percent of the active population of the Republic of Slovenia, as defined by the Statistics Office. The quota includes sub-quotas of employed workers, posted workers, workers on vocational and other training, seasonal workers and workers performing individual services. It is not divided by economic sectors.

Except in the case of third-country workers falling into quotas, employment of third-country nationals is subject to a labour market test. Employers have to make sure that there is no suitable person, i.e. nationals or person equal to nationals with respect to access to labour market, in the registry of the Employment Service. In 2010, it is anticipated that amendments will be introduced requiring a labour market test for all employment of migrant workers.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Slovenia, the following must be obtained:

- A residence permit, which needs to be acquired before entry to Slovenia, issued by Departments for Foreigners of Administrative Units upon the third-country national's or the employer's application to the consulate or upon the employer's application to the Departments for Foreigners; and
- A work-related permit issued by the Employment Service upon the employer's application.

An employer who wants to hire a third-country national is required to apply for work permit for the third-country national, publish the employment vacancy in the media or in the registry of the Employment Service for 30 days, and, if for any reason the employment relationship is not concluded between the employee and the third-country worker, to return the issued work permit to the Employment Service.

In order to obtain a work-related permit, an employer is required to submit the following documents: (1) four copies of the signed employment contract; and (2) proof of registration of the employer (certificate from the responsible authority; (3) photocopy of the third-country workers ID; and (4) proof of appropriate qualifications of third-country workers with a secondary or lower level of education.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to obtain a residence permit, the applicant (either the employer or the third-country worker) is required to submit: (1) a valid passport; (2) proof of health insurance; (3) proof of sufficient means of subsistence;¹⁵⁷ and (4) a work permit. Additional documents may be required by the competent authority.

7. First Residence and Work Permits

Work-related permits and residence permits are two separate documents.

There are three types of permits related to work: a) work permit, b) employment permit and c) personal work permit. Third-country ULSWs applying for their initial residence permit may only obtain work permit or employment permit. Residence permits for the purpose of work, employment or seasonal work, as well as renewals of such residence permits, can only be obtained on the basis of issued work-related permit. The duration of residence permits is tied to duration of corresponding work-related permits.

The duration of the work permit depends on the purpose for which it is issued (e.g. three months for seasonal work; six months in agriculture, forestry, catering and tourism). Work permits are issued in the framework of quotas and are not subject to the labour market test.

Employment permit may be issued for a maximum of one year. Issuance of an employment permit is subject to a labour market test.

Work permits usually cannot be extended. Another work permit cannot be issued without the interruption of third-country worker's residence in Slovenia. Employment permits may be extended up to one year if the employment contract is still in force.

A third-country worker is restricted to one employer under any of the two work-related permits. Change of employers requires a new work-related permit, as well as a new residence permit (except for migrants who already have long-term residence permit).

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for ULSWs. The Ministry of Labour, Family and Social Affairs is preparing an agreement between Slovenia and Bosnia and Herzegovina on circular migration; however, the details are not public yet.

¹⁵⁷ This amount should be equal to the minimum income in the Republic of Slovenia, which is currently EUR 460 net per month.

9. Obligatory Administrative Costs Incurred by EU Employers

EU employers are required to pay the following fees:

- EUR 3.55 for the application for a work permit;
- EUR 70.90 for issuing an employment permit or work permit; and
- EUR 80 for issuing a residence permit.

Legislation specifically states that the employer is not allowed to transfer the financial burden of acquiring a work-related permit and other relevant costs to the employee. From this provision it is not clear, however, whether or not the costs of residence permits must also be covered by the employer.

Administrative costs are the same regardless of whether the worker is recruited from another EU member state or from a third country.

10. Rights of Third-Country ULSWs

The rights of ULSWs depend on their legal status, on the length of their work permit and on the length of their residence in Slovenia, but not on their skill level. All workers who are employed in Slovenia have to be included in the obligatory insurance scheme which covers health insurance, disability and pension insurance and parenthood insurance. Short-term migrant workers who have employment permits and work permits are not entitled to unemployment or social welfare benefits, for which permanent residence permits are required. Family reunification rights are recognized for migrants who have already resided in Slovenia on the basis of residence permits for one year and who have temporary residence permits for at least one year.

SPAIN

1. General Assessment of Immigration of Third-Country ULSWs

Out of a total of 2,941,100 third-country nationals employed in Spain in 2008, 993,100 (33.8%) were unskilled workers. Growing unemployment caused by the global economic crisis affected both Spanish and third-country workers. Third-country ULSWs are among the most affected groups of migrants due to job cuts in the sectors of the economy where ULSWs are usually employed. In 2008 the services sector cut employment by 3.25 percent, construction by 17.34 percent, manufacturing industry by 11.89 percent and agriculture by 2.64 percent.¹⁵⁸ The quota established in national legislation (see Section 2) in 2008 for 2009 was 901 third-country workers, with the greatest for third-country workers in the metal industry (364 persons), services (252 persons), and fishing (100 persons). For 2010, this quota decreased to 168, comprised of only the service sector (136 persons) and “other industries” (24 persons).

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. Third-country ULSWs fall under the general rules applying to all third-country workers. The main legal acts regulating immigration in general, as well as employment of third-country nationals are: (1) Organic Law 4/2000 of 11 January 2000, on the Rights and Liberties of Aliens in Spain and Their Social Integration;¹⁵⁹ (2) the implementing Regulation of the Organic Law 4/2000 of 2004;¹⁶⁰ (3) resolution of the Secretary of State on Immigration and Emigration publishing the agreement of the Council of Ministers of establishing the quota of non-community third-country workers for the year 2009;¹⁶¹ (4) resolution of the Public Service of State Employment approving the Catalogue of Difficult to Cover Occupations for the first three months of 2010;¹⁶² and (5) Order TIN/3498/2009 of 2009.¹⁶³

¹⁵⁸ All numbers as of first three months of 2008. Pajares, Miguel. *Inmigración y mercado de trabajo. Informe 2009*.

http://extranjeros.mtin.es/es/ObservatorioPermanenteInmigracion/Publicaciones/archivos/Inmigracixn_y_mercado_de_trabajo._Informe_2009.pdf (last visited February 2010).

¹⁵⁹ Consolidated text available at

http://extranjeros.mtin.es/es/NormativaJurisprudencia/Nacional/RegimenExtranjeria/RegimenGeneral/documentos/Texto_consolidado_LO_4_8_11_14.pdf (last visited February 2010).

¹⁶⁰ Available at http://noticias.juridicas.com/base_datos/Admin/rd2393-2004.html (last visited February 2010).

¹⁶¹ Available at <http://www2.sepe.es/sgst/BDlegislativa/documentos.asp?archivo=Legis/PDF/SoloPDF/d20605> (last visited February 2010).

¹⁶² Available at <http://www.boe.es/boe/dias/2010/01/12/pdfs/BOE-A-2010-502.pdf> (last accessed in February 2010).

¹⁶³ Available at

<http://extranjeros.mtas.es/es/NormativaJurisprudencia/Nacional/RegimenExtranjeria/RegimenGeneral/documentos/ContratacionesOrigen2010.pdf> (last visited February 2010).

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Ministry of Interior, in cooperation with the Ministry of Labour and Immigration and the Ministry of Foreign Affairs and Cooperation, develops general immigration policy, including immigration policy regarding third-country ULSWs.
- The Ministry of Labour and Immigration is in charge of all issues related to employment of third-country nationals.
- The Public Employment Service conducts the labour market test.
- The Ministry of Interior (represented by the Bureau of Foreigners in each province) is responsible for residence procedures.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

There is a general quota system for third-country workers, established annually by the government. Jobs under the quota are indicated by name and broken down by Autonomous Community and Provinces, without specification of the level of skills of the workers.¹⁶⁴ The Catalogue of Difficult to Cover Occupations¹⁶⁵ does not distinguish the needed categories of workers on the basis of skill levels.

A labour market test (see Section 5) applies to employment of third-country workers in jobs not listed in the Catalogue of Difficult to Cover Occupations.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Spain, the following must be obtained:

- A visa for residence and work issued by the consulate abroad upon the third-country national's application;
- A work and residence authorization issued by the Bureau of Foreigners upon the employer's application.

Employers have to apply to the Bureau of Foreigners in order to obtain work and residence authorization for third-country nationals. If a third-country national is not employed for one of the jobs listed in the Catalogue of Difficult to Cover Occupations, the employer has to obtain a certificate from the Public

¹⁶⁴ For example, in the province of Teruel the quota allowed then head chefs out of the total national quota of 12 jobs in catering and hotel management. See <http://www2.sepe.es/sgst/BDlegislativa/documentos.asp?archivo=Legis/PDF/SoloPDF/d20605> (last visited February 2010).

¹⁶⁵ The Catalogue is adopted by the General Director of the State Public Service on Employment based upon the information supplied by the Autonomics Public Services on Employment and after consultation of the "tripartite labour commission on immigration."

Employment Service stating that the labour market test requirements have been satisfied. The Public Employment Service announces the vacancy, and, if no suitable candidate already in the Spanish labour market can be found within 15 days, the certificate is issued. The following should be attached to an application for work and residence authorization: (1) a national identity card or fiscal identification code and the Social Security registration document of the employer; (2) an employment contract or employment offer guaranteeing to the third-country national continuous work for the duration of the work and residence permit; (3) if required, reasonable evidence of economic, material or personal resources guaranteeing that the employer is able to support the business and to meet all legal obligations; (4) a copy of the third-country national's valid passport or travel document; (5) a certificate from the Public Employment Service as a proof that the labour market test requirements were met; and (6) a properly endorsed title or accreditation demonstrating that the worker has the required training and skills needed to do the job (if relevant).

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

In order to enter and work in Spain, a third-country national has to obtain a visa for residence and work. The following are required for the visa: (1) a valid passport; (2) a certificate indicating the applicant has no criminal record; and (3) a copy of the approval of work and residence application submitted in Spain by the employer.

The visa application must be submitted to the consulate within one month of approval of the work and residence application.

7. First Residence and Work Permits

Residence and work authorizations are issued as one document.

The initial authorization is valid for one year. It can be renewed twice in two-year increments (four years in total).

The first authorization ties the third-country worker to one sector and specific geographical area but not to a specific employer. After one year, if the authorization is renewed, the third-country worker can change sectors or areas.

8. Specific Schemes for Third-Country ULSWs

Spain has concluded bilateral agreements related to employment of third-country workers with Colombia,¹⁶⁶ Dominican Republic,¹⁶⁷ Ecuador,¹⁶⁸ and Morocco.¹⁶⁹ Under these agreements Spain, on the basis of its labour market needs, employs workers in the respective countries. Such employment is carried out through communication between the state authorities in both countries, and not through individual employers.

9. Obligatory Administrative Costs Incurred by EU Employers

Employers are required to pay the following fees:

- For a work authorization:
 - EUR 190.12 for an initial work authorization if the salary of the worker is less than double minimum inter-professional wage;¹⁷⁰ or
 - EUR 380.27 for an initial work authorization if the salary is equal to or higher than double minimum inter-professional wage; and
 - EUR 76.05 for renewing a work authorization.
- For seasonal and temporary workers:
 - None for a work authorization of less than six months; or
 - EUR 10.20 for a work authorization of six months or more; and
 - EUR 15.30 for renewing a work authorization.

Employers are obliged to pay contributions to the social security system for third-country workers. In the case of temporary work, employers are obliged to provide third-country workers with housing and return tickets and to make sure that the workers leave the country upon expiration of their contracts.

10. Rights of Third-Country ULSWs

The rights of third-country workers do not depend upon their skill level, except that immediate family reunification is immediately granted only to skilled migrants.

¹⁶⁶ Acuerdo entre el Reino de España y Colombia Relativo a la Regulación y Ordenación de los Flujos Migratorios Laborales (Agreement between the Kingdom of Spain and Colombia on Regulation and Management of Migratory Flows) of 2001. Available in Spanish at http://noticias.juridicas.com/base_datos/Admin/acolomig-mae.html (last visited February 2010).

¹⁶⁷ Acuerdo entre el Reino de España y la República Dominicana Relativo a la Regulación y Ordenación de los Flujos Migratorios Laborales (Agreement between the Kingdom of Spain and the Dominican Republic on Regulation and Management of Migratory Flows) 2001. Available in Spanish at http://noticias.juridicas.com/base_datos/Laboral/a171201dom.html (last visited February 2010).

¹⁶⁸ Acuerdo entre el Reino de España y la República del Ecuador Relativo a la Regulación y Ordenación de los Flujos Migratorios (Agreement between the Kingdom of Spain and the Republic of Ecuador on Regulation and Management of Migratory Flows) of 2001. Available in Spanish at http://noticias.juridicas.com/base_datos/Admin/a010601-mae.html#cp (last visited February 2010).

¹⁶⁹ Acuerdo Sobre Mano de Obra entre el Reino de España y el Reino de Marruecos (Agreement between the Kingdom of Spain and the Kingdom of Morocco on Labour Force) 2001. Available in Spanish at http://noticias.juridicas.com/base_datos/Admin/a250701-mae.html (last visited February 2010).

¹⁷⁰ The minimum wage for 2010 is EUR 633.30 per month by Royal Decree 2030/2009 of 30 December 2009.

SWEDEN

1. General Assessment of Immigration of Third-Country ULSWs

Access to Swedish labour market for the third-country nationals was substantially eased in 2008, with adoption of the new legislation (see Section 2). During the first five months of 2009, 6,342 applications for work permits out of 7,560 received were reviewed by the Swedish Migration Board. 89 percent of the applications examined were approved. The most common low-skilled and unskilled occupations for which work permits were approved were in agricultural, fishery and related sectors (2,667) and housekeeping and restaurant services (302).¹⁷¹ The relatively high numbers of approved applications within the agricultural, fishery and related sectors are due to the high number of seasonally-employed berry pickers.

2. Legal Framework

There are no specific regulations regarding third-country ULSWs. Admission to the national labour market of all third-country nationals is regulated by the Swedish Aliens Act of 2005¹⁷² and the Swedish Aliens Ordinance of 2006.¹⁷³

At the end of 2008, the Swedish government introduced changes to the Aliens Act in order to establish a more open and flexible system for labour immigration.¹⁷⁴ In this context, the following changes to the national legislation are of particular importance:

- The role of the Public Employment Service in carrying out labour market tests was abolished. Under the new system, individual employers will determine whether there is a need to recruit third-country nationals.
- The basic requirement for permission to migrate to Sweden for employment purposes is that there be an offer of employment that will provide the immigrant with an adequate income.
- There are improved opportunities to obtain a permanent residence permit for work purposes.
- Under certain circumstances, asylum seekers may apply for work permits while in Sweden.

¹⁷¹ Swedish Migration Board. Available at www.migrationsverket.se.

¹⁷² Available at <http://www.sweden.gov.se/content/1/c6/06/61/22/bfb61014.pdf> (last visited February 2010).

¹⁷³ Available at <http://www.regeringen.se/content/1/c6/07/56/18/7cbd265a.pdf> (last visited February 2010).

¹⁷⁴ Government proposal 2007/08:147. Available in Swedish at <http://www.regeringen.se/content/1/c6/10/43/28/9e8dd282.pdf> (last visited February 2010).

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- On a policy level, the Ministry of Justice is responsible for all migration related issues, including labour migration.
- The Swedish Migration Board issues work as well as residence permits.
- The consulates assist in collecting and delivering approved residence and work permits.

4. Regulations Regarding Access to the National Labour Market

There are no special regulations regarding employment of third-country nationals.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

With respect to employment of a third-country national in Sweden, the following must be obtained:

- A visa (for stay of less than three months) issued by the consulate upon the third-country national's application; or
- A residence permit (for stays greater than three months) issued by the Swedish Migration Board upon the third-country national's application, which is submitted from abroad to the Swedish Migration Board's website or to the embassy/consulate); and
- A work permit issued by the Swedish Migration Board upon the third-country national's application, which is submitted from abroad either to the Swedish Migration Board's website or to a Swedish embassy/consulate).

The employer must make it possible for residents of Sweden, other EU/EEA countries and Switzerland to apply for the job. This requirement may be met by advertising the vacancy with the Public Employment Service and EURES (The European Job Mobility Portal) for ten days.

The relevant trade union must be given the opportunity to express an opinion on the terms of employment the employer is offering the third-country national.¹⁷⁵ Wage, health insurance and other terms of employment must at least be equivalent to a Swedish collective agreement or what is customary for the occupation or the sector.

¹⁷⁵ Applications will be processed more quickly if the employer obtains the trade union statement. If a statement is not attached to the application, the Migration Board refers the employment offer to the relevant trade union before making a decision.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

If the stay is for less than three months, a visa has to be obtained. In order to obtain a visa, a third-country national must submit the following: (1) application forms; (2) a passport; and (3) two photographs. Other documents may be required, such as financial statements and proof of employment.

For stays of more than three months, a residence permit allows entry into Sweden without visas. A residence permit is issued to a third-country national who produces an application, a valid passport and who have obtained a work permit. When examining an application for a residence permit, careful attention is paid to whether the third-country national has been guilty of any criminal activity or other misconduct. There are no requirements related to insurance or financial means etc., except that the employment must provide sufficient income.

In order to obtain a work permit, a third-country national has to submit the following: (1) an application; (2) the offer of employment from the employer, preferably with a statement from a trade union attached; (3) a copy of his/her passport and two photographs; and (4) receipt proving payment of the application fee (see footnote 7).

7. First Residence and Work Permits

Residence and work permits are two separate documents.

Work permits are granted for the period of employment, up to two years. Residence permits are issued for the same duration as the corresponding work permits. Work permits are renewable, but the total period may not exceed four years. After this, a permanent residence permit may be granted to a third-country national. If a permanent residence permit is granted, there is no need for a specific work permit.

During the first two years, a work permit is linked to a particular employer and occupation. After two years, the work permit is only linked to a particular kind of work.¹⁷⁶

8. Specific Schemes for Third-Country ULSWs

There are no specific schemes for third-country ULSWs.

¹⁷⁶ A residence permit may be withdrawn from a third-country national who has entered the country if the third-country has been granted a work permit but the employment has ceased. However, this does not apply if the third-country national finds new employment covered by the work permit within three months or has applied for a work permit as a result of new employment within the three months and the application is subsequently granted. Third-country workers may remain in the country while searching for new employment regardless of whether the employer or the employee terminated the former employment.

9. Obligatory Administrative Costs Incurred by EU Employers

Employers do not pay any fees.¹⁷⁷

10. Rights of Third-Country ULSWs

The rights of third-country ULSWs who have been granted work permits do not differ from other categories of third-country workers.

¹⁷⁷ Third-country nationals have to pay SEK 2,000 (EUR 200) for work permits or SEK 1,000 (EUR 100) for extensions of work permits in the same occupation or with the same employer. The application fee for visas is EUR 60.

UNITED KINGDOM

1. General Assessment of Immigration of Third-Country ULSWs

Currently there is no specific scheme for employment of third-country ULSWs from outside the EU Members States, the European Economic Area (EEA) or Switzerland. Those who are not in a designated skilled occupation are ineligible for admission under the general labour migration categories (Tiers 1 and 2 of the “points-based system” (PBS)).

The two schemes, Seasonal Agricultural Workers Scheme (SAWS) and “sectors based scheme” for food processing (SBS), which were previously open to some third-country nationals, are currently reserved for Bulgarian and Romanian nationals.¹⁷⁸

The points-based system (PBS), set up in 2008 in order to regulate labour and student migration, includes Tier 3 regarding low-skilled third-country workers. Tier 3 is currently on hold. There are no plans to activate it, but this may change when the transitional regime applicable to Bulgarian and Romanian workers comes to an end on 31 December 2013.

2. Legal Framework

Currently there are no specific regulations regarding third-country ULSWs. A *Points-Based System: Making Migration Work for Britain* lays down the concept of the Tier 3, among others.¹⁷⁹

3. Competent National Authorities

The following national authorities are involved in admission and residence procedures for third-country ULSWs:

- The Government, acting through the Home Secretary, sets out the general immigration policy for third-country nationals.
- The UK Border Agency implements the immigration policy.
- Migration Advisory Committee (mainly academic researchers) advises the Government on the points-based system.
- The consulates issue visas.

4. Regulations Regarding Access to the National Labour Market

Currently there are no special regulations for access to UK labour market by third-country ULSWs, as officially they are not accepted. The PBS is the basis

¹⁷⁸ There were 21,250 places under the Seasonal Agricultural Workers Scheme and 3,500 places under the “Sectors based scheme” for food processing in 2009.

¹⁷⁹ Home Office, 2006, available at <http://www.homeoffice.gov.uk/documents/command-points-based-migration2835.pdf?view=Binary> (last visited February 2010).

for labour migration to the UK. It is anticipated that Tier 3 of the PBS regarding low-skilled third-country workers will only be activated when transitional provisions on access to UK labour market cease to apply to the nationals of Bulgaria and Romania. It is anticipated that Tier 3 system will be quota-based and subject to a labour market test.

5. Necessary Procedures to Be Followed by Third-Country ULSWs and/or EU Employers

Not applicable, as permission to employ third-country ULSWs is not currently being granted.

6. Conditions Third-Country ULSWs Must Fulfil to Be Admitted for Work

Not applicable, as third-country ULSWs are not currently admitted for work in the UK.

7. First Residence and Work Permits

In general, under the PBS a sponsor (employer) issues a “certificate of sponsorship” with which the third-country worker obtains an immigration permit (entry clearance or leave to remain).

In *A Points-Based System: Making Migration Work for Britain* in 2006, the Government indicated that under Tier 3 of the PBS, permits would last for a maximum of 12 months and would not be renewable.

8. Specific Schemes for Third-Country ULSWs

There is no current scheme for third-country ULSWs. There are only schemes for employment of Bulgarian and Romanian nationals, who are already EU nationals, in agriculture and food processing (see Section 1).

9. Obligatory Administrative Costs Incurred by EU Employers

Not applicable.

10. Rights of Third-Country ULSWs

There is difference regarding certain rights of third-country workers on the basis of their skill levels. Skilled third-country workers (Tiers 1 and 2 of the PBS) are eligible for family reunification, including the right to work for family members, and can eventually obtain long-term residence status. In previous ULSW schemes – the SAWS and SBS – workers had no right to family reunification, had a maximum period of stay in the United Kingdom (six months in any 12 for SAWS, 12 months for SBS), and no route to long-term residence status. It is likely that any future Tier 3 scheme would follow the same model.

CONCLUSIONS

Several conclusions can be drawn on this study on admission and residence procedures for unskilled and low-skilled third-country nationals entering the labour markets of the 27 EU Member States.

Many EU countries need an unskilled and low-skilled foreign labour force. The trends of employment of third-country ULSWs and the levels of need differ among countries. In some EU Member States, such as Belgium, Denmark, Germany and the Netherlands, halts on recruitment of third-country nationals still exist. If any exceptions from the general restrictive policy exist they concern only highly-skilled workers. This is often due to the fact that nationals of certain EU Member States, who have preference over the third-country nationals in the labour markets of other EU Member States, are available for low-skilled and unskilled jobs. Southern states, including Greece, Italy, Portugal and Spain, acknowledge the need for third-country ULSWs. However, due to the high unemployment rates among the native populations as a result of the global economic crisis, employment of third-country ULSWs in these countries has been reduced drastically or put on hold. New EU Member States, including the Czech Republic, Estonia and Poland, recently developed a need for foreign labour as a result of the emigration of native populations to the old EU Member States.

There is most often a need for ULSWs in agriculture, forestry, construction, domestic help, farming, hotel and restaurant business, and tourism.

Despite the need for third-country ULSWs, more often than not there are no special schemes or legislative provisions to regulate the employment of this category of third-country workers. Instead, the recruitment of ULSWs is regulated by general rules. General procedures, which include labour market tests and submission of numerous documents, may be justified in case of recruitment of long-term workers but are discouraging for employers of ULSWs, whose positions are often temporary. This, in turn, may lead to irregular employment. Currently, only a few countries have special simplified procedures for employment of ULSWs, most often for seasonal workers; such programs exist in France, Estonia, the Czech Republic and Finland, inter alia. Sweden is particularly notable for recent and significant changes in its legislation that simplify access of the third-country nationals to its labour market. Usually, simplified procedures entail abolishment of the labour market test or/and the requirement for a residence and/or work permit. In such cases, only visas are needed to stay and work in the country.

Some of the EU Member States limit the employment of third-country ULSWs or offer simplified recruitment procedures to the nationals of the countries with which they have bilateral agreements. Germany, Greece, Poland and Spain are among the EU countries with such bilateral agreements.

Procedures and requirements applied in the Member States for granting entry, residence and employment permission to a third-country ULSWs differ substantially. For instance, some countries allow employment of third-country ULSWs on the basis of a visa, while others require visa, residence and work permits. At the same time there is a number of visa types, different forms of residence and work permits. In some countries permits are obtained by the employee, in others by the employer; in some cases the application is to be submitted before entry to the country, in others – after the entry etc. The terminology related to entry, residence and work permits also differs among countries. The EU could play a significant role in aligning the terminology applied and in harmonizing the procedures and requirements for employment of third-country ULSWs across Europe.

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ANNEX 1

Questionnaire on admission and residence procedures for unskilled and low-skilled third-country nationals to enter the labour markets of EU Member States

1. Please provide us with a brief general assessment of immigration of unskilled and low-skilled workers, including relevant facts regarding migrant women in your country:

2. Legal framework

Which national laws and/or provisions apply to the admission of third-country ULSW into the national labour market (please provide the legal act and relevant article/s)?

3. Competent national authorities

a. Which authorities are in charge of admitting third-country ULSW? Please specify, if different, which authority is in charge of work-related permits and which one is in charge of residence-related permits for third-country nationals?:

b. Which authority/ies are in charge of the general admission policy for third-country ULSW?

4. Conditions that third-country ULSW have to fulfil to be admitted for work (i.e. requirement for residence and work authorizations)

Which requirements must be fulfilled by the third-country ULSW in order to enter the labour market regarding:

a. Residence permit (e.g. medical care insurance, financial means which should be possessed by third-country ULSW entering the country, no risk to public security, public health, etc.)

b. Work permit (e.g. work contract, any requirement related to the regulation of the national labour market)? ¹⁸⁰

c. Any other particular requirements?

5. Regulation regarding access to the national labour market

Which relevant regulations regarding access to the national labour market apply to unskilled and low-skilled workers? E.g. is there any specific quota per sector¹⁸¹ employing this category of workers, a labour market test applying to third-country ULSW or points system applicable to the admission of third-country ULSW, etc?

¹⁸⁰ Please see next question.

¹⁸¹ We are interested in the following sectors: care for the elderly, construction, food processing, hospitality and catering, and domestic and household work.

6. Necessary procedures to be followed by third-country ULSW and/or EU employers

Could you please enumerate the procedures that (a) third-country ULSW and/or (b) EU employers have to adhere to according to the national system (i.e. applications to which authorities and for which permits).

7. First residence and work permit

Please describe the features of the first residence and work permit granted to third-country ULSW:

- a. Are there two permits (e.g. residence permit and work permit) or is there one single permit?
- b. For how long is/are permit(s) granted?
- c. Is/are permit(s) renewable? If so, what is the maximum period of renewal?
- d. Are there any restrictions (e.g. sectoral, territorial or limitation to one employer)?
- e. Are there any others restrictions or characteristics?

8. Specific schemes for unskilled and low-skilled workers

Are there any specific schemes for employment of third-country ULSW according to (a) the type of sector (e.g. care for the elderly, agriculture, construction, food processing, hospitality and catering, and domestic and household work); (b) seasonal or periodical employment (e.g. seasonal workers); (c) targeting women migrants and/or (d) in bilateral labour agreements between the EU Member State and the country of origin of third-country ULSW?

9. Obligatory administrative costs incurred by EU employers

What are the total administrative costs and fees incurred by EU employers for the recruitment of unskilled and low-skilled workers from third countries?

Please specify the amount of administrative costs regarding:

- a. Permit fees that employers have to pay (e.g. visa, administrative costs)
- b. Any other costs incurred by the employers (e.g. official vacancy announcement and its publication, etc.)

10. Rights of ULSW

Are the rights of ULSW after admission the same as those afforded to other categories of migrant workers, including skilled and highly qualified migrant workers, or are restrictions imposed, e.g. in respect of family reunion, access to social security/welfare benefits, vocational training, etc.?

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