

Analytical Note for 2013

The Language Requirements under EU Law on Free Movement of Workers

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Introduction

I. EU legal framework

Apart from provisions about anti-discrimination¹ and Article 45 TFEU, EU secondary legislation in terms of Articles 3 and 7 of Regulation (EU) No. 492/2011 as well as Article 53 of Directive 2005/36/EC regulate language requirements imposed on workers in access to employment, working conditions, promotion and salary.²

Moreover, Articles 7 (2) of Regulation (EU) No. 492/2011 and Article 24 of Directive 2004/38/EC provides for the equal treatment of migrant workers with nationals in terms of access to social benefits/advantages; and Article 9 (1) of Regulation (EU) No. 492/2011 provides for the equal treatment of migrant workers in matters of housing.

While Articles 3 and 7 of Regulation (EU) No. 492/2011 apply to all workers, Directive 2005/36/EC applies only to workers exercising *regulated* professions. “A regulated profession implies that access to a profession is subject to a person holding a specific qualification, such as a diploma from a university.”³

As can be seen in the following, the linguistic exceptions laid down in Article 3 of Regulation (EU) No. 492/2011 and Article 53 of Directive 2005/36/EC share common characteristics in terms of the linguistic knowledge having to be *required/necessary* in relation to a specific *post/profession*. The CJEU has on various occasions dealt with the scope of those linguistic exceptions, and established the requirements national linguistic measures, including the means of proof of linguistic knowledge, restricting the free movement of workers in matters pertaining to employment must meet in order for such measures to be justified.⁴ Accordingly, apart from pursuing a legitimate aim, language requirements must be applied in a non-discriminatory and proportionate manner in order for such requirements to justify restrictions of rights conferred on EU citizens by EU free movement law;⁵ see below para. I.iii where the key issues of specific CJEU case law of relevance to this analytical note are described.⁶

¹ See Iris Goldner Lang in ‘Languages as a Barrier to Free Movement of Persons in the European Union’, in *Curriculum, Multilingualism and the Law* (ed. L. Socanac, C. Goddard, L. Kremer), Nakladni zavod Globus, 2009, pp. 175-191, part 2.

² As regards working conditions, see also joint cases *Pilar Allué and Carmel Mary Conan and other vs. Università degli studi di Venezia and Università degli studi di Parma* (C-259/91, C-331/91, C-332/91), judgment of 2 August 1993, regarding restrictions imposed on the contracts of foreign-language assistants by Italian universities in terms of time-limiting the contracts of employment - as opposed to the contracts of other teachers - where only 25 % of the employed foreign-language teachers were nationals.

³ *Modernisation of the Professional Qualifications Directive - frequently asked questions*, para 3 with reference to the Regulated Professions Database, containing about 800 categories of regulated professions. Available at http://europa.eu/rapid/press-release_MEMO-11-923_en.htm?locale=en, accessed 10 September 2013.

⁴ The term ‘linguistic exception’ is borrowed from Iris Goldner Lang, cf. the reference in note 1 above.

⁵ See Iris Goldner Lang in ‘Languages as a Barrier to Free Movement of Persons in the European Union’, in *Curriculum, Multilingualism and the Law* (ed. L. Socanac, C. Goddard, L. Kremer), Nakladni zavod Globus, 2009, pp. 175-191, part 3, also making the observation that “the statement that the language requirement must be provided in a non-discriminatory manner is questionable, since the language requirement itself can be understood as constituting indirect discrimination.”

⁶ See Iris Goldner Lang in ‘Languages as a Barrier to Free Movement of Persons in the European Union’, in *Curriculum, Multilingualism and the Law* (ed. L. Socanac, C. Goddard, L. Kremer), Nakladni zavod Globus, 2009, pp. 175-191, part 3 about the terms ‘necessary’ and ‘required.’ Cf. also Catherine Barnard in *The Substantive Law of the EU - the Four Freedoms*, second edition, Oxford University Press, New York, 2007 pp. 292-293, and Paul Craig and

Whilst it falls outside the scope of this analytical note to account for freedom of establishment (Article 49 TFEU), it should be noted that the CJEU has dealt with the issue of language requirements imposed as a prerequisite for establishment in the host Member State in cases concerning i.a. lawyers, where the CJEU established that “[...] the registration of a lawyer with the competent authority of a Member State other than the State where he obtained his qualification in order to practise there under his home-country professional title *cannot be made subject to a prior examination of his proficiency in the languages of the host Member State*”⁷ (emphasis added). Moreover, the CJEU found it to be incompatible “[...] making registration with the competent national authorities *subject to a prior language test for lawyers* who have obtained their qualification in a Member State other than the [the host Member State] and who wish to practise under their home-country’s professional title in the latter Member State, by prohibiting those lawyers from being persons authorised to accept service on behalf of companies, and by requiring them to produce each year a certificate of registration with the competent authority of their home Member State [...]”⁸

According to the Commission “[t]he ability to communicate effectively is obviously important, and a certain level of language may therefore be required for a job, but the Court has held that any language requirement must be *reasonable and necessary* for the job in question, and must not be used as an excuse to exclude workers from other Member States. While employers (whether private or public) can require a job applicant to have a certain level of linguistic ability, they *cannot demand only a specific qualification* as proof. The Commission has received numerous complaints about job advertisements which require applicants to have as their ‘mother tongue’ a particular language. The Commission considers that while a very high level of language may, under certain strict conditions, be justifiable for certain jobs, *a requirement to be mother tongue is not acceptable*”⁹ (emphasis added).

I.i. Regulation (EU) No. 492/2011

The first subparagraph of Article 3 of Regulation (EU) No. 492/2011 reiterates the general principle of equal treatment of migrant workers and accordingly prevents direct as well as indirect discrimination against foreign nationals wishing to take up and pursue employment in the host Member State. However, the second subparagraph of Article 3 expressly provides a linguistic exception to the principle of equal treatment by way of allowing that a certain level of language proficiency may be required from migrant workers in relation to a specific post:

1. Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:
 - (a) where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

Gráinne de Búrca in *EU Law, Text, Cases and Materials*, fourth edition, Oxford University Press, New York, 2008, pp. 758-760.

⁷ *Wilson* (C-506/04), judgment of the Court of 19 September 2006, para. 78. See also below para. I.iii on *Haim II* (C-424/97). The latter case is described as it provides information on the justification of language requirements imposed on health personnel (dentists).

⁸ *Commission of the European Communities vs. Grand Duchy of Luxembourg* (C-193/05), judgment of 19 September 2006, para. 74.

⁹ *Communication from the Commission - Free movement of workers: Achieving the full benefits and potential* part 2.3, COM (2002) 694 final.

(b) where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

The first subparagraph shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.

In addition, Article 7 of Regulation (EU) No. 492/2011 reiterates the principle of equal treatment of workers and accordingly prohibits discrimination of migrant workers in respect of any conditions of employment and work and also provides for the equal treatment of migrant workers in respect of social and tax advantages:

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.

Furthermore, Article 9 provides for the equal treatment of migrant workers in matters of housing:

1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

I.ii. Directive 2005/36/EC

Under Article 53 of Directive 2005/36/EC, a certain level of linguistic knowledge may be required from migrant workers, whose professional qualifications have been recognised in another Member State, in relation to a specific profession:

Knowledge of languages

Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practicing the profession in the host Member State.

Under Directive 2005/36/EC there are 3 systems for the recognition of professional qualifications:¹⁰

- 1) The *automatic recognition* for 7 sectoral professions, where minimum training conditions are harmonised: Architects, dentists, doctors, midwives, nurses, pharmacists and veterinary surgeons;¹¹
- 2) The *general system* for regulated professions, where minimum training conditions are not harmonised;¹² and
- 3) Recognition on the basis of professional experience for certain professional activities within the craft, commerce or industry sector. Workers within these sectors may have their qualifications recognised either through automatic recognition or on the basis of the general system.¹³

Under the *general system*, the host Member State may impose compensation measures by requiring the applicant to pass an aptitude test or to complete an adaption period under certain restricted conditions pursuant to Article 14, which serve as a so-called ‘indirect filter’ with regard to the applicant’s language proficiency. Under the system of *automatic recognition*, such ‘indirect filter’ is non-existent.¹⁴

According to the Commission, “Article 53 of the 2005 Directive clarifies that professionals should have the level of knowledge of the national language that is *necessary* for exercising the professional activity in question. Any language requirement should be *justified and proportionate*, in view of the activity a professional actually wishes to carry out. Recognized professionals are entitled to attest their language knowledge through *any means of proof*. However, the Directive should not be construed as imposing a blanket ban on language testing; it does allow for *language testing in exceptional cases*”¹⁵ (emphasis added). Moreover, language requirements “[...] can only be considered on an *individual case by case basis* [...]”,¹⁶ and “[t]he proportionality principle *excludes a systematic or standardised check*, which should be imposed only in cases of doubt concerning the language skills of individual migrants (e.g. check on the language skills of a migrant who has studied partially in the host Member State would be questionable).”¹⁷ In addition, “[...] the recognition of the professional qualifications cannot be *denied or delayed* until the migrant has acquired the necessary language skills.” And “[m]igrants cannot be compelled to hold a specific

¹⁰ See http://ec.europa.eu/internal_market/qualifications/directive_in_practice/index_en.htm, accessed 10 September 2013.

¹¹ See http://ec.europa.eu/internal_market/qualifications/directive_in_practice/automatic_recognition/index_en.htm, accessed 10 September 2013.

¹² See http://ec.europa.eu/internal_market/qualifications/directive_in_practice/general_system/index_en.htm, accessed 10 September 2013.

¹³ See http://ec.europa.eu/internal_market/qualifications/directive_in_practice/recognition/index_en.htm, accessed 10 September 2013.

¹⁴ Cf. *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, parts 12.3 and 12.4.

¹⁵ *Commission Staff Working Document on the transposition and implementation of the Professional Qualifications Directive (2005/36/EC)*, SEC(2010) 1292, Brussels, 22/10/2010, European Commission, para. 2.3.

¹⁶ *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* point 16.

¹⁷ *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.

certificate of language knowledge delivered by a *particular institution* (e.g. the Goethe Institut or a department of a University)”¹⁸ (emphasis added).

Article 53 incorporates the case law of the CJEU and allows for Member States “[...] to *control* the language knowledge of professionals, but stipulates they can *organise language testing* only under *exceptional circumstances*. The level of language knowledge required should be defined according to the type of activity and the framework in which it will be conducted [...]” (emphasis added). The facts that the provision is placed in Title IV of the Directive, dealing with the exercise of a profession rather than with the recognition of professional qualifications, as well as the wording of the provision, “[...] implies that *language testing shall not be part of the recognition procedure* and the lack of language knowledge *cannot be a reason for refusing recognition of professional qualifications* as such. This means that the competent authority of the host Member State may only check the language knowledge of migrant professionals *after* the recognition took place” (emphasis added). Exceptions apply with regard to language-related industries, such as speech therapists.¹⁹

In line with this, the key findings of the Evaluation of the Directive show that “[...] most competent authorities consider that it is *the employer's responsibility* to check if the professional has a sufficient knowledge of the host Member State's language.” However, with regard to *health professionals* who benefit from *automatic recognition* of their qualifications, “[...] the provisions of the Directive concerning the assessment of language skills are not sufficiently clear [...].” “Point 16 of the Code of Conduct for the Directive gives guidance about the application of Article 53, however the Code of Conduct is not a binding legislative instrument, and it is unknown by many competent authorities”²⁰ (emphasis added).

Directive 2005/36/EC is currently being revised,²¹ and among other things, “[...] the proposal clarifies that the checking of the language knowledge of a professional should take place only *after* the host Member State has recognised the qualification. In the case of professions with implications for patient safety, competent authorities can carry out the language examination if it is requested by the national healthcare system or by national patients' organisations, notably in the case of self-employed health professionals”²² (emphasis added). The proposal is illustrative of the fact that namely within the health sector, language proficiency is an issue.²³

¹⁸ Group of Coordinators for the Recognition of Professional Qualifications, *Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.

¹⁹ Cf. *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.1. See also *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6, and *USER GUIDE, Directive 2005/36/EC, Everything you need to know about the recognition of professional qualifications, 66 questions - 66 answers*, part V, and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* Point 16.

²⁰ Cf. *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.3.

²¹ See *Proposal for a Directive of the European Parliament and of the Council, amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System*, COM (2011) 883 final, Brussels 19.12.2011, European Commission, and http://ec.europa.eu/internal_market/qualifications/policy_developments/index_en.htm, and namely http://europa.eu/rapid/press-release_IP-11-1562_en.htm?locale=en, both accessed 10 September 2013.

²² See http://europa.eu/rapid/press-release_MEMO-11-923_en.htm?locale=en, para. 6, item 12, accessed 10 September 2013, and *Proposal for a Directive of the European Parliament and of the Council, amending Directive 2005/36/EC on*

I.iii. CJEU case law

Angonese (C-281/98):²⁴ The disputed matter of the case was the compatibility with Article 48 (now 45) TFEU of internal rules of a private banking undertaking in the Italian province of Bolzano making entry into a recruitment competition for a post conditional upon possession of a type-B certificate of bilingualism - '*attestato di bilinguismo*' (Italian and German). Such certificate was issued exclusively by a public authority of Bolzano after an examination held only in at an examination centre in the province of Bolzano (being the Italian-German speaking province).²⁵

The origin of the dispute was the refusal of an Italian citizen, having German as his mother tongue, to be admitted into the recruitment competition for the post on grounds of him not producing the said certificate.²⁶

The Italian court, submitting the question to the CJEU for a preliminary ruling, found that Mr. Angonese was perfectly bilingual and that this was substantiated by other certificates submitted with a view to gaining admission to the competition, as well as his professional experience.²⁷

The CJEU found that the question submitted by the national court should be examined solely in relation to Article 48 (now 45) TFEU, rather than also in relation to Regulation (EEC) No. 1612/68 (now 492/2011) Articles 3 (1) or 7 (4). This was caused by the fact that the relevant provision of the Collective Agreement did not "[...] authorise the institutions concerned, either expressly or implicitly, to adopt discriminatory criteria in relation to workers who are nationals of other Member States, which would be incompatible with Article 7 of the Regulation." It hence "[...] follows that such a provision does not in itself constitute an infringement of Article 7 of the Regulation and does not have any effect on the lawfulness, under the Regulation, of a requirement such as the one imposed by the Cassa di Risparmio."²⁸

With regard to the requirement imposed by the private banking undertaking on possession of the type-B certificate of bilingualism - '*attestato di bilinguismo*', the CJEU found that persons not residing in the province of Bolzano had "[...] little chance of acquiring the Certificate, and it will be difficult, or even impossible, for them to gain access to the employment in question." The CJEU further found that the requirement on possession of the specific certificate puts nationals of other Member States as well as Italian nationals resident in other parts of Italy "[...] at a disadvantage by comparison with residents of the province" Bolzano.²⁹

The CJEU further referred to its ruling in *Groener* "[...] the principle of non-discrimination precludes any requirement that the linguistic knowledge in question must have been acquired within the national territory."³⁰

the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System, COM(2011) 883 final, Brussels 19.12.2011, European Commission, part 4.9.1.

²³ Cf. *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.3.

²⁴ Judgment of the Court of 6 June 2000, Roman Angonese mod Casa di Risparmio di Bolzano SpA.

²⁵ Paras. 5-7 and 28.

²⁶ Para. 9.

²⁷ Para. 8.

²⁸ Paras. 23-28, cf. para. 36.

²⁹ Paras. 39-41.

³⁰ Para. 43.

As regards the justification of the language requirement, the CJEU found that a requirement “[...] making the right to take part in a recruitment competition conditional upon possession of a language diploma that may be obtained in only one province of a Member State and not allowing any other equivalent evidence could be justified only if it were based on *objective factors* unrelated to the nationality of the persons concerned and if it were in *proportion to the aim legitimately pursued*”³¹ (emphasis added).

The CJEU ruled that albeit it may be legitimate to require an applicant for a post to have a certain level of linguistic knowledge, and the possession of said certificate may constitute a criterion for assessing that linguistic knowledge “[...] the fact that it is *impossible* to submit proof of the required linguistic knowledge *by any other means*, in particular by *equivalent qualifications obtained in other Member States*, must be considered disproportionate in relation to the aim in view.”³²

Accordingly, the CJEU ruled that making admission to a recruitment competition conditional on evidence of linguistic knowledge “[...] exclusively by means of one particular diploma issued only in one particular province of a Member State” constituted indirect discrimination on grounds of nationality contrary to Article 48 (now 45) TFEU.³³

Groener (C-379/87):³⁴ The disputed matter of the case was the compatibility with namely Article 3 of Regulation (EEC) No. 1612/68 (now 492/2011) of Irish rules making appointment to a permanent full-time post as a lecturer in public vocational education institutions conditional upon proof of an adequate knowledge of the Irish language (Gaelic).

The origin of the dispute was the refusal of a permanent full-time art teaching post to a Netherlands national engaged in Ireland as a temporary part-time art teacher. Ms. Groener was approved for the full-time teaching post, provided she passed a language examination, and when she did not pass the oral examination of the Irish language she was refused the full-time teaching post.³⁵ As a rule, a person could not be appointed to i.a. a permanent full-time art teaching post without holding a specific *Ceard-Teastas Gaeilge* certificate of Irish language proficiency or having an equivalent qualification recognized by the competent Minister. The Minister may exempt candidates from countries other than Ireland on more specified circumstances, and candidates not holding the certificate may be required to undergo an oral examination; as was the case with Ms. Groener.³⁶

With regard to the requirements of proof, the CJEU ruled that “[...] the principle of non-discrimination precludes the imposition of any requirement that the linguistic knowledge in question must have been acquired *within the national territory*”³⁷ (emphasis added).

As regards the power of the competent Minister to exempt candidates from the linguistic qualification requirement the CJEU stated that “[...] where the national provisions provide for the possibility of *exemption from that linguistic requirement* [...], Community law requires that power

³¹ Para. 42.

³² Para. 44.

³³ Paras. 45 and 47.

³⁴ Judgment of the Court of 28 November 1989, Anita Groener v. Minister for Education and the City of Dublin Vocational Educational Committee.

³⁵ Paras. 1, 2 and 6.

³⁶ Paras. 4-6.

³⁷ Para. 23, and see *Angonese* (C-281/98) para. 43.

to grant exemptions to be exercised by the Minister in a *non-discriminatory manner*³⁸ (emphasis added).

Concerning the justification of said language requirement, a pertinent aspect was the aim pursued by the Irish State. Accordingly, the CJEU found the policy followed by Irish governments for many years to *maintain and to promote the use of Irish* as a means of expressing *national identity and culture* to be legitimate. The CJEU referred to the fact that the EEC Treaty did not prohibit the adoption of a *policy for the protection and promotion of a language* of a Member State which is both the national language and the first official language.³⁹

When examining the application of the linguistic exemption under Article 3 on the matter at issue, the CJEU dealt with the question of whether the *nature of a permanent full-time post of lecturer in art* in public vocational education institutions *is such as to justify the requirement* of knowledge of the Irish language.⁴⁰

The CJEU found that the teaching of art was essentially and indeed exclusively conducted in English, and knowledge of Irish was hence not necessary for the performance of the tasks. However, teachers played a vital role in implementing the efforts made by Irish governments for many years to maintain and to promote the use of Irish as a means of expressing national identity and culture through policy.⁴¹ The CJEU accordingly found that “[i]t follows that the requirement imposed on teachers to have an adequate knowledge of such a language must, provided that the level of knowledge required is *not disproportionate* in relation to the objective pursued, be regarded as a *condition corresponding to the knowledge required by reason of the nature of the post* to be filled within the meaning of the last subparagraph of Article 3 (1) of Regulation No. 1612/68⁴² (emphasis added). Consequently, when considering the meaning of the phrase ‘the nature of the post to be filled,’ regard was to be had to the policy of the Irish State and the special linguistic situation in Ireland,⁴³ and the CJEU did thus find knowledge of Irish to be necessary for the post.

The CJEU accordingly ruled that “[...] a permanent full-time post of lecturer in public vocational education institutions *is a post of such a nature as to justify the requirement of linguistic knowledge*, within the meaning of the last subparagraph of Article 3 (1) of Regulation No. 1612/68 of the Council, provided that the linguistic requirement in question is imposed as *part of a policy for the promotion of the national language* which is, at the same time, the *first official language* and provided that that requirement is applied in a *proportionate and non-discriminatory manner*”⁴⁴ (emphasis added).

³⁸ Para. 22.

³⁹ Para. 19.

⁴⁰ Para. 14.

⁴¹ Paras. 15-18 and 20.

⁴² Para. 21.

⁴³ Paras. 16-17; cf. Para. 2.

⁴⁴ Paras. 24 and 26.

Haim II (C-424/97):⁴⁵ The disputed matter - of particular relevance to this analytical note - of the case was the compatibility with Article 52 TFEU (now Article 49 on freedom of establishment) of a German practice, making appointment as a social security scheme dental practitioner of nationals of other Member States who is authorized to practice in Germany, conditional upon those nationals having the linguistic knowledge necessary for the exercise of their professional activities in Germany.⁴⁶

The CJEU established that national measures which restrict the exercise of fundamental freedoms guaranteed by the Treaty can be justified only if they fulfill four conditions:

- 1) They must be applied in a non-discriminatory manner;
- 2) They must be justified by overriding reasons based on the general interest;
- 3) They must be suitable for securing the attainment of the objective which they pursue; and
- 4) They must not go beyond what is necessary in order to attain that objective.⁴⁷

With regard to the second and third conditions, the CJEU established that overriding reasons of general interest such as to justify making the appointment as a dental practitioner under a social security scheme subject to language requirements existed in the case. Thus, the CJEU found that such overriding reasons were constituted by “[...] the *reliability of a dental practitioner's communication with his patient and with administrative authorities and professional bodies*. [...] Dialogue with patients, compliance with rules of professional conduct and law specific to dentistry in the Member State of establishment and performance of administrative tasks require an appropriate knowledge of the language of that State.”⁴⁸

With regard to the fourth - and possibly also the third - condition, the CJEU established that “[...] it is important that language requirements designed to ensure that the dental practitioner will be able to communicate effectively with his patients, whose mother tongue is that of the Member State concerned, and with the administrative authorities and the professional bodies of that State do not go beyond what is necessary to attain that objective. In this respect, it is in the interest of patients whose mother tongue is not the national language that there exist a certain number of dental practitioners who are also capable of communicating with such persons in their own language.”⁴⁹

The CJEU thus ruled that “[...] the competent authorities of a Member State may make the appointment, as a social security scheme dental practitioner, of a national of another Member State who is established in the first Member State and authorised to practise there but has none of the qualifications mentioned in Article 3 of Directive 78/686, conditional upon his having the *linguistic knowledge necessary for the exercise of his profession* in the Member State of establishment” (emphasis added).⁵⁰

⁴⁵ Judgement of the Court of 4 July 2000, *Salomone Haim v. Kassenzahnärztliche Vereinigung Mordrhein*.

⁴⁶ Paras. 23-24 and 54-55.

⁴⁷ Para. 57.

⁴⁸ Para. 59.

⁴⁹ Para. 60.

⁵⁰ Paras. 61-62.

Las (C-202/11):⁵¹ The disputed matter of the case was the compatibility with Article 45 TFEU of a provision of the Flemish Decree on Use of Languages, governing the Dutch-speaking region of the Kingdom of Belgium, imposing an obligation on an undertaking established in the Dutch-speaking region when hiring a worker in the context of employment relations with an international character, to draft all documents relating to the employment in Dutch (i.e. the official language of that federated entity), on pain of nullity.⁵²

The origin of the dispute was the dismissal of a Netherlands national resident in the Netherlands, employed by a company established in the Dutch-speaking region of Belgium, but part of a multinational group whose registered office is in Singapore. The contract of employment stipulated that Mr. Las was to carry out his work in Belgium, although some work was carried out from the Netherlands. Mr. Las' counsel held that the employment contract should be deemed null and void, as the contract was not drafted in Dutch. Consequently, the counsel held that Mr. Las was entitled to demand more substantial compensation from his employer than provided for in the employment contract.⁵³

The CJEU found that the disputed provision of the Flemish Decree constituted a restriction on the freedom of movement of workers, as it was liable to have a dissuasive effect on non Dutch-speaking employees and employers from other Member States.⁵⁴ With regard to the justification of such restriction, the CJEU stated that national measures capable of hindering the exercise of the fundamental freedoms guaranteed by the Treaty or of making it less attractive may be allowed only if:

- 1) They pursue a legitimate objective in the public interest;
- 2) Are appropriate to ensuring the attainment of that objective; and
- 3) Do not go beyond what is necessary to attain the objective pursued.⁵⁵

With regard to the first condition on the objective being legitimate, the CJEU referred to i.a. *Groener* and pointed out that EU Law does not preclude the *adoption of a policy for the protection and promotion of one or more official languages* of a Member State, and that the objective of promoting and encouraging the use of Dutch, being one of the official languages of Belgium, constituted a legitimate interest which, in principle, justifies a restriction to free movement of workers.⁵⁶ Also, the CJEU stated that the social protection of employees and the facilitation of the related administrative controls, as invoked by the Belgian government, are among the overriding reasons in the general interest capable of justifying such restrictions to free movement.⁵⁷

With regard to the third condition on proportionality of said measure, the facts that breach of the obligation to draft an employment contract in Dutch is the nullity of the contract, that parties to a cross-border employment contract do not necessarily have knowledge of the official language of the Member State concerned, and that legislation did not permit the drafting of employment contracts in a language known to all parties concerned, lead the CJEU to conclude that the provision of the

⁵¹ Judgment of the Court of 16 April 2013, Anton Las v. PSA Antwerp NV.

⁵² Paras. 4-8 and 15-16.

⁵³ Paras. 9-11.

⁵⁴ Para. 22.

⁵⁵ Para. 23.

⁵⁶ Paras. 25-27.

⁵⁷ Para. 28.

Flemish Decree goes beyond what is strictly necessary to attain the objectives of the Belgian government and could hence not be regarded as proportionate.⁵⁸

The CJEU accordingly ruled that Article 45 precludes “[...] legislation of a federated entity of a Member State [...], which requires all employers whose established place of business is located in that entity’s territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own notion.”⁵⁹

II. Mandate from the Commission

The mandate forming the basis of the information provided by the national experts and thus this analytical note is as follows:

The language requirements under EU law on free movement of workers

The legal framework

1. Under Article 3 of Regulation 492/2011:

I ...provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

(a) where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

(b) where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

The first subparagraph shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.

2. Under Article 53 of Directive 2005/36:

Knowledge of languages

Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State.

The case law of the Court

The Court of Justice has interpreted very strictly the derogation of this article relating to language requirement and has held that any language requirement must be reasonable and necessary for the

⁵⁸ Paras. 29-33.

⁵⁹ Paras. 34-35.

job in question and cannot constitute grounds for excluding workers from other Member States.⁶⁰ Employers cannot demand a particular qualification only by way of proof, and systematic language tests carried out in a standardised form are considered contrary to the principle of proportionality.⁶¹

Moreover, while employers (whether private or public) can require a job applicant to have a certain level of linguistic ability, they cannot demand only a specific qualification as proof. In the *Angonese* case the Court stated that Article 45 TFEU precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State.

The Commission's position

While a very high level of linguistic knowledge may be justifiable in particular situations and for certain jobs, the Commission considers that a requirement for the person to be a mother tongue speaker is not in principle acceptable. It has to be examined on a case by case basis if the nature of the job to be filled and the tasks to be assigned require a certain degree of language knowledge. Moreover, only specific certificates cannot be accepted as proof of language knowledge when a person applies for a given job.

Language requirement for access to social advantages/benefits

During the recent years in some Member States (host Member States) there are language requirements (as an element of integration) for access to social benefits i.e., EU migrant workers should prove a certain degree of language knowledge of (one of) the official language(s) of the host Member State in order to be eligible for some social benefits.

Specific request to the Network of experts on free movement of workers

A. Situation in the different Member States – Legislation and/or administrative practices, including case law in relation to language requirements and proof thereof:

- for access to employment (in the public and private sector; at the national or subnational/ local level), but also in relation to working conditions, promotion and salary.

- for access to social advantages/social benefits (at the national or subnational/ local level).

B. A summary assessment of the justification of the above requirements

⁶⁰ Case C-379/87.

⁶¹ Case *Angonese* (C-281/98).

III. Preliminary comments about the structure of this report

In most of the 28 EU Member States, there is no clear distinction between language requirements for *access to employment* and language requirements for *working conditions, promotion or salary*, as the main focus is put on the access to employment - and to a certain extent also on the access to continued employment. However, albeit language requirements for working conditions, promotion and salary are generally not regulated in most Member States, language skills may have an impact on working conditions, promotion or salary - in particular with regard to employment protection in connection with dismissals.

This is adequately articulated by the Swedish expert stating that: “Since promotion or salary could be related to the employee’s skills, it seems reasonable that also good language skills could facilitate promotion or a higher salary. For instance, if an employee cannot express him or herself in understandable writing, he or she could probably be paid less than an employee having excellent skills in writing. However, [...] the starting point for such an advantage should be what skills are necessary for working on a certain position or employment.”

Consequently, language requirements in respectively access to employment and working conditions are dealt with together in this report, while also allowing for specific statements made by the experts about working conditions, promotion and salary to appear.

The report is structured in the following manner:

- A. Regulatory framework: Within this section, language skills in employment within the private and public sector required by law, regulation, administrative action or practice, or by collective or individual agreement or any other collective regulation, as well as language skills required by private entities in practice are dealt with.

Consequently, within this section, the following questions from the Commission are dealt with: “A. Situation in the different Member States – Legislation and/or administrative practices, including case law in relation to language requirements [...]:

- for access to employment (in the public and private sector; at the national or subnational/ local level), but also in relation to working conditions, promotion and salary.
- for access to social advantages/social benefits (at the national or subnational/ local level).”

- B. Requirements for proof: Within this section, the requirements for proof of language skills in employment within the private and public sector required by law, regulation, administrative action or practice, or by collective or individual agreement or any other collective regulation, as well as language skills required by private entities in practice are dealt with.

Consequently, within this section, the following questions from the Commission are dealt with: “A. Situation in the different Member States – Legislation and/or administrative practices, including case law in relation to [...] proof [of language requirements]:

- for access to employment (in the public and private sector; at the national or subnational/ local level), but also in relation to working conditions, promotion and salary.
- for access to social advantages/social benefits (at the national or subnational/ local level).”

- C. Justifications: Within this section, the justifications of language skills in employment within the private and public sector required by law, regulation, administrative action or practice, or

by collective or individual agreement or any other collective regulation, as well as language skills required by private entities in practice are dealt with.

Consequently, within this section, the following question from the Commission is dealt with: “B. A summary assessment of the justification of the [language] requirements.”

- D. Conclusions: Within this section, an overview of the findings of sections A, B and C is presented.

Apart from two subsections to section A, specifically dealing with the issues of whether the language requirements are imposed on all workers, regardless of nationality, and whether the language requirements are having the effect of excluding EU migrant workers from accessing employment etc., respectively, the three main A, B and C sections - and also section D - are at large structured in the following identical manner:

- I. Access to employment and working conditions, promotion or salary: Within those sub sections, the specific requirements on respectively language skills and proof and the justifications of language requirements in employment within the private and public sector required by law, regulation, administrative action or practice, or by collective or individual agreement or any other collective regulation, as well as language skills required by private entities in practice are dealt with.

In a number of Member States, many business sectors, such as the health and education sector, or specific professions or aspects are found in the private as well as the public sector. Consequently, the presentation of language requirements within this report is to a large extent based on a distinction within the paragraphs between business sectors and professions, rather than on a strict distinction between the private and public sector. However, as certain posts, such as civil servants, are found only within the public sector, special paragraphs are dedicated to employment in the public sector.

Based on the distinction made in EU law between language skills required by law, regulation, administrative action or practice (Article 3 (1) of Regulation (EU) No. 492/2011, cf. *Angonese* (C-281/98) para. 22), or by collective or individual agreement or any other collective regulation (Article 7 (4) of Regulation (EU) No. 492/2011) and language skills required in practice by private entities (Article 45 TFEU, cf. *Angonese* (C-281/98) paras. 23-28 and 36), such distinction is upheld within this report.

Namely concerning legislation governing language requirements for employment in the public sector, the Member States fall in three categories:

1. Member States with *generally applicable State Language Acts governing language requirements in the public as well as the private sector*: In a few Member States, language requirements in the private as well as the public sector are governed by national State Language Acts of a general nature. Due to the distinctive characteristics of the State Language Acts, special paragraphs deal with those main characteristics in terms of employment in the private sector and employment in the public sector. Such State Language Acts may be supplemented and/or implemented by specific legislation governing specific sectors or professions. When this is the

case, such legislation is dealt with in the relevant paragraph covering that specific sector or profession.

2. Member States with *Language Acts and/or constitutional provisions governing language requirements for employment in the public sector*, only. Due to the distinctive characteristics of such legislation, special paragraphs deals with those main characteristics. Such legislation may be supplemented and/or implemented by specific legislation governing specific sectors or professions. When this is the case, such legislation is dealt with in the relevant paragraph covering that specific sector or profession.
 3. Member States with *neither Language Acts nor constitutional provisions governing language requirements for employment in the public sector, and where general legislation governing the public sector and/or administrative practice* thus regulates possible language requirements for employment in the public sector. Such legislation may be supplemented and/or implemented by specific legislation governing specific sectors or professions. When this is the case, such legislation is dealt with in the relevant paragraph covering that specific sector or profession.
- II. Access to social benefits: Within those sub sections, the specific requirements on respectively language skills and proof, and the justifications of language requirements in access to social benefits, are dealt with.

A. Regulatory framework

IV. Access to employment and working conditions, promotion or salary: Specific requirements to have a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions, promotion or salary in the private and public sector

IV.I. Language skills required by law, regulation, administrative action or practice, or by collective or individual agreement or any other collective regulation in the private and public sector

IV.I.I. No language skills required by law or other relevant rules or administrative practices for employment in the private sector

IV.I.I.i. Summary of findings

In a few Member States, no legislation allows for language requirements in access to employment, working, conditions, promotion and salary in the private sector (*France, Malta, Portugal and Slovenia*).

IV.I.I.ii. Findings

No legislation allows for language requirements in *France* and *Malta*; and neither in *Portugal* are workers in general or *a priori* required to have a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions, promotion or salary in the private sector. The same applies to *Slovenia*, where the knowledge of the Slovenian language as a rule is not required by legislation applicable to the private sector (e.g. Commercial Companies Act, Employment Relationships Act etc.); neither for access to employment nor for working conditions, promotion and salary.

IV.I.II. Language skills required by generally applicable State Language Acts for employment in the private sector specifically

IV.I.II.i. Summary of findings

Language requirements in the *private as well as the public sector* are governed by national *State Language Acts* of a general nature in three Member States (*Estonia, Latvia and Lithuania*).

In *Estonia* and *Latvia*, the private sectors are covered by the respective Language Act namely when this is justified by public interests. Furthermore, language requirements are imposed in *Latvia* on employees of enterprises whose majority of shares are owned by state or municipality; employees of private sector and self-employed which according to the delegation by normative acts perform public functions; and foreign experts and members of the foreign administration bodies of enterprises, who work in Latvia.

In *Lithuania*, language requirements are imposed on persons in the particular sectors of communications, transport, health and other establishments providing services to the residents and also on heads of commercial services.

Regarding language requirements in *working conditions and promotion and salary*, the Language Board in *Estonia* has a right to propose to the employer to dismiss an employee or an official, if the person concerned does not have the ability necessary to communicate in Estonian. Also the Language Board can order that a person should undergo the language examination.

IV.I.II.ii. Findings

In *Estonia*, the language requirements for foreign workers have been established by the Language Act and by the Governmental Decree thereof. The Agency that is responsible for controlling the language requirements is the Language Board. According to the Language Act this Act is mainly meant for *public institutions*. However, the *private sectors* will be covered by the Language Act if this is justified by protection of *public interests or for protection of basic rights and freedoms*. The ability to communicate in Estonian will be proved by the language examination. In order to assess the Estonian Language ability, three levels will be used: A, B, C (see Annex I of the national report). Level A is for beginners, level B for advanced, level C for high level ability.

The level A will be required from the technical workers, who are in position to fulfil the tasks that are not complicated in the nature. Level B will be required from workers, who should communicate with many people or who are in position to lead a department or who are in position to compose the necessary official documents. The level C, the highest level, will be demanded from the employees or officials who are responsible for delivering the public speeches, for composing official letters, leading the departments and planning the activities of the institutions concerned. .

A similar situation is found in *Latvia*, where the general obligation of use of the official language is provided by the State Language Law and by Regulation of the Cabinet of Ministers. The aim of this Law is to ensure that Latvian language could be used freely within every field of life and protection and preservation of Latvian cultural identity. Employees of the private sector and self-employed must use official language only as far as it concerns *legitimate interests of the society* (public security, health, morality, protection of health, consumer protection, protection of labour law, safety at work, administrative supervision of public). Furthermore, language requirements are imposed in *Latvia* on *employees of enterprises whose majority of shares are owned by state or municipality; employees of private sector and self-employed which according to the delegation by normative acts perform public functions; and foreign experts and members of the foreign administration bodies of enterprises, who work in Latvia*.

In order to assess the Latvian language ability, there are three proficiency levels: (C - highest, A - lowest) of the knowledge which are divided into two sublevels (1 - lowest and 2 - highest). The A level requires basic knowledge of Latvian, the B requires ability to deal with almost all aspects of everyday and professional life in Latvian, the C indicates knowledge close to native speaker.

With regard to the term ‘legitimate interests of the society’ in *Latvia*, the interpretation is not given officially. However, it may be interpreted in many different ways. It may be interpreted as well that any profession or post in the private sector involves legitimate interests of the society in one or another way, thus applicable to all employees of private sector. With regard to administrative practice, the Language inspectors of the State Language Centre⁶² however explain that the relevant provision concerns those employees only working with customers and administrative institutions (for example, bookkeepers working with State Revenue Office, office workers and board members working with different administrative institutions). For the rest of employees of the private sector,

⁶² The State administrative institution that is in charge of enforcement and supervision of the use of official language in all sectors of life.

an employer is allowed to define official language proficiency level itself. However, Administrative practice of the State Language inspectors reveals possible incompliance with the general principles of law: 1) The State Language inspectors in practice require employees of private sector whose level of knowledge is not defined by Regulation No.733 to know Latvian language in the level which is one level lower than required for employees of the public sector. However such practice runs contrary to the administrative law principle - that administrative fines may be imposed only on the basis of law; and 2) The State Language inspectors apply the Law different with regard to Latvian Russian-speaking population than to EU workers, which runs contrary to non-discrimination principles under human rights law. Accordingly, there is a suspicion that the State Language policy and application of the Law by the State Language inspectors are aimed at control of the Latvian-Russian speaking population, i.e., to compel them to study and use Latvian language in everyday life. At the same time the State Language inspectors know well about the EU law requirements and the special status which EU migrant workers enjoy, thus it is most likely that they are not so strict with, for example, Bulgarian construction workers.⁶³

Regarding language requirements for *access to specific posts*, in *Estonia* all workers in the private sector, who are not specifically mentioned in the Language Act, have to follow the requirements of the Language Act and the requirements set forth by the government. The language requirements are imposed usually on a case-by-case basis, taking into account the nature of the tasks to be fulfilled by the worker. Employers have to guarantee that the employees and officials, from whom the Estonian language will be required, have the ability to communicate in Estonian. According to the Language Board's annual reports, main problems concern the Russian speaking population and their ability to communicate in Estonian, in 2012 there were altogether 2171 violations and non-following of Language Act requirements.

By contrast, detailed State language legislation lists particular professions in *Latvia*. Currently language requirements for the purposes of employment are provided by Regulation No. 733 'On the level of knowledge of official language and procedure for verification of official language proficiency necessary for the performance of professional duties, for the acquisition of permanent residency permit and status of permanent resident of the European Community, and on state duty for testing of proficiency of official language.' Regulation No. 733 has 2 appendixes. Appendix I is applicable to the state and municipal institutions and enterprises which are wholly or predominantly owned by the state or municipality, and provides exhaustive list of professions acknowledged in the Latvian labour market. It means that Appendix I provides official language proficiency levels for all professions. Appendix II is applicable to private enterprises which according to normative acts perform public functions or whose activities concern legitimate interests of society. Appendix II contains approximately 30% of professions acknowledged in the Latvian labour market. It sets proficiency requirements for professions listed therein. In the event Appendix II does not provide for the particular knowledge of an official language for a particular profession, an employer (or self-employed) must determine the level of the knowledge her-/himself to ensure that consumers will be able to acquire necessary information in official language. The list of professions with particular requirements on the knowledge of official language has been extended several times by hundreds of particular professions setting concrete level of the knowledge of Latvian language. In *Latvia*,

⁶³ One of the State Language inspectors informed the Latvian expert during a telephone interview that there are no language barriers with regard to Bulgarian construction workers, because they understand very well Russian language, and thus Latvian employers usually instruct them with regard to health and safety in a workplace in Russian language. The Latvian expert cannot, however, imagine that the State Language inspectors would ever find acceptable instructions in Russian language on health and safety for local workers.

requirements on knowledge of the official language in employment have been very high since the very beginning of the adoption of the State Language Law in 1999.

A similar situation is found in *Lithuania*, where a significant part of the Law on the State Language of the Republic of Lithuania is related to Lithuanian language requirements in the context of the labour market. Second part of the Law regulates the language of institutions, companies and organisations, and a number of other articles are related to language used in the working context.

The State Language Law in *Lithuania* requires that apart from public officials, and those persons in the public service sector, also persons in the particular sectors of *communications, transport, health and other establishments providing services to the residents* must be proficient in State language in accordance with the categories of State language proficiency, established by the Government. Furthermore, *heads of commercial services* must ensure that services to the residents are provided in the State language. Language proficiency requirement is further regulated by the Government Resolution No. 1688 on Approval and Implementation of State Language Proficiency Categories of 24 December 2003. This Resolution establishes three categories of language proficiency and the list of positions to which each category applies. The list is not exhaustive, thus it is likely to be applied also in some other cases on discretionary basis, which may be of concern. The positions range from posts where *commercial employees or employees performing economy* (first category of proficiency) or *technical functions to employees of educational and cultural establishments, teachers and others* (second category of proficiency) to *heads of companies and organisations, lecturers, aviation specialists and specialists controlling flight security, specialists of maritime and internal waters' transport responsible for transportation of cargo and passengers* (captain of the ship, port captain) and *others* (third category of proficiency).

In *Estonia*, the Estonian language requirements will not be applied to the foreigners who work in Estonia on fixed term basis as foreign experts or specialists. For foreigners who are working at the universities as university teachers or scientific workers the language requirements will not be applicable, if she/he will work or has worked in Estonia less than 5 years.

Regarding language requirements in *working conditions and promotion and salary*, the Language Board in *Estonia* has a right to propose to the employer to dismiss an employee or an official, if the person concerned does not have the ability necessary to communicate in Estonian. Also the Language Board can order that a person should undergo the language examination, if the Language Board finds out that a worker or official is not in position to communicate in Estonian on the required level.

IV.I.III. Language skills required by law etc. for employment within the medical sector

IV.I.III.i. Summary of findings

In the majority of the Member States, a certain level of linguistic ability is required for workers within the *medical sector*, being private or public - either per sector or per post through specific legislation covering health personnel, legislation generally applicable to regulated professions or administrative practice. With regard to the specific issue of whether such language requirements are imposed on all workers, regardless of nationality, see below para. IV.III.III.

The medical professions may include posts such as physicians/doctors, dentists, pharmacists, veterinarians, ergo therapists, nurses, midwives, paramedics, elderly care personnel, dermatologist,

certain laboratory professionals and barber-surgeons (*Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Lithuania, Poland, Slovakia, Slovenia, Sweden, The Netherlands and United Kingdom*). Health personnel appear to be either required to dispose of the required language skills in order to receive admission for practicing a specific profession, or the enforcement of language requirements rests with the employer.

In *Germany*, the Federal Social Court established that persons who are members of the obligatory illness insurance system are not entitled to be treated by persons speaking the language of their home country,⁶⁴ which sits uneasily with *Haim II* (C-424/97).⁶⁵

Notably, language requirements appear to be part of the *recognition procedure* in some Member States, which may raise issues on compatibility, as making recognition of qualifications subject to linguistic knowledge is contrary to Directive 2005/36/EC, unless linguistic knowledge belongs to the qualification (i.e. in language-related industries, such as speech therapists or teachers teaching the language of the host country).⁶⁶ Thus, in *Hungary* recognition of health care diplomas requires the applicants to indicate her/his language knowledge. However, lack of language knowledge does not have any kind of consequences. And in *Lithuania*, doctors may be required to attest language proficiency when applying for a license.

In *United Kingdom*, there has been recent controversy regarding the requirement under EU law to allow *doctors* and *nurses* from the EU to practice in the UK without a requirement to speak English. The British Medical Association has recently commented that it plans to introduce an English language competency test based on a requirement to understand and communicate in English throughout the medical profession. Traditionally, the General Medical Council has not applied an English language test on EEA nationals. And in *Cyprus*, obstacles in the form of excessive language requirements in the job descriptions for *nurses* are still practiced.

IV.I.III.ii. Findings

The Member States within which a certain level of linguistic ability is required from EU workers with regard to medical professions comprise *Austria*, where a certain level of linguistic ability is a legal precondition to practice certain professions where admission is regulated by law. For example, *physicians* are required to have sufficient command of the German language according to law. And *Czech Republic*, where knowledge of the Czech language is required for some of the regulated professions, but it may be required only to the extent that is necessary for a pursuit of the regulated activity, and e.g. *physicians, dentists* and *paramedics* must accordingly be able to understand their patients so the knowledge of the Czech language is required to the extent that is necessary for a pursuit of the medical practice. Likewise in *Croatia*, provisions of the Health Care Act generally prescribe that in the health care field, the condition of knowing Croatian language is a condition

⁶⁴ Judgement of 5 February 2008, B 6 KA 40/06 R, EuroAS 2008, 120.

⁶⁵ Para. 60.

⁶⁶ *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.1. See also *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6, and *USER GUIDE, Directive 2005/36/EC, Everything you need to know about the recognition of professional qualifications, 66 questions - 66 answers*, part V, and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* Point 16.

applicable to health care workers who have a private practice. The same applies to the employment of doctors in line with the Act on Medical Practice, with the exception of doctors who perform temporary diagnostic and therapeutic procedures, as the performance of such activities does not necessitate verbal communication with the patient or if the communication is possible through an intermediary. However, both of these sources of law have more lenient approach for EU nationals, since for EU nationals not a general language requirement provision applies, but a milder one, prescribing that they have to have 'knowledge of Croatian language at least at the level that is required for the smooth and the necessary communication with the patient.' Such milder provisions for EU nationals can be also found in other laws regulating regulated professions, for example in the Act on Pharmacy, the Act on Medical and Biochemical Activities and the Act on Nursing.

In *Sweden*, most of the regulated professions are in the *health care sector*, and for the employment of *medical doctors*, the language understanding between doctor and patient can be of vital importance. On the other hand, the same does not apply if the doctor's task, by example, is to take and analyze roentgen pictures. For employment in the *public health care sector*, it is the local government that should examine if a person has the sufficient skills for a certain position, and that procedure could vary between different local County Councils in charge of the recruitment. Apparently, there are critical voices against this procedure with no centrally regulated language requirements for obtaining the right to work as *medical doctors*, leading to the employment of doctors with insufficient language skills not being able to communicate with patients.⁶⁷ Regarding the public health sector in *Slovenia*, the Health Service Act for instance states that workers in health service are obliged to use the Slovenian language at their work (in addition to Italian or Hungarian language in the respective regions). In that case active knowledge of Slovenian language is not required. The standard of the language has to be determined by a specific employer.

Language skills for medical professions are required also in *Germany*, where language requirements may be required for the granting of professional licences to exercise a certain profession or the recognition of professional qualifications. However, the question of language skills should not be part of the recognition process of professional qualifications. I.e. State authorities should not require standard information on language skills. They may in particular not require applicants to pass language tests as a matter of principle. Instead, they should consider each individual case with due consideration to the principle of proportionality. This gives State authorities some flexibility.

Most prominently, the professional rules on legal rules on different *medical professions* require sufficient knowledge of the German language in order to communicate with clients. The Federal Regulation for practicing medicine provides that an applicant in order to receive the admission as a *medical doctor* must dispose of the required language skills necessary for exercising the medical profession. In a similar vein, the Federal Regulation on *pharmacists*, the law on *veterinary professions*, rules for *ergo therapists*, the Federal Law on *nurses*, the rules for the *care of elderly people*, the Federal Law on *midwives* and even rules for *medical and technical assistants in laboratories* all require adequate language skills for medical professions. Moreover, the Federal Social Court rejected an application for a special license from a psychotherapist who applied for a special licence to treat patients in the Greek language and hence to provide services for foreigners. The Court argued that persons who are members of the obligatory illness insurance system were not entitled to be treated by persons speaking the language of their home country.⁶⁸

In *Lithuania*, specific exceptions to language requirements have been made with regard to certain professions, e.g. *doctors*. Accordingly, EU, EEA and Swiss nationals may provide temporary

⁶⁷ See for instance <http://www.poeter.se/Las+Text?textId=1065679>, accessed 20 June 2013.

⁶⁸ Judgement of 5 February 2008, B 6 KA 40/06 R, EuroAS 2008, 120.

services in Lithuania even if they do not have a license. Thus language requirement is not, at least explicitly, provided. However, according to the Lithuanian expert, it would be worthwhile to include a special exemption concerning language proficiency requirement for doctors who are EU, EEA and Swiss nationals, due to the fact that when doctors, who are EU nationals, apply for a license, they may be requested to provide documents, attesting Lithuanian language proficiency by the State Service for Accreditation of Health Care Supervision at the Ministry of Health Care (institution responsible for issuing the licenses). Language requirements hence appear to be part of the *recognition procedure* in *Lithuania* as regards the health sector.

In *Poland*, the statutory language requirements are imposed on a general basis per sector, and the relevant Acts apply without distinction to the private as well the public sector. Hence, *pharmacists*, which, however, appear only in the private sector, must have the level of knowledge of Polish language necessary to carry out that profession. Moreover, *nurses* and *midwives* must have the knowledge of Polish language required for the communication with patients and to understand written text as well as ability to write in Polish according to their respective competences. Furthermore, *doctors* and *dentists* must have the oral and written knowledge of Polish language necessary to carry out those professions; and also *barber-surgeons* and *veterinary doctors* must have knowledge of Polish.

In *Ireland* the question of linguistic proficiency has arisen in relation to a number of professions, in particular, *nurses*, *doctors*, *pharmacists*, *teachers* and *lawyers*. In the case of *doctors*, the website of the Medical Council of Ireland provides that “the Medical Council is not entitled to require evidence of English language proficiency from EU citizens.” However, Section 35 of the Medical Council's ‘Guide to the Application Procedure and Registration Rules for Registration in the Register of Medical Practitioners’ states that while the Medical Council is not entitled to require evidence of English language proficiency from EU citizens: “Employers should satisfy themselves that all medical practitioners employed by them have sufficient English language skills to perform their duties and communicate effectively with patients and colleagues.” This section continues by quoting Paragraph 12.1 of the Medical Council's Guide to Professional Conduct and Ethics which states: “If you do not have the professional or language skills [...] you must refer the patient to a colleague who can meet those requirements.” Finally, the section provides that “if an employer finds that a registered medical practitioner does not have sufficient English language skills to practice medicine, they should make a formal complaint to the Medical Council. It may be considered professional misconduct if a medical practitioner is unable to communicate effectively with their patients and colleagues.” Furthermore, in relation to *pharmacists*, the Pharmacy Act, 2007, stipulates that the Council of the Pharmaceutical Society of Ireland shall register a person in the pharmacists’ register if the person being a national of the State or another Member State and lacking the linguistic competence necessary to be a registered pharmacist in the State, undertakes to acquire such competency. With regard to *nurses*, there is no general requirement that employees in the private sector speak English and/or Irish. Thus, while proof of English language competence is required for non-EU nationals who apply to register with the Irish Nursing Board, a 2007 Circular issued by this Board stated that the Board was precluded from assessing the English language competence of nurses coming from other EU Member States. However, while the Board itself may not require English language competence, prospective employers are entitled to assess English language competency. There is no general requirement for Irish language competency in the *public Health Service*. However, in order to ensure that services can be provided in Irish, an assessment of ability to speak in English and Irish may be carried out at interview, and this may result in preference given to Irish speakers.

In *United Kingdom*, there has been recent controversy regarding the requirement under EU law to allow *doctors* and *nurses* from the EU to practice in the UK without a requirement to speak English. The British Medical Association has recently commented that it plans to introduce an English language competency test based on a requirement to understand and communicate in English throughout the medical profession. Traditionally, the General Medical Council has not applied an English language test on EEA nationals.⁶⁹ The question of whether or not a ‘speak English only’ policy can be justified has not yet been tested in the tribunals and courts under the Equality Act 2010 in the UK. In addition, the guidance of the National Health Service specifically excludes the application of language requirements to EEA nationals. However, from 21 March 2013 a new policy has been put into place by the NHS to ensure that any individual involved in the delivery of NHS services has the required level of linguistic skills to enable them to undertake their role effectively and to assure the delivery of safe care to patients.⁷⁰ Furthermore, from April 2013, there will be one single GP performers list, held by the NHS Commissioning Board. All doctors wishing to practise as GPs in the UK must be able to demonstrate that they have adequate written and oral skills before they can be admitted to the list. This single list will replace the different lists held by PCTs (Primary Care Trusts - the organizing system of the UK health care system).

Conversely regarding *Cyprus*, where some of the previous barriers in the *medical profession*, such as the requirement for excellent use of Greek for *medical doctors*, have now been removed as the Medical Doctors’ Association has complied with the recommendation of the Cypriot Equality body, following a complaint from a general practitioner whose application for registration had been declined.⁷¹ Today doctors can register without the language restrictions.⁷² However, there are still allegations about language barriers to the *nursing profession*, which continue to practice stringent language tests: Very good knowledge Greek or English, despite a relevant decision of the Equality body, both in public and private sector. Apparently, complaints were examined by the Equality body from nurses, who have good knowledge of other official EU languages, such as French and German. Obstacles in the form of excessive language requirements in the job descriptions are still practiced. An open question remains whether it is justifiable to retain language requirements for *nurses* higher than the requirement for *doctors* in *Cyprus*.

The Member States within which a certain level of linguistic ability is required from EU workers with regard to health personnel in general comprise *Denmark*, where *health personnel* must have the language skills necessary for exercising the work. A somewhat similar situation is found in *Slovakia*, where Act No. 578/2004 Coll. on Providers of Health Care provides that a foreigner is required to know Slovak language and special terminology in the Slovak language to the extent necessary for the *medical profession*. And in *Bulgaria* EU, EEA or Swiss citizens whose *medical professional qualifications* has been recognized in *Bulgaria*, should be provided with conditions for acquiring the necessary language knowledge and professional terminology in Bulgarian by the Ministry of Health and the high schools “when this is in their interest and in the interest of their patients.” In *Hungary* recognition of *health care diplomas* requires the applicants to indicate her/his

⁶⁹ See http://www.gmc-uk.org/doctors/registration_applications/language_proficiency.asp, accessed 26 September 2013.

⁷⁰ See

<http://www.nhsemployers.org/RecruitmentAndRetention/InternationalRecruitment/Pages/CheckingLanguageCompetency.aspx>

⁷¹ AKI 10/2006.

⁷² The Head of the Equality Authority assured the national expert that there is compliance 24 March 2009.

language knowledge. However, lack of language knowledge does not have any kind of consequences. In *The Netherlands*, the Recognition of EC Vocational Qualifications Act establishes the general principle that the migrant professional whose vocational qualifications are recognized or who is admitted as a service provider must possess the language skills that are required to practise the concerned regulated profession in The Netherlands. The enforcement of this article rests with the employer. Therefore there are no additional requirements for employees who work in i.a. health care (Healthcare Professionals Act). In a specific case, the Board of Human Rights decided that the rejection of a Bulgarian woman for the job of *dermatologist* because she did not command the Dutch language sufficiently was justified (Opinion No. 2012-204). In *Finland* the Act on the Health Care Professionals stipulates that *health care professionals* must have sufficient linguistic competence to be able to perform their tasks. The law does not define what is to be regarded as sufficient competences. This is left to be assessed by the employers on a case-by-case basis.

Conversely in *Romania*, in case of *medical doctors* (Law No. 95/2006 on health care reform) there are no legal language requirements at all, and the case is similar for *nurses* (Emergency Ordinance No. 144/2008). No case law can be reported where a language requirement was imposed and contested.

IV.I.IV. Language skills required by law etc. for employment within the marine and aviation sector

IV.I.IV.i Summary of findings

In some Member States, language proficiency is required by law for employment within the *marine or aviation sector* pursuant to specific legislation governing those sectors.

The professions include posts such as captain and chief mate (*Greece, Italy and Lithuania*), personnel on board passenger ships (*Denmark*), chief pilots and candidate chief pilots (*Lithuania*) or skilled workers in air navigation service (*Hungary*).

In *Lithuania*, *chief pilots and candidate chief pilots* are required a certain level of Lithuanian language proficiency for unlimited duration in order to obtain the licence for student of chief pilot.

With regard to the specific issue of whether such language requirements are imposed on all workers, regardless of nationality, see below para. IV.III.

IV.I.IV.ii. Findings

The Member States within which a certain level of linguistic ability is required with regard to posts within the *marine sector* comprise *Italy*, where one piece of legislation is intended to apply only to EU nationals and regulates access to the *post of captain and chief mate* on board ships flying Italian flag. Access is conditional on the knowledge of Italian language and legislation. And *Greece*, where Presidential Decree 5/2011 provides that ‘sufficient knowledge’ of the Greek language is required for the *posts of master and his substitute* (chief mate) of merchant ships flying the Greek flag to be manned by EU citizens. And in *Lithuania* certain *captain or chief officer* of certain ships shall know the Lithuanian language. In *Denmark* language proficiency is required for *personnel on board passenger ships*, where the ship owner and the captain must ensure that all crew members have sufficient language proficiencies for more specified tasks.

By contrast, in *Ireland* there are no Irish language conditions for access to posts in the marine sector.

The Member States within which a certain level of linguistic ability is required with regard to *aviation* comprise *Lithuania*, where *chief pilots and candidate chief pilots* are required a specific level of Lithuanian language proficiency for unlimited duration in order to obtain the licence for student of chief pilot, depending on their education. The level of language proficiency is included in the licence of chief pilot/student while extending the chief pilots' qualifications. Furthermore, language requirements for *skilled workers in air navigation service* that is operated by private companies are determined by law in *Hungary*. The employment criteria, testing method, language ability in English and Hungarian, its evaluation system of *stagier, junior and senior worker* are clearly regulated.

IV.I.V. Language skills required by law etc. for employment within the education sector or child care personnel

IV.I.V.i. Summary of findings

In a number of Member States, language requirements are imposed on workers within the *education sector*, in terms of pedagogical workers or teachers (*Croatia, Cyprus, Czech Republic, Denmark, Germany, Greece, Ireland, Poland, Portugal, Romania, Sweden and The Netherlands*) or child care personnel (*The Netherlands*) - either through specific legislation, general legislation applicable to regulated professions or administrative practice.

In *Ireland*, language requirements are part of the *recognition procedure*, and persons will thus not be granted recognition to teach in any capacity in a national school until English language competence is established through a special DES test and aptitude test/adaption period; see below section C on proof of language proficiency. This seems to be in line with EU law, as making recognition of qualifications subject to linguistic knowledge is contrary to Directive 2005/36/EC, unless linguistic knowledge belongs to the qualification (i.e. in language-related industries, such as speech therapists or teachers teaching the language of the host country).⁷³ Moreover, Member States may apply compensation measures in terms of aptitude tests or adaption periods in certain circumstances.⁷⁴

Notably in *Greece*, the language requirements are imposed on all specialties of teachers. Therefore, even *professors of foreign languages* are included, which may raise issues on proportionality.

IV.I.V.ii. Findings

Examples of a certain level of linguistic ability required for employment within the *education sector* (public and private) are found in *Ireland*, where, to be eligible for recognition as a *teacher* in an Irish primary or post-primary school, an individual must be competent to teach English and to teach the various aspects of the curriculum in the English language. Where English is not the person's

⁷³ *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.1. See also *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6, and *USER GUIDE, Directive 2005/36/EC, Everything you need to know about the recognition of professional qualifications, 66 questions - 66 answers*, part V, and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* Point 16.

⁷⁴ Directive 2005/36/EC Article 14.

first language or if they have received their teaching qualification from a country where English is not the first language, a person will not be granted recognition to teach in any capacity in a national school until English language competence is established. In relation to Irish language requirements, primary school teachers trained in another EU Member State (and currently teachers trained outside the EU) whose qualifications have been assessed and accepted by the DES but who do not possess an appropriate Irish language qualification, will be granted a 5-year period of provisional recognition to teach in Irish national schools. During this period, teachers must work towards meeting the Department's Irish language requirements. Primary school teachers must satisfy the DES that they can not only teach the Irish language but also teach the range of primary school subjects through Irish. Similarly in *Portugal* teachers in pre-school, primary and secondary education the certificate of Portuguese language required to the EU workers must be issued by the Centre of Evaluation of Portuguese as a Foreign Language.

In *Germany*, there is a variety of specific language requirements for different sectors (e.g. *teachers for specific classes*, etc.). These are usually not always laid down in general rules, however, but are required at the moment of the public tender or the job interview when the degree of language skills which is necessary for the successful realisation of a job is specified. It is not possible to generally reject a job application for reasons of language requirements, unless the job description of a specific assignment says so.

Also in *Poland*, the *teacher* other than foreign language teacher shall have sufficient knowledge of Polish language in order to be able to communicate with students. The Polish language is by law the working language in all educational entities either public or private. Likewise in *Czech Republic* a certain level of linguistic ability is required from *pedagogical workers*. Teachers who will be *teaching foreign language* or conversations in a foreign language only, or will be working at a school with working language other than Czech, are not obliged to prove their knowledge of Czech language. Similarly in *Croatia* the Act on Education in Primary and Secondary Schools requires i.a. the knowledge of the Croatian language and Latin script in the measure that allows the execution of educational work, which is in Croatia as a rule conducted in Croatian language, unless something else provided (e.g. in the case of foreign language courses, or courses for minorities, or regular courses in other languages if allowed by the Ministry). And in *Estonia*, the Estonian language requirements will not be applied to the foreigners who work in Estonia on fixed term basis as foreign experts or specialists. For foreigners who are working at the universities as university teachers or scientific workers the language requirements will not be applicable, if she/he will work or has worked in Estonia less than 5 years.

Conversely in *Greece*, where the language requirements concern *all specialties of teachers* and there is no distinction. Therefore, even *professors of foreign languages* are included. By contrast, in *Romania* there is no language requirement imposed by law on teachers.⁷⁵ However, generally the language requirement is indirectly necessary and determined by the language of the subjects taught (generally in Romanian or in a national minority language). But there is no legal impediment that, for example, English teachers from another Member State to be employed (but there can be imposed a certain level of Romanian in case of teaching beginners).

And in *Denmark* language requirements are imposed in access to employment within the public education sector (municipal primary and lower secondary school or upper secondary school), due to

⁷⁵ Law No. 1/2011 on national education.

the fact that teaching is conducted in Danish within the Danish education system. A similar situation is found in *Sweden*, where there are no language requirements stipulated in the School Act regulating teachers' competence for employments. In principle, the recognition of educational diplomas follows from Directive 2005/36/EC and there are no formal general language requirements for holding a position as a teacher in Swedish schools. However, a teacher on lower levels (pupils normally aged around 7-10 years) must fulfill a requirement on depth knowledge of the basic reading and writing skills in Swedish. Further, a teacher in Swedish language must - independent of nationality - show that he or she is educated in teaching Swedish. However, exceptions apply to applicants who have studied Swedish at a Nordic university. In *Cyprus* the Committee of Educational Service initially rejected the diploma of a Greek national, who had a philology degree from a Greek University which would entitle her to teach in Greece. However, she was eventually allowed to apply for the post of teacher following a complaint and an intervention by the Cypriot Equality Authority.

Likewise in *The Netherlands*, where the Recognition of EC Vocational Qualifications Act establishes the general principle that the migrant professional whose vocational qualifications are recognized or who is admitted as a service provider must possess the language skills that are required to practise the concerned regulated profession in the Netherlands. The enforcement of this article rests with the employer. Therefore there are no additional requirements for employees who work in i.a. *education* (Recognition of EC Vocational Qualifications Educational Personnel Regulation). With regard to *child care personnel*, the language requirements for child care personnel in *The Netherlands* will be sharpened. Since last year, knowledge of the Dutch language had to be at 2F level, and from 1 August 2013 in the city of Rotterdam this level has become 3F.

IV.I.VI. Language skills required by law etc. for employment in the hotel/catering and tourism industry

IV.I.VI.i. Summary of findings

In one Member State, language proficiency is reported to be required within the *hotel/catering and tourism industry*. Accordingly, in *Cyprus* a rather disturbing situation is found in terms of a 'priority for employing Cypriots' initiative launched during 2012-2013 in part using Greek language as a policy instrument; and Greek language is made an essential qualification for the jobs in the hotel/catering industry for eight vocations relating to the sector at the different required levels. Also, the President announced that it has a 'gentlemen's agreement' with social partners about imposing a *quota on foreign workers* at 70-30 ratio, i.e. 70% Cypriots and 30% foreigners. It is not clear how this would operate in practice; however it seems that an important instrument to achieve this ratio is to require Greek language in job descriptions, especially within the hotel and tourism sector. There seems to be a *prima facie* case of nationality discrimination, something officials deny.

Although officials from the Ministry of Labour and the Ministry of Interior consider that *there is no binding policy as such* for the private sector to impose restrictions on Union citizen workers, nor are there any language barriers, and albeit no information is available to establish whether workers are *in practice* required to have a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions, this has been disputed by human rights and migrant support organisations. Moreover, in administrative practice, knowledge of the national language has been required by a semi-governmental tourist organisation.

IV.I.VI.ii. Findings

In *Cyprus* Greek language is made an essential qualification for the jobs in the Hotel/Catering industry for eight vocations relating to the sector at the different required levels: Reception, Presentation of foods and drinks, Food Preparation and Cooking, Housekeeping, Travel Agency Operations, Bakery, Confectionery, Preparation and presentation of drinks. Although officials from the Ministry of Labour and the Ministry of Interior consider that *there is no binding policy as such* for the private sector to impose restrictions on Union citizen workers, nor are there any language barriers, and albeit no information is available to establish whether workers are *in practice* required to have a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions, this has been disputed by human rights and migrant support organisations.

In the private sector, apart from the regulated professions, most of which do have language requirements, workers are not required to prove a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions, promotion or salary. However, during 2012 when the economic crisis really begun to hit Cyprus, and particularly with the financial and banking crisis in March 2013, there has been a change of approach with regard to language requirements, in the political discourses over the policies. Since taking office in March 2013, the newly elected conservative Government has actively sought to change the policy debate. The Government has already activated the transitional provisions for suspension of articles 1-6 of Regulation 492/2011 for a period of two years as regard the free movement for Croat workers following the accession of Croatia to the EU on 1 July 2013.⁷⁶

The President, Government Ministers and MPs have been vocal about changing the policy, alleging that it this would be a measure to reduce unemployment of Greek-Cypriot workers. Government Ministers, MPs, officials from the Cyprus Tourism Board, representatives of the Employers Association and trade unionists have recently supported the imposition of more stringent controls on the employment of migrants, including EU citizens, and are almost unanimously calling for ‘priority for employing Cypriots’.⁷⁷ It is in this context that we have seen the proposal to impose a more stringent Greek language requirement as qualification for holding certain posts in the private sector e.g. in hotels.

President Anastasiades has unveiled a package of measures aimed at keeping Cypriots in employment as the massive costs of a Eurozone bailout deliver a huge blow to the island's economy.⁷⁸ In a televised address to nation the President stressed that the country would cease to be a ‘migrants' paradise’ and that benefits to asylum seekers would be ‘significantly reduced,’ with cash payments for food and clothing replaced by a coupon system. He said state benefits would also be withdrawn from those who do not actively look for work. President Anastasiades said the state would rehire 800 contract workers while investing 21 million Euros to subsidize salaries by 40% for 6,000 registered jobless who would be given work in the key tourism industry. Also, the President announced that it has a ‘gentlemen’s agreement’ with social partners about imposing a quota on

⁷⁶ It has informed the permanent representative of the EU (letter of 10 June 2013) of the decision of the Council of Ministers 8 May 2013.

⁷⁷ ‘Εργοδότηση Κυπρίων κατά προτεραιότητα,’ *Phileleftheros* 6 March 2013.

⁷⁸ ‘Cyprus unveils workfare measures to ease bailout shock,’ 19 April 2013, <http://www.eubusiness.com/news-eu/cyprus-economy.o44>, accessed 28 September 2013.

‘foreign workers’ at 70-30 ratio, i.e. 70% Cypriots and 30% foreigners. Since March 2013,⁷⁹ the reference to this ‘gentlemen’s agreement’ has been repeated several times by Minister of Labour and the Tourism Employers Association PASYXE. The Chair of PASYXE, Loizides stated: ‘The 70%-30% is our own commitment and a target which is set, a gentlemen’s agreement, that will hire over the next 1-2 years in such a way that in a hotel 70% of the staff will be Cypriot and the rest will from other nationality.’⁸⁰ It is not clear how this would operate in practice; however it seems that an important instrument to achieve this ratio is to require Greek language in vocational in job descriptions especially in the hotel and tourism sector. There seems to be a prima facie case of nationality discrimination, something officials deny.

According to the President of the Parliamentary Committee on Employment there is consensus amongst all the members of the Parliamentary Committee that the requirement for good knowledge of Greek for the adoption of such a regulation in different profession; this is also supported by the executive Director of the Cyprus Tourism Board.⁸¹ Trade unions nonetheless consider the Government measures as inadequate. One small trade union, DEOK, has proposed instead the immediate revocation of the work permits for third country nationals and the suspension of free movement of workers from EU Member States.⁸²

The Chair of the Parliamentary Committee of Employment, Andreas Fakondis, referred to a study conducted by the Human Resources Development Authority (HRDA), which has clarified that the requirement of Greek is possible for the Hotel / Catering Industry.⁸³ However, no such study was made available; nonetheless the Greek language requirement was included as a necessary qualification in the relevant vocation guidelines. Instead, officials from Ministry of Labour and Social Insurance referred to an opinion by the Attorney General whose advice was sought as to the possibility of imposing Greek language as an essential qualification for the hotel and catering industry, which gave the clearance that the Acquis Communautaire allows for this.⁸⁴

The economic sectors and vocations which the HRDA certifies vocational qualifications as covered by the EU co-funded project are following:⁸⁵

- Hotel / Catering Industry
- Manufacturing industries
- Construction Industry
- Wholesale and retail trade

⁷⁹ ‘Εργοδότηση Κυπρίων κατά προτεραιότητα,’ *Phileleftheros* 6 March 2013.

⁸⁰ ‘ΠΑΣΥΞΕ: Δέσμευση για εργοδότηση Κυπρίων κατά 70%,’ *Phileleftheros*, 1 July 2013, <http://www.philenews.com/Publications/ArticleModule/ArticleViewers/SingleArticleViewerPrint.aspx?av=946&aid=151719>, accessed 28 September 2013.

⁸¹ ‘Η κυβέρνηση κλείνει την πόρτα στους Κροάτες. Πάνω από 150 χιλιάδες οι ξένοι στην Κύπρο,’ *Phileleftheros* 21 May 2013, <http://www.philenews.com/el-gr/oikonomia-kypros/146/145878/pano-apo-150-chiliades-oi-xenoi-stin-kypro>, accessed 28 September 2013.

⁸² The smallest of trade unions affiliated to Social Democratic EDEK is calling for this openly, see ‘Μείωση ξένων εργατών για αντιμετώπιση ανεργίας, προτείνει η ΔΕΟΚ,’ *Phileleftheros*, 4 June 2013.

⁸³ ‘Στο 15,6% η ανεργία το Μάιο, ενθαρρυντικά τα στοιχεία από τα σχέδια του Υπ. Εργασίας, σύμφωνα με Ζέτα και Φακοντή,’ *Kathimerini*, 03 June 2013, <http://www.kathimerini.com.cy/index.php?pageaction=kath&modid=1&artid=135828>, accessed 28 September 2013.

⁸⁴ The existence of this opinion by the Attorney General’s office was confirmed by the Ministry of Labour official interviewed by the expert (27 June 2013) as well as the official form the Equality authority (27 June 2013), however this was not made available to the expert to examine the legal basis and the reasoning of the said Opinion.

⁸⁵ See <http://www.hrdauth.com/easyconsole.cfm/id/221#221>, accessed 28 September 2013.

- Vehicle repair
- Provision of Vocational training
- Communication Systems and Networks / Electronic Computers
- Hairdressing

Official or unofficial policy, or mere rhetoric, mostly for Greek-Cypriot public consumption, such rhetoric panders xenophobia by claiming to assure ‘priority for Cypriots’ is contributing to a xenophobic climate. What is rather odd with the policy, according to the Cypriot expert, is that the vast majority of the two million or so tourists who visit every year the Republic of Cyprus are not Greek speakers as they come primarily from the EU, Russia and other parts of the world: English is and has been the primary linguistic medium used in the hotel and catering industry. If there was concern raised today about the use of Greek in these sectors, nothing has changed about this ‘concern’ in the specific industry over the last five, ten and twenty years ago. It seems that the imposition of the requirement of Greek is motivated by factors others than what is genuinely essential for the industry: Rather they seem to pander anti-migrant workers sentiments and depicted as a measure to combat rising unemployment of Greek-Cypriots. A major issue however is the fact that the policy for ‘priority for Cypriots policy’, in part using Greek language as a policy instrument, not only fails to properly take account of the free movement acquis, but also fails to take into account that migrant workers, EU and third country citizens have been in Cyprus since 1991.

Regarding *administrative practice* within the tourism industry, a number of complaints against *public sector institutions* have been decided by the Cypriot Equality body as using language as a barrier to access. The Equality Authority decided on a complaint submitted by an EU national regarding a requirement by the semi-governmental Cyprus Tourist Organisation, that in order for permits to operate a tourist office to be granted, a Greek-speaking manager must be hired.⁸⁶ The decision criticised the practice of requiring knowledge of the national language, which constitutes discrimination on the ground of language amounting at the same time to indirect discrimination on the ground of race/ethnic origin.⁸⁷

⁸⁶ Decision dated 1 August 2006. The Cypriot Equality body concluded that it cannot make concrete recommendations, because there is third party rights involved (referring to the person hired for the post in question) and because an appeal is in progress before the Supreme Court, filed by the complainant, seeking to cancel the University’s decision to select the other applicant.

⁸⁷ Law on Equal Treatment in Employment and Occupation (2004), Article 16 (1). The decision referred also to Regulation 1612/68/EEC which sets as a target for the EU the elimination of all forms of discrimination as a result of nationality in the field of employment, as well as to the law transposing Directive 2000/78/EC, which prohibits direct or indirect discrimination on the ground of race or ethnic origin in employment, occupation and self-employment. The decision further instructs that this regulation be abolished, in accordance with the law transposing Directive 2000/78/EC which provides that all laws and regulations contravening the said law must be abolished.

IV.I.VII. Language skills required by law etc. for employment or self-employment within legal professions, as certified auditors, members of management boards in certain institutions, patent counsels, notaries, insurance brokers, (real) estate agents, asset managers, architects, engineers, interior designers or mechanical engineering

IV.I.VII.i. Summary of findings

In a number of the Member States, language proficiency is required for employment or self-employment within legal professions (*Denmark, Germany, Slovakia, Spain and The Netherlands*), as certified auditors (*Hungary and Poland*) members of management boards in certain institutions and/or patent counsels (*Poland and Romania*), notaries (*Croatia, Lithuania, Romania and The Netherlands*), insurance brokers (*Cyprus*), (real) estate agents, asset managers, engineers and/or interior designers (*Cyprus and Luxembourg*) or mechanical engineering (*Cyprus*) - either through specific legislation, general legislation applicable to regulated professions or administrative practice. With regard to the specific issue of whether such language requirements are imposed on all workers, regardless of nationality, see below para. IV.III.

Notably, in *Cyprus* qualifications obtained abroad have been ignored in practice. And in *Denmark* an example of a requirement on being a mother tongue speaker imposed on writers was found. This constituted indirect discrimination on grounds of ethnic origin, according to the Board of Equal Treatment, and the foundation concerned subsequently amended its practice. In *Croatia* the Notaries Public Act requires Croatian citizenship; a requirement that will be removed, according to the Croatian expert.

With regard to the possibility of exemption from the linguistic requirements and whether powers to grant such exemptions are exercised in a non-discriminatory manner as required by EU law;⁸⁸ in *Poland* the Polish Financial Supervision Authority may depart from the language requirements imposed on members of management boards in certain institutions based on an objective assessment of the risk exposure, provided meeting the requirement is not necessary for prudential supervision, taking into account in particular the level of permissible risk or the scope of the activity of the institution, which seems to be in line with EU law. In *Luxembourg* the jury may authorize a candidate self-employed to answer the test in German or in English, instead of in French. Such possibility will depend on ‘the goodwill of the jury,’ which makes the compatibility with EU law of the exercise of the powers to grant exemption difficult to ascertain.

In some instances, exams/aptitude tests are required and conducted in the national language (*Croatia, Hungary, Slovakia, Spain and The Netherlands*) which seems to be in line with EU law, due to the fact that under the general system of recognition, Member States may apply compensation measures in terms of aptitude tests or adaption periods in certain circumstances.⁸⁹

In other instances, tests or training forming the basis of being registered with the relevant authorities or associations, or for being authorized to practice that specific profession, are conducted in the national languages; or specific documents necessary for registration must be translated into the national language (*Cyprus, Hungary and Luxembourg*).

This may in some instances raise issues on compatibility, namely with regard to freedom of establishment⁹⁰ (as regards access to work as a self-employed in *Luxembourg*, where the training

⁸⁸ Cf. *Groener* (C-379/87) para. 22.

⁸⁹ Directive 2005/36/EC Article 14.

⁹⁰ I.a. *Wilson* (C-506/04) and *Commission of the European Communities vs. Grand Duchy of Luxembourg* (C-193/05), judgment of 19 September 2006.

and tests for obtaining a permission to establish is in French in principle; as regards auditors providing auditor service in *Hungary*, who shall be registered by the tax authority based on their regular (yearly) training, managed in Hungarian. Without this training, deletion from the registry means loss of their entitlement to supply service; and as regards exams in Greek or translation of documents into Greek in *Cyprus*.

Accordingly, in *Cyprus*, the Equality body concluded that the requirement imposed on insurance brokers to take an exam in Greek and hence to conduct written examination for a professional license only in the Greek language, amounts to indirect discrimination, identifying this requirement as a case of language being used as a justification for excluding suitably qualified professionals from other Member States, which is prohibited.

IV.I.VII.ii. Findings

A certain level of linguistic ability is required for *certified auditors* in *Poland* and *Hungary*, where EEA nationals and their family members cannot operate in the latter country as a mandatory certified auditor without membership in the Chamber of Certified Auditors in the latter Member States. Accession to the Chamber shall be ensured if the applicant proves that she/he has a certificate issued in an EEA state allowing her/him to work as a mandatory auditor and provided she/he meets the general requirements (e.g. absence of incompatibility to auditor function, clean criminal record, liability insurance is provided) and she/he has taken a successful difference exam, managed by the Chamber and taken in Hungarian. Furthermore, auditors providing auditor service shall be registered by the tax authority based on their regular (yearly) training, managed in Hungarian. Without this training, deletion from the registry means loss of their entitlement to supply service. After deletion, the new entry into the register is possible after 2 years. In *Poland*, several statutory provisions regulate certain professions that do not require having Polish citizenship. Instead, Polish language proficiency is necessary. Such an obligation refers inter alia to *certified auditors* and *patent counsels*.⁹¹

Moreover, language requirements are imposed on *members of management boards of banks* and *members of management boards of national insurance institutions* in *Poland*, where at least two members of a management board shall prove their knowledge of Polish language, which may, however, be departed from by the Polish Financial Supervision Authority based on an objective assessment of the risk exposure, provided meeting the requirement is not necessary for prudential supervision, taking into account in particular the level of permissible risk or the scope of the activity of the institution. And in *Romania* in the case of *credit institutions*, where if no one of directors or the members of the directorate has Romanian citizenship, at least one of them must know the Romanian language.

The Member States within which language requirements are imposed with regard to *legal professions* comprise *Denmark*, where the access to exercise of certain professional activities are attached directly to the language, and applicants for assistant attorney-at-law must substantiate i.a. mastering the Danish language at a level rendering it possible for the applicant to conduct a court hearing in a safe manner. And *Slovakia*, where the Act No. 586/2003 Coll. on Advocacy provides that in order to be enrolled in the List of Advocates in Slovakia, EEA citizens have to pass a legal

⁹¹ The Act of May 7, 2009 on certified auditors and their self-governing bodies, entities entitled to control financial reports and public supervision (Ustawa o biegłych rewidentach i ich samorządzie, podmiotach uprawnionych do badania sprawozdań finansowych oraz o nadzorze publicznym), Journal of Laws of 2009, No. 77, item 649 and the Act on patent counsels of April 11, 2001 (Ustawa o biegłych rewidentach), Journal of Laws of 2001, No. 49, item 509.

qualification exam in Slovak, if they did not provide legal services in Slovakia for three years as settled attorneys-at-law (Slovak law used the term ‘settled Euroadvocate’). However, there is no language requirement for enrolment into the List of settled attorneys-at-law (and consequently the List of Advocates in Slovakia) after three years of performance of activities in the Slovak Republic and upon the request of the settled attorney at law. The legal position of a settled attorney at law is the same as an advocate, subject to some restrictions regarding applying for positions in the Bar Association.

Likewise in *Spain*, Resolution of September 7, 2012, the General Directorate for the Administration of Justice, requires exams for access to the *exercise of the legal profession* in Spain by citizens of the EU and EEA. The exams have two phases and are held in Spanish: The first one will be a writing exercise on Spanish Law and the second one will be an oral exam. The oral exam will consist of the reading of the exercise before the Commission Assessment, which do questions about the purpose of the oral exam, as well as about Spanish Judicial Organization and Professional Ethics, for a maximum of fifteen minutes.

In *The Netherlands*, there is no language skills test for judiciary, but the competence test (admittance of foreign professionals) is taken in Dutch. Likewise in *Germany*, a special case is the *legal profession*, since the federal law on *judges*, which also regulates *legal education*, including the practical training which any German *lawyer or judge* has to go through after his studies and which the Court of Justice has qualified as the exercise of a profession for the purposes of Art. 45 TFEU.⁹² Access to the practical training requires either a State Exam with a German law school (which is always held in German) or a test which certifies equivalent knowledge for those who studied law outside Germany.⁹³ As a result, only those speaking good German may enrol for the practical training for legal professions.

And in *Croatia* the Attorney’s Act is not requiring knowledge of Croatian language for EU qualified attorneys who want to establish themselves in Croatia under the Croatian title. However, indirectly they would be required to know the language since the special aptitude test on the knowledge of Croatian legal system is performed in the Croatian language. However, if the EU attorney has been providing services in Croatia under his home title for three years or more, then he /she is not required to pass the aptitude test, hence there is no explicit or implicit language requirement.

Conversely in *Ireland* there is no requirement for nationals of EU Member States to satisfy an English language competency requirement in order to work as a *legal professional*.⁹⁴ The Legal Practitioners (Irish Language) Act 2008 has replaced a compulsory Irish language requirement for most barristers and solicitors with a voluntary system designed to ensure that there are sufficient numbers of lawyers qualified to provide services through Irish. However, this Irish requirement only ever applied to those seeking to qualify for the first time in Ireland and not to EU nationals qualified to practice in other Member States, who could register as foreign qualified lawyers under the Establishment Directive (98/5/EC) and were not required to complete any Irish or English tests. Similarly in *Lithuania*, specific exceptions to language requirements have been made for certain professions, such as advocates.

⁹² *Kranemann* (C-109/04).

⁹³ See Section 112a Deutsches Richtergesetz (DRiG).

⁹⁴ Key Issues in Free Movement in Ireland, Seminar, Law Society of Ireland, 5 November 2010, Eva Massa, Law School, Law Society of Ireland, ‘Access to Employment: The Question of Language.’

The Member States within which a certain level of linguistic ability is required with regard to *notaries* comprise *Lithuania*; and *Romania*, where the knowledge of the Romanian language is mandatory for public notaries, which function can be considered belonging to the private sector. Similarly in *Croatia* the Notaries Public Act, in addition to Croatian citizenship (which will be removed, according to the Croatian expert) prescribes as another condition ‘active knowledge of Croatian language and the other languages that are official in the area where notary activities are to be performed.’ Likewise in *The Netherlands*, notaries must have sufficient language skills for carrying out that profession. Moreover, the ministerial Regulation on the recognition of professional qualifications of candidate notaries and candidate bailiffs stipulate that the aptitude test is to be conducted in Dutch. A Bill abolishing the requirement of Dutch nationality for the appointment as a notary has been adopted in June 2012.⁹⁵ This Bill includes a provision requiring knowledge of the Dutch language as an explicit condition for appointment as a notary. Apparently, this language condition has been applied implicitly, without statutory basis, until now. There was a presumption that the requirement of a Dutch law degree ensured that the job applicant had sufficient knowledge of the Dutch language to perform the job. The Bill was approved of by the First Chamber in June 2013.

In *Cyprus* there are issues regarding the profession as *insurance brokers*, as a requirement for applicants to take an exam in Greek is in place. On 9 October 2005, a repatriated Cypriot who had lived in UK until 2003 and whose mother tongue was English complained to the Equality Body about his problems in accessing the labour market due to regulations which prevented him from taking a written exam in a language other than Greek or Turkish. The same regulation applies not only to repatriated Cypriots but also to Union nationals residing in Cyprus. From the wording of the laws on the Exercise of Insurance and other related Activities 2002-2011 it emerges that insurance brokers who want to work in Cyprus must know one of the official languages of the Republic (Greek and Turkish). In its decision dated 9 February 2012, the Equality Authority found that the said language requirement could be justified only to the extent where the insurance contracts are addressed exclusively to Greek Cypriot or Turkish Cypriot insured persons whose mother tongue is Greek and Turkish respectively; however this is not the case following the accession to the EU and the entry of large numbers of Union citizens into Cyprus for work. The report concludes that the requirement to take the exam in Greek amounts to indirect discrimination, identifying this requirement as a case of language being used as a justification for excluding suitably qualified professionals from other Member States, which is prohibited. The Equality Authority recommended that the exam be offered in other official languages of the EU, in addition to the official languages of the Republic, stressing that in order to ensure equality of opportunity to succeed in the exam, Union citizens should also be offered access to exam material in languages beyond Greek.⁹⁶ The Equality Body found this requirement to be justified only to the extent that insurance contracts were targeting exclusively Greek or Turkish speakers, which is not the case since Cyprus’ accession to the EU and the movement of large numbers of Union citizens to Cyprus for work. With references to the legislative framework for the free movement of workers and for non-discrimination in access to the labour market, including CJEU case law on measures prohibiting, impeding or rendering less attractive the exercise of the right to free movement, the report concluded that the conduct of written examination for a professional license only in the Greek language, amounts to indirect

⁹⁵ *Eerste Kamer* 31040, No. S; Staatsblad 2012, 272.

⁹⁶ Report of the Equality Authority regarding indirect discrimination on the ground of language regarding the exercise of the profession of the insurance mediator, Ref. A.K.I. 9/2006 & A.K.I.A 1/2012, dated 9 February 2012. Available at: http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument, accessed 28 September 2013.

language discrimination not only for Union citizens wishing to practice a particular profession but also for those Union citizens residing in Cyprus whose mother tongue is not the official language of the Republic, as they are deprived of services in their native language or in a language they understand. The report added that the right of Member States to require a certain level of knowledge of the national language cannot justify the exclusion of professionals with suitable qualifications from other Member States. The report suggested that applicants be allowed to take the examination in (at least) English, recommending to the authorities to introduce a fee payable by the applicants in order to cover the expenses resulting from this (e.g. translation costs).⁹⁷

In *Luxembourg*, the Luxembourg laws and regulations do not require a certain level of linguistic ability in order to access employment in the private sector from dependant employees. However, the knowledge of French might be a requirement in order to work as a *self-employed* as e.g. *real estate agent, asset manager, architect* and *interior designer*, as the Luxembourg Law of 22 September 2011 on access to independent professions⁹⁸ provides that in order to carry on one of the occupations mentioned by it, the worker concerned must obtain a permission to establish, which would be delivered only under certain conditions. For example, if the worker does not hold a diploma recognized by the Grand-Duchy of Luxembourg, he will have to undergo additional training and to pass a final test. The problem is that according to the Grand-Duchy Regulation of 3 February 2012, the trainings and the tests are all in French in principle. However, if the candidate asks for it, the jury may authorize her/him to answer the test in German or in English. Such possibility will depend on the goodwill of the jury.

Likewise in *Cyprus* there are issues pertaining to *estate agents*. Thus, a number of complaints have been lodged to the Cypriot Equality authority, which decided on the use of language and made recommendations to the authorities about removing them. Many of these recommendations were adopted, but some remain unaddressed. In 2009, the Equality Body's recommendations regarding the requirement of knowledge of Greek in order for EU nationals to acquire an estate agent's license were only been partially complied with. Further complaints on the same issue were submitted to the Cypriot Equality body.⁹⁹ The report of the Cypriot Equality body in the case of a foreign national seeking to be registered as a *building contractor* established that the language requirement in the documents needed for the registration was discriminatory.¹⁰⁰ The current status as regards the requirements of the Building Contractors' Association for registering foreign nationals is not clear. The Labour Bureau confirmed that the Building Contractors' Registration Council requests all applications and relevant certificates to be translated in Greek, irrespective of the applicant's nationality. The Equality Body has also considered a complaint submitted by a foreign national whose application to the Registration Council of Building Contractors was not processed because his certificates, evidencing his qualification as a building contractor, were in English.

Requirements on language skills are imposed in administrative practice on *architects* in *Sweden*, where in a case from the Labour Court, a municipality was looking for a new building permit architect. In the ad, a requirement for 'good ability to express themselves in speech and writing' was expressed. The court found that the employer's language requirement was justified. The court

⁹⁷ The report is available in Greek at the Equality Body's website:

http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/presentationsArchive_gr/presentationsArchive_gr?OpenDocument, accessed 28 September 2013.

⁹⁸ Réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales.

⁹⁹ File No. AKR 70/2005 and 73/2005, dated 23 February 2007.

¹⁰⁰ File No. AKR 36/2006, dated 23 February 2007

meant that the employee as an architect in many decisions should be dealing with building permits and with numerous parties involved. These parties must understand the decisions, which are the basis for a building permit. This means that there should be high demands on skills in Swedish language for the employment (Case AD 2005 No. 98).

And in *Cyprus* regarding *mechanical engineering*, there have been complaints about membership to the Chamber of Civil Engineers of Cyprus (E TEK), which is a precondition for practicing in the private and the public sector. Language may be relevant, albeit indirectly. In 2012 there was a Supreme Court decision on the case of a repatriated Cypriot who applied to E TEK to be registered in its Mechanical Engineering Branch, so as to be able to work as a mechanical engineer in Cyprus *Kyriakos Varnava v. E TEK*. E TEK declined his application for lacked of a university degree in mechanical engineering, ignoring his qualification earned in the UK as a member of the IMechE. The Equality Authority issued a report in 2006 about a complaint by a Union citizen who was a civil engineer applying for a certain post that required membership to E TEK which presupposes residence in Cyprus.¹⁰¹ The Equality body ruled that this was a case of access to the public service and that the job description for the post of officer of metal work is discriminatory against Union citizens and contrary to the freedom of movement principle, and recommended that the Attorney General proceeds with changing the relevant job description. The response of the Labour Bureau to allegations about language barriers is that, depending on the profession, language requirements are appropriate and not excessive in any way. Nevertheless, there are allegations that in the private sector there are language requirements of professional associations amounting to barriers in entering the profession concerned.

An example of a requirement on being a mother tongue speaker imposed on writers was found in *Denmark*, where the Board of Equal Treatment dealt with a case where Danish mother tongue was a prerequisite for receiving a work scholarship from a foundation, having the responsibility of awarding public means for the purpose of promoting Danish creative art. The Board made the observation that the Danish language requirement was imposed on the book's manuscript, and that the language requirement had the effect of placing persons with another ethnic origin than Danish in a less favourable position than ethnic Danes due to mother tongues. As the Board did not find the language requirement to be appropriate or necessary for achieving the purpose of the foundation to promote Danish creative art, the Board found that the foundation's interpretation of the relevant rules, and hence its practice, constituted indirect discrimination on grounds of ethnic origin. The foundation subsequently amended its practice. (Case No. 217/2012).

By contrast in *Hungary* language requirements are not imposed on entrepreneurs and self-employed. For joining the Chamber as Union citizen entrepreneur or self-employed person in processing industry or producer, the applicant has to complete the entry form in Hungarian and requesting information or assistance from an interpreter, however, because the staff of the Chamber is speaking Hungarian. However there is no discrimination in agricultural sector for Union citizens (e.g. Austrian, Bulgarian and Romanian nationals in Csongrád county). It is the same situation for self-employed or micro-entrepreneurs with Union citizenship: They can freely join the Chamber of Industry (e.g. Italian and French nationals in Szeged). However the non-speakers have to manage language assistance if they use counselling or a membership in the Chamber.

¹⁰¹ AKI 22/2006, issued 11 December 2006.

IV.I.VIII. Language skills required by law etc. for employment in the security sector or in certain risky occupations

IV.I.VIII.i. Summary of findings

In a few Member States, language proficiency is required for employment within the *security sector* or for *certain risky occupations* pursuant to specific legislation. The professions include posts such as security workers (*Estonia* and *Spain*), working conditions experts, asbestos removal experts, asbestos removal supervisors, divers, diving supervisors, diving medical assistants, diver medics, gas expert tank ships, crane operators, explosives engineers, fireworks experts, crop protection professionals and biocide professionals (*The Netherlands*).

IV.I.VIII.ii. Findings

The Member States within which a certain level of linguistic ability is required for *security workers* comprise *Estonia*, where it is necessary to have the ability to communicate in Estonian on the level as is required by the law. All other workers in the private sector have to follow the requirements of the State Language Act and the requirements set forth by the government. The language requirements are imposed usually on a case-by-case basis, taking into account the nature of the tasks to be fulfilled by the worker.

Likewise in *Spain*, where the Order INT/2850/2011 regulates the recognition of professional qualifications for the exercise of professions and activities in the *private security sector* by nationals of the Member States of the European Union, and was approved in October 2011. The Order requires workers in the private security sector to have enough knowledge of Spanish language skills for the normal performance of private security functions.

In *The Netherlands*, *working conditions experts*, *asbestos removal experts*, *asbestos removal supervisors*, *divers*, *diving supervisors*, *diving medical assistants*, *diver medics*, *gas expert tank ships*, *crane operators*, *explosives engineers* and *fireworks experts* are required to master the Dutch language at the level that is necessary for carrying out work activities in a responsible fashion in the specific conditions under which work takes place, or ‘collectively spoken foreign language.’ If the collectively spoken language at the place where the job is performed is for instance English or Polish, proficiency of that language is sufficient as well. Also, in *The Netherlands*, *crop protection professionals* and *biocide professionals* are required sufficient language skills to understand and execute directions on labels on plant protection products and biocides and other laws and regulations on plant protection products and biocides.

Furthermore, as of 1 July 2013 foreign employers who come to work in the Netherlands temporarily in *certain risky occupations* such as *removers of asbestos* and *crane drivers*, have to have sufficient command of the Dutch language in order to do their work safely and to prevent serious accidents. The necessary level of command of the language depends on the work and responsibilities of the employee. The Inspection Social Affairs and Employment will check if the language requirement is met. If this is not the case, the foreign employee as well as the employer can be fined. Employees from abroad who are working in *The Netherlands* structurally in a certified occupation already had to meet the language requirement.

IV.I.IX. Language requirements imposed on translators or interpreters by law etc.

IV.I.IX.i. Summary of findings

A few national experts address the language requirements applicable in their respective Member State with regard to *translators or interpreters* (*Denmark, Hungary and The Netherlands*).

IV.I.IX.ii. Findings

In *Denmark*, with regard to working conditions - the access to exercise of certain professional activities are attached directly to the language; i.a. with regard to translators. And in *The Netherlands*, language requirements are imposed on sworn interpreters and sworn translators.

And in *Hungary*, due to belonging to the continental legal system, the Hungarian law constituted official translator and interpreter office in 1869. This state-run entity (OFFI) was reformed in 1994 to a single corporation and its owner rights are practiced by the minister of justice. However, this market economy step is controversial because monopoly of authentic translation of official documents, judicial and police interpretation in the capital was granted to the OFFI together with the right to set up its own fee system, while authentic translation from one language in the EU to another of the excerpts (*Handelsregisterauszug*) issued by the Court of Registry as well as of required corporated documents submitted to this Court may be provided also by freelance specialised translators. The interpretation and translation is considered as service activity in the Act LXXVI of 2009 transposing the 2006/123/EC Directive. It means that authentic or official translation belongs to the market of service providers, it is not a part of public power - with the mentioned exceptions. The qualification required for specialised translators and conference/intepreters that is obtained in other state shall be supplemented with a Hungarian certificate if Hungarian is a target/source language in translation/interpretation. In possession of a decree or language certificate union citizens and family members may be employed or undertake as entrepreneur (or freelance self-employed person) may work in free market. OFFI also employes union citizens and family members, too.

IV.I.X. Language requirements imposed on employment contracts by law etc.

IV.I.X.i. Summary of findings

Language requirements are imposed on *employment contracts* in *Belgium* pursuant to a Decree of the Flemish Community as well as a Decree of the French Community; and also in *Estonia*, where however, the language requirement is not mandatory, which appears to be in accordance with the CJEU ruling in *Las* (C-202/11), as described in the following. Regarding *Belgium*, however, the CJEU recently dealt with the compatibility of the Decree of the Flemish Community with EU law and delivered its judgment on 16 April 2013 regarding a reference for a preliminary ruling in *Las* (C-202/11). The CJEU considered that “Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as that in issue in the main proceedings, which requires all employers whose established place of business is located in that entity’s territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion” (para. 35). As to the kind of alternative measures it would find acceptable, the CJEU ruled that “legislation of a Member State which would not only require the use of the official language of that Member State for cross-border employment contracts, but which also, in addition,

would permit the drafting of an authentic version of such contracts in a language known to all the parties concerned, would be less prejudicial to freedom of movement for workers than the legislation in issue in the main proceedings while being appropriate for securing the objectives pursued by that legislation” (para. 32).

The national court should deliver its final judgment by the end of the year, while the Flemish parliament has still to deal with the matter. Apparently, the CJEU ruling gave rise to concern in the Flemish Community, i.a. due to the fact that well-settled case law of the Dutch-speaking section of the Belgian State Council interprets Article 4 of the Belgian Constitution as precluding the use of another language than Dutch in the Dutch-speaking region.

IV.I.X.ii. Findings

Issues arising from language requirements imposed on *documents relating to certain employment relationships* appear in *Belgium*. Accordingly, in *Belgium* in the Flemish region, doubts as to the compatibility of the Decree of the Flemish Community of 19 July 1973 (*M.B.*, 6 September 1973, p. 10089) with EU law were raised before the Arbeidsrechtbank of Antwerpen which lodged on 28 April 2011 a reference for a preliminary ruling, asking whether the Decree aforementioned is contrary to Article 45 TFEU in that it imposes an obligation on an undertaking situated in the Flemish language region when hiring a worker in the context of employment relations with an international character, to draft all documents relating to the employment relationship in Dutch, on pain of nullity (Reference for a preliminary ruling from the Arbeidsrechtbank Antwerpen (Belgium) lodged on 28 April 2011, *Anton Las v PSA Antwerp NV, previously Hesse Noord Natie NV*, C-202/11). This Decree sits uneasily with Article 3 of Regulation 492/2011 which states that provisions laid down by law shall not apply where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered. Conditions relating to linguistic knowledge escape the latter sanction, the Regulation says, only if they are required by reason of the nature of the post to be filled. The Flemish Decree goes beyond this exception by requiring the exclusive use of Flemish in all employment relationships.

In its judgment of 16 April 2013, the CJEU follows its Advocate General and considers that “Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as that in issue in the main proceedings, which requires all employers whose established place of business is located in that entity’s territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion.” As to the kind of alternative measures it would find acceptable, the CJEU ruled that “legislation of a Member State which would not only require the use of the official language of that Member State for cross-border employment contracts, but which also, in addition, would permit the drafting of an authentic version of such contracts in a language known to all the parties concerned, would be less prejudicial to freedom of movement for workers than the legislation in issue in the main proceedings while being appropriate for securing the objectives pursued by that legislation” (para. 32).

The Arbeidsrechtbank of Antwerpen should deliver its final judgment by the end of the year while the Flemish parliament has still to deal with the matter. In the meantime, a conference was held on the subject in Brussels on 14 May 2013 at the Université Saint-Louis (FUSL). The main concerns expressed about the CJEU’s ruling were the following. First, the supplementary use of another

language than Dutch raises the issue of which version of the contract will prevail in case of conflict. Second, the fact that EU law does not apply to purely internal situations might lead the Flemish legislator to change the law regarding cross-border contracts only. Third, the CJEU's ruling might overrule the well-settled case law of the Dutch-speaking section of the Belgian State Council which interprets Article 4 of the Belgian Constitution as precluding the use of another language than Dutch in the Dutch-speaking region.

A similar problem may arise with regard to the Decree of the French Community of 30 June 1982 which provides that French is the language to be used in the context of employment relationships in the French-speaking region. Yet, in view of the aforementioned ruling, its conformity with EU law may be less problematic in that, contrary to its Flemish counterpart, it allows for the complementary use of the language chosen by the Parties.¹⁰² Another aspect of the Decree of the French Community which attenuates any potential conflict with EU law concerns the sanctions provided therein. The Decree stipulates that the acts and documents drafted in violation therewith are null and void, whereas the Flemish Decree imposes additional penalties, administrative and criminal.

In *Estonia*, the *employment contract* should be in Estonian language, only provided the parties to the contract did not agree to use other language. This means that it is not mandatory to compose the employment contract in Estonian.

IV.I.XI. Language skills required by law etc. for employment in the public sector specifically

IV.I.XI.i. Summary of findings

As described above, *State Language Acts* govern language requirements for employment in the private as well as the public sector in *Estonia* (where the observance of language requirements in public service is more important than within the private sector. Thus, according to the Language Act, this Act is mainly meant for public institutions. In particular the language requirements will be observed in police forces, to certain extent also in hospitals etc), *Latvia* (where legislation provides official language proficiency levels for all professions within the public sector) and *Lithuania* (where in the public service the language requirement is imposed on a general basis, and in the public sector (which is wider than the public service) it is imposed in the fields of communications, transport, health and other establishments providing services to the residents).

Within those Member States, detailed legislation imposes explicit language requirements of various levels on workers in the public sector on either a general basis (*Latvia* and *Lithuania*) or depending on the nature of the tasks (*Estonia*).

With regard to working conditions, promotion and salary, notably in *Estonia*, the Language Board has a right to propose to the employer to dismiss an employee or an official, if the person concerned does not have the ability necessary to communicate in Estonian. Also the Language Board can order that a person should undergo language examination. And in *Lithuania* there has been at least one case recorded in the beginning of 2012 when a state owned company applied reduction of salary for 11 employees who did not use Lithuanian language.

Also, in a number of Member States, specific *Language Acts and/or constitutional provisions* regulate language requirements for employment in the public sector. This is addressed by the experts regarding *Belgium* (where public servants have to speak French, Dutch or German,

¹⁰² *M.B.*, 27 August 1982, p. 9863, Art. 2.

depending on the region, or whether the employment is within the capital or at federal level), *Finland* (where employees are always required sufficient knowledge of at least one or both of the national languages - Finnish and Swedish), *Ireland* (where English language proficiency is required for virtually all posts within the public sector. There is no formal Irish language requirement except within the primary education sector. Nonetheless, applicants for certain Irish-speaking posts may have to show that they have the necessary qualifications/competence. In addition, as part of the State's policy to ensure that services are available in Irish, applicants may be assessed for Irish language ability and Irish-speakers may be favoured in the selection process), *Italy* (where access to employment in the public sector for EU nationals in general - to those posts not reserved to nationals - is conditional on an adequate knowledge of the Italian language. With regard to access to employment sector within the three regions in Italy, knowledge of French, German or Slovenian is required by law or practice. In addition to that, an ethnic proportional system applies. Under this system, all posts in the public sector are distributed among the three linguistic groups according to their respective amount), *Luxembourg* (where in the public service, the mastering of the three administrative languages (Luxembourgish, French and German) is necessary), *Malta* (where applicants to the Public Service have to be conversant in both official languages, namely Maltese and English, unless exceptional circumstances warrant that either of the official languages is waived) and *Romania* (where for civil servants, the knowledge of the Romanian language - spoken and written - is mandatory. In certain administrative-territorial units, where the percentage of a national minority is above 20% of the total population, the knowledge of that minority language is mandatory for some the civil servants dealing with public relations).

Within those Member States, national languages - and to some extent also minority languages - enjoy a special status. Language requirements are hence imposed for employment in the public sector on various levels, depending on the post in question, and in various shapes - mainly as explicit, but also as implicit language requirements. Implicit language requirements are constituted by language requirements being part of an education requirement, which is the case in *Ireland* regarding Gardaí; or by practice entitling candidates to extra marks when passing language tests or obtaining a certificate for attending a language course, which is the case in *Ireland* regarding positions within the Civil Service.

Such legislation and policy namely has the aim of guaranteeing the right of citizens' to use own language and to promote the use of that Member State's language; culture and heritage; see more below section C.

Notably in *Ireland*, candidates for positions within the Civil Service who pass an Optional Language Test in Irish are entitled to extra marks at the interview. Also, an existing Civil Servant who enters competition for promotion can establish bilingual proficiency and thus benefit from extra marks if they pass a test¹⁰³ or attend a Gaeleagras course leading to a certificate of competence. And in *Romania* employment in the public sector is generally conditioned by Romanian citizenship.

In the majority of the Member States, there are *neither Language Acts nor constitutional provisions* governing language requirements for employment in the public sector. Possible language requirements for employment in the public sector are hence governed by *legislation regulating the public sector and/or administrative practice*. This is the situation in *Austria* (where language skills are a precondition for admission as a civil servant), *Croatia*, *Cyprus* (where workers within the public sector are required to have a certain level of linguistic ability or to be a mother tongue

¹⁰³ Gaeleagras Triail Inniulachta.

speaker when accessing employment), *Denmark* (where requirements on language knowledge may lie implicit in the exercise of certain positions), *France* (where each civil servant must in practice be able to provide an answer to a French citizen. Also, the tests for competitive examinations are written in French and have to be answered in French), *Germany* (where for the position of civil servant, German language skills are required, and where there is a variety of specific language requirements for different sectors), *Greece* (where knowledge of the Greek language is necessary for employment in the public sector), *Hungary* (where either Hungarian nationality or Hungarian language knowledge is required), *Poland* (where the relevant legislation applies to both the private and public sector. However, in the public sector, there are certain posts in the public sector which require a certain level of linguistic ability for accessing employment), *Portugal* (where workers may be required to have the linguistic ability objectively necessary for the proper exercise of the job in question), *Slovakia* (where knowledge of the Slovak language is one of the general conditions for admission to the civil service), *Slovenia* (where civil servants in state bodies and local community administrations may be required to have active knowledge of the official language, which comprises the Slovenian language and, in addition, the Italian or Hungarian language in certain regions), *Spain* (where the knowledge of Spanish is implied since the Selection Committee can require oral exams in the selection process. In the Autonomous Communities with own language, the access to the public sector is conditioned by having knowledge of both official languages), *Sweden* (where a request for language skills should basically be founded on the qualifications necessary for the employment), *The Netherlands* (where in practice, proficiency in the Dutch language is required for most public service jobs. Also, police officers and fire-brigade officers, have to have obtained sufficient knowledge of the Dutch language) and *United Kingdom* (where there is no other sector of the public service than that of the National Health Service, where there is a current controversy about language requirements).

Within those Member States, language requirements are imposed for employment in the public sector on various levels, depending on the post in question, either on a case-by-case basis, per post, per sector or in general for employment in the public sector (the latter applies to *Slovakia*). Consequently, a certain level of language proficiency is required in terms of national languages; and may be required also in minority languages in three Member States (*Slovenia* and *Spain*). In a few of those Member States, there are no specific legislation governing language requirements specifically for posts in the public sector, as legislation covers specific professions or professional sectors, rather than the public and private sector. This applies to *Czech Republic* and to certain extent to *Poland*.

Notably only in *Cyprus* workers within the public sector may be required to be a mother tongue speaker when accessing employment in the public sector.

Some experts address the issue of whether certain posts within the public sector are reserved to nationals or also are available to EU nationals. Accordingly, in some Member States, access to employment in the majority of posts within the public sector is confined to nationals (*Bulgaria*, where the scope of posts in the public sector reserved for Bulgarian nationals remains questionable as to its conformity with Article 45 (4) TFEU; and *Romania*, where employment in the public sector is generally conditioned by Romanian citizenship).

When the access to certain posts is confined to nationals, these nationality requirements implies or rather constitute implicit or inherent language requirements - *a maiore ad minus*. Notably in *Bulgaria*, the nationality requirement is the main obstacle to access to work in the public sector for other EU nationals. That is why there is no administrative and judicial practice on the issue of language requirements in *Bulgaria*.

In other Member States, public employment namely involving the exercise of authority is confined to nationals (*Austria*, where Austrian nationality is a prerequisite for positions requiring a special loyalty to Austria; *Hungary*, where EU citizens and their family members are excluded from the status of government officials; and *Sweden*, where Swedish nationality is required for judges and prosecutors, and for employment within the police force and the army).

In some Member States, employment within the public sector at large is open to EU citizens (*Cyprus, France, Germany and Malta*).

In conclusion, in all Member States but one (*Bulgaria*, where the majority of posts are reserved to nationals), either statutory language requirements apply or language requirements are imposed in practice for the access to employment within the public sector; per sector, per post or on a case-by case basis. With regard to the specific issue of whether those language requirements are imposed on all workers, regardless of nationality, see below para. IV.III.II.

IV.I.XI.I. Language skills required by generally applicable State Language Acts for employment in the public sector specifically

As described above, in three Member States, State Language Acts govern language requirements for employment in the private as well as the public sector. Accordingly, a generally applicable State Language Act is in place in *Estonia* where the observance of language requirements in public service is more important than within the private sector. Thus, according to the Language Act, this Act is mainly meant for *public institutions*. Employers have to guarantee that the employees and officials, from whom the Estonian language will be required, have *the ability to communicate in Estonian*. In particular these language requirements will be observed in *police forces*, to certain extent also in *hospitals* etc.

According to the Civil Service Act, which entered into force on 1 April 2013, there are two categories of workers in public service: Officials and employees. According to the Civil Service Act, an *official* is a person who graduated secondary school, has full legal capacity and who is *able to communicate in Estonian* at the level that is required by the law. As the Civil Service Act does not determine which level of ability to communicate in Estonian will be required, the general rules of Language Act will be applicable.

And in *Latvia* the aim of State Language Law is to ensure that Latvian language could be used freely within every field of life and protection and preservation of Latvian cultural identity. According to Article 3 (1), the official language in Latvia is the Latvian language.

Currently, language requirements for the purposes of employment are provided by Regulation No. 733 ‘On the level of knowledge of official language and procedure for verification of official language proficiency necessary for the performance of professional duties, for the acquisition of permanent residency permit and status of permanent resident of the European Community, and on state duty for testing of proficiency of official language.’ Regulation No. 733 has two appendixes. The appendixes provide a list of the exact requirements on the level of knowledge of the official language for particular professions. The requirements of Appendix I are applicable to the *state and municipal institutions and enterprises which are wholly or predominantly owned by the state or municipality*. Appendix I provides *exhaustive list of professions* acknowledged in Latvian labour market. It means that Appendix I provides *official language proficiency levels for all professions*.

The requirements of Appendix II are applicable to private enterprises which according to normative acts perform *public functions* or whose activities concern *legitimate interests of society*.

Likewise in *Lithuania*, general Lithuanian language proficiency requirements for accessing the jobs in the *public sector* are established by the Law on the State Language. Furthermore, on 21 December 2011 the Law on Public Service was amended concerning the Lithuanian language of exams to public service. There is an *explicit Lithuanian language requirement* following from paragraph 2 of Article 9 (1) of the Law on Public Service, which mentions requirements for admission to public service. The law does not specify proficiency of language level, but reference could be made to Lithuanian language exam, which is mandatory when requesting citizenship of Lithuania or EU long-term residence permit. The level of proficiency for language exam is based on European Council A2 level. The Lithuanian expert is yet of the opinion that higher proficiency would be requested in practice, e.g. for working in the ministries.

In the *public service* the requirement is imposed on a general basis, and in the *public sector* (which is wider than the public service) it is imposed in the fields of *communications, transport, health and other establishments providing services to the residents*. The requirements for language proficiency establish rather concrete posts where different levels of proficiency are required, e.g. for persons employed in service provision, production, commercial and transport services, if they have to communicate with persons while executing their functions and/or fill in simple document forms (e.g. drivers, cloakroom attendants, sellers, waiters and other commercial employees or employees performing economy or technical functions); persons employed in education, culture, health care and other sectors, public, if they constantly communicate with persons and/or fill in the forms of documents while performing their functions (e.g. employees of educational and cultural establishments, teachers and others); heads of companies and organisations, lecturers, aviation specialists and specialists controlling flight security, specialists of maritime and internal waters' transport responsible for transportation of cargo and passengers (captain of the ship, port captain) and others. Thus it can be concluded that the requirements are imposed on a general basis for certain positions and professions in the public sector related to performance of the functions.

Regarding language requirements in *working conditions and promotion and salary*, the Language Board in *Estonia* has a right to propose to the employer to dismiss an employee or an official, if the person concerned does not have the ability necessary to communicate in Estonian. Also the Language Board can order that a person should undergo the language examination, if the Language Board finds out that a worker or official is not in position to communicate in Estonian on the required level. And in *Lithuania* there has been at least one case recorded in the beginning of 2012 when a state owned company applied reduction of salary for 11 employees who did not use Lithuanian language. The issue was raised by the Ministry of Culture in the context of national minorities. The Ministry did not question the order of the administration of the company (Rules on the Use of State Language approved by the Director of the company), but rather two concrete cases whereby the salaries were reduced for welder and wheel-stopper. There is no publicly available information on the situation in private sector companies.

IV.I.XI.II. Language skills required by Language Acts and/or constitutional provisions for employment in the public sector

In a number of the Member States, Language Acts and/or constitutional provisions govern language requirements for employment in the public sector. This is the case in *Italy*, where the *national language is Italian, but French, German and Slovenian are minority languages* enjoying special status in the three Italian Regions: Valle d’Aosta, Provincia Autonoma di Bolzano and Friuli-Venezia-Giulia. While Article 3 of the Italian Constitution prohibits discrimination on the ground, among others, of language, Article 6 of the Italian Constitution states that “the Republic safeguards linguistic minorities by means of appropriate measures.” There are *twelve linguistic minorities* recognized by law, but only the three abovementioned languages enjoy special status. The protection of linguistic minorities is territorial, meaning that the provisions in their favour only apply in the Municipalities where the minority is established. In general, linguistic minorities are allowed to use their language in their relations with the public authorities, while the three linguistic minorities singled out above enjoy the right to use their language. In Valle d’Aosta, Italian and French are on the same footing: the applicants can choose the language of their choice to address the public authorities, and so can do the public authorities. On the contrary, in the Province of Bolzano and in the Municipalities of Friuli-Venezia-Giulia where the linguistic minority is established, the public authorities shall reply in the language chosen by the applicants. For that reason, knowledge of French in Valle d’Aosta, German in Province of Bolzano, and Slovenian in Friuli-Venezia-Giulia is required for access to the public sector. It is therefore necessary to pay attention to where the employment would take place: if in one of abovementioned Regions, special requirements about languages would apply.

In *Italy*, access to employment in the public sector for EU nationals is conditional on an *adequate knowledge of the Italian language*. The requirement is general, applicable to all posts and functions not reserved to Italian nationals.

For access to employment in the public sector in the *Region of Valle d’Aosta, knowledge of French* is required by law. Likewise, for access to employment in the public sector in the *Province of Bolzano, knowledge of German* is required by law. In addition to that, the so called ‘*proporzionale etnica*’ (ethnic proportional system) applies. Under this system, all posts in the public sector are distributed among the three linguistic groups (German, Italian, and Ladin) according to their respective amount. Vacant posts reserved to one linguistic group can be filled only by candidates belonging to that group. If there are no available candidates of that group, the post can be filled by a person belonging to one of the other groups, provided that it does not exceed the total number of posts attributed to each group. Each person (foreigners included) living in the Province shall declare to what ethnic group she/he belongs. For access to employment in the public sector in the *Municipalities of Friuli-Venezia-Giulia*, where the linguistic minority is established, *knowledge of Slovenian*, not by law, contrary to access to employment in the public sector in the Region of Valle d’Aosta and in the Province of Bolzano, but de facto. Indeed, public employees shall have a workable knowledge of Slovenian in order to answer to applications made in Slovenian. Nonetheless, a full knowledge of Slovenian is required for the posts in the Office for Slovenian educational affairs of the Regional Office of education.

And in *Belgium*, in general, it would seem that there are no major issues in Belgium regarding language requirements for access to employment, working conditions, promotion or salary in the public sector to the Belgian expert. Nonetheless, problems may arise as regards the proof that can be made of the knowledge of those languages; see more below section B; and apparently, well-

settled case law of the Dutch-speaking section of the Belgian State Council interprets Article 4 of the Belgian Constitution as *precluding the use of another language than Dutch in the Dutch-speaking region*. Belgian legislation on the use of languages for administrative purposes¹⁰⁴ provides that *public servants* have to speak *French, Dutch or German* if they work for the local or regional administration of, respectively, *the French-speaking, Dutch-speaking or German-speaking regions*. They have to speak either *French or Dutch* if they work for the local or regional administration of Brussels-capital. The same rule applies if they are *federal public servants*.

And in *Finland*, the issue of language requirements for posts at the public sector is regulated through the Language Act and the Act on Language Proficiency Required from the Personnel of Public Authorities, and through legislation concerning different sectors of administration.

The primary purpose of this legislation is to *guarantee the constitutional right to use one's own language, Finnish or Swedish*, at the courts of law and other public authorities, and to oblige the state and the local authorities to make sure that they have qualified personnel to fulfill the linguistic rights and to meet the needs of both Finnish and Swedish speaking citizens.

The Act on Language Proficiency Required from the Personnel of Public Authorities seeks to guarantee that each *civil servant* would have *sufficient linguistic competence* to perform her/his duties. As a main rule, it is the responsibility of the employer to decide which level of linguistic competence it requires from the employees. However, from the obligation of the state and the local authorities to guarantee that the linguistic rights laid down in the Constitution and in the Act on Languages are fulfilled, it follows that the employees are always required sufficient knowledge of at least one or both of the national languages. What this level is depends on the organization and the post in question.

Furthermore, the language legislation contains certain statutory language requirements. For instance, pursuant to section 6 of the Act on Language Proficiency, for public posts for which the qualification requirement is a university degree, the required level of language proficiency in the majority language is excellent oral and written skills and in minority language satisfactory oral and written skills. Hence, as it concerns the higher officials at the governmental institutions, the requirements concerning linguistic competence are bound to the qualification requirement and not to the tasks in question, which would be a more flexible approach. Where there are no statutory language requirements, the employer may assess the linguistic competence of the job seekers and employees freely.

Civil servants working for the government may be paid '*language supplement*' if they need both national languages to perform their duties and if they have either good or excellent command in the language that is not her/his mother tongue. The amount of the language supplement varies, but is normally around 12-20 e/month.

The general legislation on languages does not apply to the Evangelic Lutheran Church, and to the Orthodox Church. These institutions have language policies specific for them.

Also in *Ireland*, the *Irish language* has the status as *the first official language of the State* under the Constitution. Thus, the Constitution permits the public to conduct its business with the state solely through Irish. As a result, *public bodies* have a duty to comply with this constitutional right. The Official Languages Act, 2003 also ensures that Government Departments and Public Bodies provide services in the Irish language. Thus, at least some members of the public sector have to have competency with regard to the Irish language. The first official language status of Irish as well

¹⁰⁴ Loi sur l'emploi des langues en matière administrative, *M.B.*, 2 August 1966, p. 7799.

as the desire of the Government to promote the Irish language as a key element of the State's culture and heritage may also explain the Irish language requirement for primary school teachers. English language proficiency is required for virtually all posts within the public sector. However, there is no formal Irish language requirement except within the primary education sector. Nonetheless, applicants for certain Irish-speaking posts may have to show that they have the necessary qualifications/competence. In addition, as part of the State's policy to ensure that services are available in Irish, applicants may be assessed for Irish language ability and Irish-speakers may be favoured in the selection process. English language competency is necessary for the majority of public sector positions because employees need to be able to communicate adequately with colleagues and members of the public. This is particularly essential within the *health* and *teaching* sectors as well as for members of the *Gardaí*.

There has been no Irish language requirement for most posts in the Civil Service since 1974, apart from those positions where Irish is essential for the performance of the duties (for example for certain posts within the Department of Arts, Heritage and the Gaeltacht). However, candidates for positions within the Civil Service who pass an *Optional Language Test in Irish* are entitled to *extra marks* at the interview.¹⁰⁵ An existing Civil Servant can also *establish bilingual proficiency* and thus benefit from extra marks if they enter competition for promotion if they pass a *test*¹⁰⁶ or attend a *Gaeleagras course* leading to a certificate of competence. *Gaeleagras* is a body established in 1971 designed to promote the Irish language throughout the Civil Service.

Access to the *Defence Forces* is not dependent on Irish language qualifications. There is 'on the job' training in Irish and according to the website of the Defence Forces, 'The Defence Forces are keen to promote the Irish language and it is used in everyday life of the Defence Forces.'

In relation to *An Garda Síochána*, there are no Irish language requirements for access. Candidates are, however, required to have a *qualifying grade in two languages* as part of the education requirements for joining the *Gardaí*. One of these languages must be *English or Irish*. However, Irish is one of the subjects taught at the *Garda College* and all recruits are required to achieve an appropriate standard before becoming full members. Recruits without an Irish language qualification will undergo basic training in that language. As with the *Defence Forces*, *Garda Síochána* seek to promote the use of Irish throughout the organisation and expand the services it offers through Irish.

In *Malta*, when recruiting public sector employers in Malta, one should bear in mind two main issues. Firstly that, although administrative business is largely handled in English, *Maltese is the national language* and the language of first preference for most citizens. It is a matter of longstanding *Government policy* that members of the public are *entitled to communicate with public officials in Maltese*. Moreover, Article 3 of the National Language Act (2004) obliges the State to *promote the use of the Maltese language*.

According to paragraph 1.2.3.4 (ii) of the Public Service Management Code, '*applicants have to be conversant in both official languages, namely Maltese and English, unless exceptional circumstances warrant that either of the official languages is waived to the satisfaction of MPO [the Management and Personnel Office within the Office of the Prime Minister].*'

¹⁰⁵ Details available at

http://www.publicjobs.ie/publicjobs/client/toolkit/s8_11.htm;jsessionid=9700134C1D8075B009B3376025EEFCDD, accessed 28 September 2013.

¹⁰⁶ *Gaeleagras Triail Inniulachta*.

Secondly, officials whose duties do not involve serving the public on a daily basis may still need to reply to correspondence, deal with requests received through the Government websites, or see to members of the public who are referred with detailed queries on their areas of competence. It is hardly ever possible to restrict all contact with the public to a single office or unit.

A good working knowledge of Maltese is therefore required to communicate with and serve the public.

By virtue of article 3 (1) of the Nationality Requirements for Appointments in Public Administration Regulations (2011), no person shall be appointed to a public office unless that person is (a) a Maltese national; or (b) a national of another Member State of the European Union who is entitled to equal treatment to Maltese nationals in matters of employment by virtue of the provisions on the free movement of workers; or (c) a national of any other country who is entitled to equal treatment to Maltese nationals in matters related to employment by virtue of the application to that country of the provisions on the free movement of workers; or (d) any other person who is entitled to equal treatment to Maltese nationals in matters related to employment in terms of the law or the provisions on free movement of workers on account of his family relationship with a person mentioned in paragraph (a), (b) or (c); or (e) a third country national who has been granted long-term resident status in Malta or who has been granted a residence permit, together with family members of such a third country national who have been granted a residence permit under the Family Reunification Regulations (2007).

Generally speaking, in addition to the citizenship requirements as outlined above, public calls for the filling of posts in the *Public Service* request that applicants must also: (a) *be able to communicate in the Maltese and English languages*; (b) be in possession of a warrant, qualifications, practice or experience, or a combination of more than one, as the case may be; and (c) be of good moral character.

Public sector entities outside the Public Service normally function autonomously within the parameters of the law and Government policy where recruitment procedures are concerned.

In *Luxembourg*, the Law of 24 February 1984 on the Languages Regime¹⁰⁷ provides for the *Luxembourgish language to be the language of the Luxembourgers*. It also provides for the *law and regulations to be in French*. It also proclaims that in administrative matters, French, German or Luxembourg language may be used and that whenever possible, the administration should respond to the citizen in the same language as used by him/her. Thus, in the *public service*, the mastering of the *three administrative languages (Luxembourgish, French and German)* is necessary, as the law provides for the *right of any person to get an answer in one of those languages used by a citizen*, when sending a letter to the administration. Also the speaking ability of the civil servants is important in order to deal with the public, in those three languages alternatively. Also, French language is used as a written court language.

Candidates wishing to get a job in the Luxembourg *public service* at the national or at the local level, have to demonstrate their knowledge of the *three Luxembourg administrative languages*, namely Luxembourgish, French and German.¹⁰⁸

¹⁰⁷ Loi sur le régime des langues - Mémorial 16 du 27.02.1984, page 196.

¹⁰⁸ Art. 2 of the amended Law of 16 April 1979 fixant le statut général des fonctionnaires de l'Etat; Art. 1 of the Grand-Ducal Regulation of 12 May 2010 fixant les modalités du contrôle de la connaissance des trois langues administratives pour le recrutement des fonctionnaires et employés des administrations de l'Etat et des établissements publics; Art. 2 of the amended Law of 24 December fixant le statut général des fonctionnaires communaux.

The language requirements vary depending on the type of public career for which an application is made. The various language skills necessary are determined in accordance with the Common European Framework of Reference for Languages (CEFR).¹⁰⁹

Therefore, in order to get a high level administrative job in the Luxembourg public service, the candidate has to reach a language level up to C1 for the first language, B2 for the second language, and B1 for the third language.

Then, to access an average civil career, the candidate has to reach a language level up to B2 for the first language, B1 for the second language, and A2 for the third language.

Finally, to access an inferior civil career, the candidate has to reach a language level up to B1 for the first language, A2 for the second language, and A1 for the third language.

It should be noted that every candidate can choose which level should apply to which of the three Luxembourg administrative languages.

According to the Luxembourg Law, there are also public jobs for which the *knowledge of either language is not required*, due to the nature and the level of responsibility of these specific jobs.¹¹⁰

Promotion does not seem to be an issue, as the candidates who are being admitted in the public sector master enough the requested languages. Also promotion is based on the general statute of public servants and thus does not depend on the profile of the civil servant but her/his career.

In *Romania* employment in the public sector is generally conditioned by Romanian citizenship, based on Article 45 (4) of the TFEU; therefore Romania reserved for its citizens the civil service positions, and most of the political dignities. For *civil servants*, the *knowledge of the Romanian language* - spoken and written - is mandatory. In certain administrative-territorial units, where the percentage of a national minority is above 20% of the total population, the *knowledge of that minority language* is mandatory for the *civil servants* dealing with public relations. This a special measure of protection of national minorities. The 1991 Constitution declares in Article 6 (1) that the State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity. Furthermore, according to Article 120 (2), in the territorial-administrative units where citizens belonging to a national minority have a significant weight, provision shall be made for the oral and written use of that national minority's language in the relations with the local public administration authorities and the decentralized public services, under the terms stipulated by the organic law.

Law No. 188/1999 on the Statute of Public Servants, Article 108 states that in the administrative – territorial units where the person members of a national minority have more than 20% some civil servants within services having direct contact with the citizens shall have good command of the language of the concerned national minority.

The more detailed regulations are included in Law No. 215/2001 on local public administration. In the context of Article 19, in the territorial-administrative units in which the citizens belonging to the national minorities by a share of over 20% of the number of the inhabitants, the local public administration authorities, their subordinated structures and the deconcentrated public services shall ensure, in the relations with them, also the use of the mother tongue, in keeping with the

¹⁰⁹ Art. 3 of the Grand-Ducal Regulation of 12 May 2010 fixant les modalités du contrôle de la connaissance des trois langues administratives pour le recrutement des fonctionnaires et employés des administrations de l'Etat et des établissements publics .

¹¹⁰ Art. 2 of the Law of 16 April 1979 fixant le statut général des fonctionnaires de l'Etat; Art. 1 of the Grand-Ducal Regulation of 12 May 2010 fixant les modalités du contrôle de la connaissance des trois langues administratives pour le recrutement des fonctionnaires et employés des administrations de l'Etat et des établissements publics; Art. 1 of the Grand-ducal Regulation of 5 March 2004 déterminant les emplois dans les administrations de l'Etat et les établissements publics pour lesquels la connaissance de l'une ou de l'autre des trois langues administratives n'est pas reconnue nécessaire en raison de la nature et du niveau de responsabilité de ces emplois.

provisions of the Constitution, of Law No. 215/2001 and of the international conventions to which Romania is a party. Finally, under the provisions of Article 76, in the territorial-administrative units in which the citizens belonging to a national minority hold a share of over 20% of the total number of the inhabitants, in their relations with the local public administration authorities and with the own specialty apparatus, they may also address themselves, orally or in writing, in their mother tongue and shall receive the answer both in the Romanian language and in their mother tongue. The official documents shall be compulsorily drawn up in the Romanian language. Under these terms persons that know the mother tongue of the citizens belonging to the respective minority shall also be employed in the positions regarding public relations. So, there is a special regulation of minority protection, in consensus with the multiethnic and multi-language character of many Romanian regions, and the public sector employment reflects these measures adopted under the international public law of minority protection and national constitutional provisions. Even in the concerned territorial-administrative units, this is not a general language requirement: the law states that there must be employed - beside others - some civil servants who have the command of a determined minority language. The number or the percentage of these civil servants depends on the decision of the local authorities.

IV.I.XI.III. Language skills required by general legislation applicable to the public sector and/or administrative practice for employment in the public sector

In the majority of the Member States there are neither Language Acts nor constitutional provisions governing language requirements for employment in the public sector. Possible language requirements for employment in the public sector are hence governed by legislation regulating the public sector and/or administrative practice.

Some experts address the issue of whether certain posts within the public sector are reserved to nationals or also are available to EU nationals. Accordingly, in some Member States, access to employment in the majority of posts within the public sector is confined to nationals. In other Member States, only public employment namely involving the exercise of authority is confined to nationals.

The Member States reserving the majority of public posts to nationals comprise *Bulgaria*, where, even if the laws do not state language requirements explicitly, it is noteworthy that access to work in the public sector is restricted as a rule because of the requirement on Bulgarian nationality. The scope of posts in the public sector reserved for Bulgarian nationals remains questionable as to its conformity with Article 45 (4) TFEU. Thus, for example, all posts in the Ministry of the Interior are reserved for Bulgarian nationals, regardless of whether it is a civil servant or labour contract employee. The Law on the Administration also requires Bulgarian nationality for an extensive list of posts. The same holds true for the judiciary, etc. The nationality requirement is the main obstacle to access to work in the public sector for other EU nationals. That is why there is no administrative and judicial practice on the issue of language requirements.

In other Member States, only public employment namely involving exercise of authority is confined to nationals. This appears to be the case in *Hungary*, where the public sector has various and changing categories in legal status concerning in which branch of public power they are employed (in justice, in law enforcement, in public administration or in public suppliers). All of these categories are governed by separate acts. Moreover, the Labour Code is the common secondary regulation if specific acts remain silent about relevant issues. Due to the fact that nationality is

required in majority of legal standing in public sector, only file-keepers or simple administrators can be employed in ambit of the FreeA. Wider accession to public sector as public servants (employee at public suppliers or public services), out of higher leading positions, are available for Union workers.

For public servants belonging to the *law enforcement sector*, *Hungarian language knowledge* is required for employment.¹¹¹ The Government is entitled to regulate on the *public health sector*, *on public education*, *on high-level education*, *on the academic researchers*, *on national defence*, *on security services*, *migration management*, *police*, *law enforcement and in artist*, *culture and public collections* in this respect determining working and leader positions in which applicant is to be a Hungarian national with clean criminal record in full age, or/and *Hungarian language knowledge*. Moreover, all responsible ministers governing a branch of public administration is also entitled. Previously, the ‘proper level of Hungarian language knowledge that is needed for her/his working task’ was decisive, but now it is changing. Beyond this restrictive modification, neither formal nor informal ways of language competence, its testing method has been developed. In fact it would hinder the free movement of non-Hungarian speaking workers.

Governmental officials shall be Hungarian nationals, which inherently presume the *knowledge of Hungarian language*. Career starters must possess foreign language skills - English, German or French - which also presumes that Hungarian language skills are present. In case of *public officials*, the knowledge of Hungarian language is not expressly required, either. However, a government official is entitled to wage-supplement if she/he regularly uses a foreign language besides Hungarian. This means that the *knowledge of Hungarian language is evident*. While Union citizens and their family members are excluded from the status of government officials, the governmental/public administrators in a non-leading position or without confidential tasks (such as file-keepers, typists, archive-manager) may be recruited from Union citizens and family members in ambit of FreeA as well as nationals of party states to the European Social Charter, provided they have the proper *Hungarian language knowledge* that is required for the given job. Moreover, they have to take an administrator exam (in Hungarian) during the first six months of employment or her/his employment is terminated.

EEA nationals and their family members belonging to the personal scope of the FreeA is employable as *typist or physical worker at the Public Prosecutor Office*, i.a. if she/he has the basic qualifications and has *Hungarian language knowledge* necessary to perform work in the given job. Further on, they are employable as *typist, physical worker, expert of justice and candidate for expert* - with exception of protocol writer and editor at company court (court of registry) - in *administration of justice*, if she/he is in possession of a proper *Hungarian language knowledge* that is necessary to perform the given position. In brief, there are three levels of language requirements in the public sector:

- a) native speakers as inherent component of nationality requirement;
- b) almost full or high level of knowledge, because it is not determined the minimal competence and language ability of non-native applicant to certain jobs as public servant; the required exams taken in Hungarian (e.g. as public/judicial administrators) are equivalent with it in certain positions;
- c) limited/functional language knowledge that is necessary to perform the given job, task or work.

In *Austria*, Austrian nationality is a precondition for jobs requiring a specific loyalty to Austria, such as jobs including exercising state power or protecting general interests of the state. Other jobs

¹¹¹ Ministerial Decree of the Justice and Law Enforcement No. 10 of 2009, 17 April, Section 2 (1) (a).

in the public sector can, however, also be offered to ‘persons with unlimited access to the Austrian labour market.’ In *Austria*, *language skills* are a precondition for admission as a *civil servant*. If they are considered as sufficient, they will not have any influence on the working conditions, promotion or salary. According to Sect. 4 (1a) Civil Servants Act and Sect. 3 (1a) Contractual Employed Civil Servants Act ‘good commands in word and writing’ are required for employment in the public sector. If the job requires less, an adequate command has to be shown. As the wording of Sect. 4 (1a) Civil Servants Act and Sect. 3 (1a) Contractual Employed Civil Servants Act shows, it is assessed at a case-by-case basis whether less than good command is sufficient for the job.

This requirement was introduced in 1994 in course of the adjustment of the law on employment in the public sector to European community law. The reason for this new requirement was the opening of access to employment in the public sector to non-nationals made necessary by Austria’s accession to the European community. According to the legislator, in general a certain command of the German language will be necessary for any employment in the public sector due to the functions of the public sector. The level of the required linguistic ability should be assessed on a case-by-case basis depending on the job in question.¹¹²

In *Sweden*, when the employment means the exercising of authority, there is a restriction based on citizenship and the right to equal treatment regarding employment in the public sector in accordance with the TFEU, Article 45 (4). Restrictions meaning demands for Swedish citizenship are founded in the Constitution. In accordance with the Constitution ch. 11 Section 11, a judge in a court should be a Swedish citizen. Beyond that, requirements on citizenship for positions dealing with jurisdiction should be regulated in law. For instance, according to the Act on public employment Sections 5 and 6, a non-Swedish citizen cannot join the police force or be employed as a prosecutor within the judicial system or be employed by the army.

For employment in the State sector, merit and competence should be decisive, but competence should be the most important criterion (the Constitution ch. 12 Section 5 and the Act on public employment 1994:260 Section 4). Further, appointments for employment in the public sector should be ruled by objectivity. The right to equal treatment for employment in the public sector should be secured through regulations. Beyond that the equal treatment principle is founded on Regulation 492/2011 and EC law applies for instance concerning nationality and discrimination.

The required merits and skills for a position are defined by the employer for each position before recruitment, and requirements should be based on the post, subject to the recruitment procedure. A request for *language skills* should basically be founded on the qualifications necessary for the employment. Considering the Act on public employment Section 4, *good language skills* - and especially in Swedish - could in practice be a very important qualification when the recruitment is made, if skills in Swedish language are considered to be important for the performance of the work. Beyond that, language skills in Swedish could be of importance for conducting the work, but it is the local government that should examine if a person has the sufficient skills for a certain position and that procedure could vary between different local County Councils in charge of the recruitment. However, even here, the starting point for setting up requirements should be the nature of the work. Concerning language requirements for obtaining certain *working conditions, promotion and salary*, there are no such regulations or guidelines etc. on the public sector.

In other Member States, employment within the public sector at large is open to EU citizens. This is the case in *Cyprus*, where Article 31 (a) of the Public Service Law 1990-2006 states that only Cypriot nationals or Union citizens can be appointed to positions in the public service (certain exceptions apply). All positions for the civil service and the public sector at large are open to Union

¹¹² Explanatory Report to the Government Bill, No 1506 of the supplements to the stenographical protocols of the National Assembly (Beilagen zu den Stenographischen Protokollen des Nationalrats), legislation period No. XVIII, 13.

citizens and there is recognition of qualifications, professional experience and seniority for access to the public sector. The job description of the post advertised stipulates the qualifications and the years of experience required for appointment. The appointment is a task of the Public Service Commission. For senior management posts in the public sector, the job description may require previous experience, which can be in administrative, public or private sector, in any EU country. Workers are required to have a *certain level of linguistic ability or to be a mother tongue speaker* when accessing employment. In terms of the level of the language requirement, this depends on the level of the post advertised: For first appointment of *officers* ‘good knowledge’ of Greek is required and very good command of one of the EU official languages (English, French or German). For most posts, especially more *senior posts*, it is required that the candidates have ‘very good knowledge’ of Greek, A Level in Greek or to be a graduate from a Greek university. For the position of the *Permanent secretary*, excellent command of Greek is required plus one of the EU official languages. In the public sector, if the job description for a job vacancy in the public sector requires ‘excellent’, or ‘very good’ or ‘good knowledge’ of the Greek language, both the meaning of each of the aforementioned terms as well as what constitutes evidence to that effect has been defined by the Public Service Board.

In *Germany*, access to the public sector is possible for EU citizens in the whole country, as according to Sec. 7 para. 2 of Federal Law on the Status of Civil Servants¹¹³ the appointment as a ‘Beamte’ requires German nationality *or* the nationality of another EU Member State. While many civil servants are employed regionally by the *Länder*, the federal law sets a uniform standard for ‘status matters’ for Germany as a whole. For the position of *civil servant*, the Federal Law on Civil Servants¹¹⁴ and corresponding laws at regional level¹¹⁵ require *German language skills*. It should be noted that the degree of language skills has been reduced somewhat, when new laws were adopted at federal and regional level after a Constitutional amendment. While for many decades, the federal law required ‘The command of the German language in speech and writing is a prerequisite for admission to career’, the new federal law reads: “The German language has to be mastered to the extent necessary for the performance of the duties of career.” This grants state authorities more flexibility - a flexibility which was introduced in order to comply with Article 53 of Directive 2005/36/EC, and in order to allow the state to hire more people with a ‘migration background’, e.g. from Turkey, in order to render the public administration more culturally diverse.

When it comes to professional careers of civil servants in the public service of the Federation, the *Bundeslaufbahnverordnung*¹¹⁶ contains rules on the recognition of professional experience in the public service of another EU Member State. Yet, there are no rules which legally require promotion to depend on language skills, although many jobs will require language skills, since the working language of most state authorities is German.

There is a variety of specific language requirements for different sectors that are usually not always laid down in general rules, however, but are required at the moment of the public tender or the job interview when the degree of language skills which is necessary for the successful realisation of a job is specified. It is not possible to generally reject a job application for reasons of language requirements, unless the job description of a specific assignment says so. Legal databases do not

¹¹³ Gesetz zur Regelung des Statusrechts der Beamtinnen und Beamten in den Ländern (Beamtenstatusgesetz) of 17.6.2008.

¹¹⁴ Sect. 18 para. 2 Bundesbeamtengesetz (BBG) = Federal Law on Civil Servants: “Die deutsche Sprache muss in dem für die Wahrnehmung der Aufgaben der Laufbahn erforderlichen Maß beherrscht werden.”

¹¹⁵ By way of example, Sect. 16 para. 4 Landesbeamtengesetz Baden-Württemberg (LBG BW) = Law on Civil Servants of the State of Baden-Württemberg: “Bewerberinnen und Bewerber müssen über die Kenntnisse der deutschen Sprache verfügen, die für die Wahrnehmung der Aufgaben der jeweiligen Laufbahn erforderlich sind.”

¹¹⁶ Verordnung über die Laufbahnen der Bundesbeamtinnen und Bundesbeamten (Bundeslaufbahnverordnung - BLV).

report major court cases on the issue, which indicates that they do not raise major problems in practice in *Germany*.

And in *France*, employment in the public sector is now opened, through the recognition of diploma and professional experiences, to workers of other Member States. They must have exercised the same job in their country of origin. The public sector in France is considered as allotted to the public, and each *civil servant* must in practice be able to provide an answer to a French citizen. The tests for competitive examinations are written in French and have to be answered in French.

Other Member States requiring language skills as a prerequisite for employment in the public sector, either explicitly or through practice, comprise *Slovakia*, where according to Article 19 (1) (e) of the Act No. 400/2009 Coll. on Civil Service, *knowledge of the Slovak language* is one of the conditions for admission to the *civil service*. Similar provisions on knowledge of the Slovak language can be found also in acts governing special civil service positions as *policemen, soldiers, custom officers*, etc. The language requirements are imposed on a general basis - knowledge of Slovak language is a prerequisite in order to be admitted as a civil servant.

Likewise in *Greece*, Article 2 (3) of Law 2431/1996 governing public employment provides that *knowledge of the Greek language* is necessary for employment in the public sector. The degree of knowledge of the language is defined each time by proclamation taking into account the requirements of the post of employment.

In *Spain*, paragraph 2 of Article 61 of the Law 7/2007, of April 12, the Civil Service Basic Statute¹¹⁷ establishes that the Selection Committee can require *oral exams* in the selection process. This requisite implies the *knowledge of Spanish*, but the Article does not define the level of knowledge.

In the *Autonomous Communities* with own language (Catalonia, Basque Country, Balearic Islands, Valencia, Galicia) the access to the public sector is conditioned by having *knowledge of both official languages*. Each Autonomous Community has its own Law on access to Public Service. Furthermore, in each call offering public post the announcement establish more points in case you know the co-official language. In practice, a Spanish citizen that only know Spanish have less chance to access the public service of Catalonia, Basque Country, etc.

In the case of Catalonia, the requirements to be met by the person interested in being admitted to a selective process of access to bodies of the Administration of the Generalitat of Catalonia are: (a) Nationality; (b) Must demonstrate knowledge of both official languages at the level determined by the conditions of the call; and (c) Must possess the academic level that determines the basis of the call in question, approved by the Ministry of Education.

In *Slovenia*, the Civil Servants Act does not contain a general provision according to which the knowledge of the Slovenian language is required as a condition for access to positions of civil servants (in a broad sense of the term). However, in the part of the Act covering *civil servants* in state bodies and local community administrations, the *knowledge of the Slovenian language* is required; indirectly, so to say. It is prescribed as a condition to be fulfilled by those civil servants (officials) who perform their tasks in titles.¹¹⁸ Namely, one can perform work of an official in title, provided she/he has been nominated in a title. One of the conditions for the nomination is the *active*

¹¹⁷ Official Gazette, num 89 de 13 de Abril de 2007.

¹¹⁸ The term is used for persons in certain positions. So-called titles are divided into 16 levels.

knowledge of the 'official language' (the Slovenian language and, in addition, the Italian or Hungarian language in regions where members of Italian or Hungarian minorities live).

When for specific work in the public sector a condition of nationality is not required, a possible condition of *active knowledge of Slovene language* sometimes may be applied.

In *The Netherlands* until recently, there were few, if any, explicit statutory requirements as to the knowledge of the Dutch language for appointment in posts in the public sector, although, in practice, *proficiency in the Dutch language* is required for most *public service jobs*. The legislation implementing Directive 2005/36/EC provides some examples of that practice. The explanatory memoranda on the ministerial regulations on the recognition of professional qualifications of *police officers and fire-brigade officers*, explicitly mentions that the officers concerned have to have obtained sufficient knowledge of the Dutch language to perform their job.

In *Croatia* the Civil Servants Act and Act on Civil Servants and Employees in Local and Regional Self-Government do not prescribe Croatian language requirement. However for certain posts such a requirement could be previewed by special laws, regulation or ordinance on state authorities that may prescribe other requirements for admission to the civil (public) service pursuant to the Civil Servants Act and the Act on Civil Servants and Employees in Local and Regional Self-Government. The Croatian expert is of the opinion that Croatian language requirement could be prescribed for most of the civil servants posts since they involve direct or indirect exercise of powers conferred by public law and duties designed to safeguard the general state interests or interest of the local and regional self-government.

And in *Portugal*, workers are not required in general and abstract terms to have a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions promotion or salary in the public sector at national or sub national/local level. It does not mean, however, that workers may not be required to have the linguistic ability objectively necessary for the proper exercise of the job in question.

In *Denmark*, requirements on language knowledge may lie implicit in the exercise of certain positions; e.g. when handling cases and communication with citizens etc., a certain level of Danish is required with regard to oral and written communication.

And in *United Kingdom*, there is no other sector of the public service than that of the *National Health Service*, where there is a current controversy about language requirements.

In a few Member States there appear to be no legislation governing language requirements for posts in the public sector specifically. This applies to *Czech Republic*, where legislation rather covers specific professions, such as pedagogical workers, or sectors, such as the medical sector, and hence applies to the public as well as the private sector. Also, antidiscrimination legislation applies to both the public and private sector. The Czech experts note, however, that the Act No. 218/2002 Coll., on Public Services, which is applicable specifically in the public sector, contains a specific provision prohibiting discrimination on the basis of language. This law did, however, not enter into force yet. There are nevertheless other antidiscrimination acts which may be used in possible litigations.

In *Poland*, the relevant legislation applies to both the private and public sector (depending on the owner structure - whether it is run by private or public entities) without distinction and governs specific professions, such as doctors. However, in the public sector, there are certain posts in the *public sector* which require a *certain level of linguistic ability* for accessing employment. But no requirement to be mother tongue speaker is applicable at all. Also there are no requirements to prove knowledge of Polish language in order to secure or earn certain working conditions,

promotion or salary. If there are language requirements, they are imposed on a general basis per sector.

IV.II. Language skills required in practice by private entities

IV.II.i. Summary of findings

In the majority of the Member States, save those three Member States where State Language Acts are effective, statutory language requirements appear to constitute exceptions to the main rule; otherwise entailing that it is left for employers to decide what level of linguistic competence they require from employees and how the employees are to establish the required competences as a matter of contractual freedom, however, subject to rules on prohibition of discrimination, and the national courts and equality bodies play an important role in this regard (*Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Malta, Portugal, Slovakia, Spain, Sweden, The Netherlands and United Kingdom*).

Consequently, the nature and tasks of the specific employment is of crucial importance in most Member States when employers decide on a reasonable level of requirements for employees' language skills, and language requirements appear to mostly be imposed on a case-by-case basis by private entities.

As adequately articulated by the experts from *Belgium*, whether there is in fact discrimination against EU citizens thus depends “[...] on employers’ relative interpretation of the necessity of the knowledge of a language for the proper execution of tasks by employees.” A rather disturbing example of language requirements imposed in practice on a non-case-by-case-basis by employers is found in *United Kingdom*, where a business announced an *English language only policy* shortly after the first year of application of the Equality Act.

The language proficiency required in practice by private entities from employees varies from no or basic language competences in low skilled employment, such as cleaning personnel, to high language competences in high skilled employment, such as IT-professionals, depending on the job in question. Occasionally, language proficiency in languages other than the national languages is required by employers.

With regard to the practice of private employers in the Member States, three main issues emerge: The issue of *job advertisements* stipulating language requirements - including mother tongue; the impact of the *accent of foreigners* on employment; and the issue on *dismissal of employees* due to insufficient language proficiency.

As regards the first issue on job advertisements, it would appear that issues on discriminatory practice by private entities arise from language requirements stipulated in job advertisements in a number of the Member States; and that in some instances, though by far not all, language requirements are used as a means to discriminate candidates on ground of their ethnic origin (*Austria, Czech Republic, Denmark, Germany, Italy, Lithuania and Luxembourg*). Concerning the impact of the accent of foreigners on employment, discriminatory rejections of employment by private entities were found in *Denmark* and *The Netherlands*. As regards the issue on dismissal of employees due to insufficient language skills, this is intimately linked to recruitment. Whether language skills are sufficient for the job concerned, hence falls under the prerogative of employers to decide upon. Examples of such dismissals were found in *Denmark, Germany* and *Sweden*.

IV.II.I. Employers' assessment of the level of linguistic competences required for specific employment

In the majority of the Member States, statutory language requirements constitute exceptions to the main rule; otherwise entailing that it is left for employers to decide what level of linguistic competence they require from employees and how the employees are to establish the required competences as a matter of contractual freedom, however, subject to rules on prohibition of discrimination.

Accordingly in *Germany*, German language skills may vary from rudimentary skills in order to work in a supermarket or high language skills in order to be hired as a consultant in a consultancy firm. Other companies with an international vocation may prefer to have employees who are fluent in English, Mandarin, or any other language - and may not expect their employees to speak German at all. To decide these matters remains the prerogative of private actors. In *Germany* other non-medical regulated professions do not require special language skills by law. That does not mean that language skills are not expected from those entering the job market, especially in cases of employment when requiring language skills. However, as a matter of principle such requirements are not laid down in the law in *Germany*, and legal databases do not show that there are problems in practice.

Likewise in *Sweden*, employers have the right to set language requirements in the recruitment process, provided that specific language skills are needed due to the nature of employment and that the requirement is objectively justified. Hence, request for language skills on the private sector should be based on the qualifications necessary case-by-case for the actual employment. The nature of the employment is of critical importance when deciding a reasonable level of requirements on the employee's language skills. In some jobs it is necessary to be able to speak and/or write in a country's native language in order to carry out the tasks to be performed. Employers can set language requirements under these conditions. For employment in other activities certain language skills is of minor importance, for instance for work as a caretaker, if the employee's main task is of a purely practical nature. In general, employers in some industries/branches require more and a higher level of language skills than employers in other industries/branches. An example is the IT sector where good language skills in English are of general importance. However, in the Swedish IT industry it is often required that the candidates should be able to speak Swedish to get employment as consultants, although the language used in professional practice is English. A branch where language skills are almost irrelevant in recruitments is the cleaning industry. Similarly in *Hungary* and *Bulgaria*, where as a rule, the level of language proficiency is to be decided by the employer, subject to rules on contractual freedom, if the nature of the job so requires.

In *Croatia* language requirements could be imposed on a case-by-case basis or group of jobs in question by the employer. Namely, the Labour Act, as *lex generalis* for all employment relationships stipulates that if a law, other regulation, collective agreement or work rules (internal work regulations) prescribe special conditions for the commencement of employment, an employment contract may only be concluded by an employee who meets these conditions. However, one needs to read the provision concerned together with a specific provision of the Anti-Discrimination Act (allowing exemptions provided they are appropriate, necessary and in proportion to the aim and purpose for which they are determined). Thus, according to the Croatian expert, it can be concluded that employers can use Croatian language requirement as a condition for employment only in exceptional circumstances when required by reason of the nature of the post to

be filled and under the proportionality test, thus in line also with Article 3 of Regulation 492/2011 and in line with CJEU case law.

And in *Czech Republic* in general the employer can have different requirements according to the announced job vacancy, promotion, etc. but the requirements must not be discriminatory. The person who meets the criteria should be treated regardless of her/his nationality, age, etc. Violations of antidiscrimination legislation can be brought to a court. Such cases have already appeared, however, to the Czech experts' knowledge, none of them concerned language requirements.

Other examples of employers requiring employees to speak the language necessary to do the relevant job are found in *Ireland*, where, however, there is no general requirement that employees in the private sector speak English and/or Irish. Likewise in *Austria*, in practice employers in the private sector demand certain language skills depending on the job in question. Most employers demand that their employees are able to communicate in German with superiors and colleagues. If the employee has contact with costumers or is responsible for correspondence with business partners this will usually also require good command of the German language. And in *Finland*, the level of the knowledge that is required seems generally to depend on the tasks in question. For instance, in many low-skilled jobs there are not necessarily any language requirements, or even rather modest level of knowledge is sufficient. Furthermore, for instance IT-companies, such as Nokia, and some other big companies use as their working language English and therefore do not require command of Finnish or Swedish from their employees. At sectors where there is a shortage of labour, such as within the health sector, the employers seem to have begun to relax the language requirements. In practice it seems to be rather common that the employers require that the employees command Finnish or Swedish and in some cases both languages, although the relative significance of Swedish at the private sector seems to have decreased recently. In *Belgium*, there are no signs of problematic language requirements being imposed with regard to access to employment. In accordance with EU law, language requirements are confined to cases where the knowledge of a language is needed for the proper execution of the contract of employment. This does not mean that there is no discrimination against EU citizens who do not speak one of the national languages in practice, depending on employers' relative interpretation of the necessity of the knowledge of a language for the proper execution of tasks by employees.

Language skills are required in practice by private entities also in *The Netherlands*, where for most white collar jobs, applicants will be required to be proficient in the Dutch language. According to the Board of Human Rights (appeal body for the Equal Treatment legislation), the employer should be the one to decide whether her capability of the Dutch language is sufficient (Opinion No. 2013-66). In *Denmark*, the Maritime and Commercial Court noted in a similar vein that it is left for the employer - and not the Court - to decide on whether the employee's linguistic ability is sufficient for the task. This was upheld by the Supreme Court which added i.a. that the there was no basis for the Court to disregard the assessment of the employer (Case UfR2010.1415H).

Likewise are language skills required in *Malta*, where in practice, for certain jobs, it is necessary to have a good command of both the Maltase and English language, while for most jobs, having a good command of either language would be sufficient. Similarly in *Slovakia*, a certain level of Slovak linguistic ability is probably required in many non-regulated positions in practice. With regard to other professions than those regulated, language requirements may be imposed on a case-by-case basis. In *Lithuania*, regarding which it is recalled that there is a State Language Act in place, language requirements appear to be imposed on a general basis. However, it is not excluded

that certain language requirements are in practice imposed by the private sector on a concrete job basis. And regarding *Greece*, the Greek experts cannot exclude that some employers take into account the linguistic knowledge in order to conclude a contract with a worker taking into account the nature of the job. In *Portugal* workers are not in general or *a priori* required to have a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions, promotion or salary in the private sector. It does not mean, however, that employers cannot require a job applicant to have a linguistic ability objectively necessary for the proper exercise of the job in question, which she/he can prove by any means. In *France*, the interviews for recruitment are, most of the time, in French, leaving it difficult to exclude the fact that employers have some language requirements; even if they do not admit it. Actually, a lot of employers require speaking also English. Likewise in *Spain*, where usually the private sector requires Spanish knowledge (but not precise the level) and English (intermediate or advanced).

Likewise in *United Kingdom*, an English language requirement, to be consistent with the Equality Act, must be a proportionate means of achieving a legitimate aim. The employer will need to show that its legitimate business needs are sufficient to outweigh the discriminatory impact on the workforce and cannot reasonably be achieved by less discriminatory methods. However, a distinct example of language requirements imposed in practice by employers is nonetheless found in *United Kingdom*, where a business announced an English language only policy at a distribution plant shortly after the first year of application of the Equality Act, which prohibits discrimination at the workplace. Commentators are in agreement that unless the requirement can be justified (which seems unlikely to the UK expert) it is contrary to the Equality Act.

IV.II.II. Job advertisements stipulating language requirements

In a number of the Member States, issues arise from language requirements stipulated in job advertisements. Accordingly, in *Germany* the Labour Appeal Court of Nuremberg held, that the requirement of ‘very good knowledge of the German language’ in an advertisement for software specialists is an indication of indirect discrimination of an applicant with migration background who was not invited for oral presentation of his application. An exception, however, applies according to the Court, if it is evident from the description of the job qualifications that knowledge of the German language is required to fulfil the requirements of the job offer.¹¹⁹

Similar issues are found in *Austria*, where in some cases language requirements are used as a means to discriminate candidates on ground of their ethnic origin. An analysis of job offers conducted by the Austrian Ombud for Equal Treatment revealed that some employers demand a high level of linguistic skills that is not necessary to fulfil the tasks of the job in question (i.a. ‘perfect German’, ‘mother tongue speaker’,...).¹²⁰ About 60 of 4376 analysed job offers were considered as discriminating because inappropriate language skills were demanded.

Likewise in *Italy* where in practice sometimes labour offers looking for ‘Italian mother tongue’ candidates can be found. Those offers could be challenged for being discriminatory, but no case law is available on the subject. A recent survey on the employment of foreigners by small and medium enterprises sheds some light on the level of linguistic ability required. According to the employers, the worker should have: Thorough knowledge (39, 3% of the employers interviewed), minimum

¹¹⁹ Judgment of 5 October 2011, 2 Sa 171/11.

¹²⁰ Analysis available at <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=46981> (13 June 2013).

knowledge (54, 7%), knowledge limited to technical vocabulary (4, 4%), no linguistic ability is required (1, 6%).¹²¹ And in *Luxembourg*, when reading the adds in the newspapers for jobs, it appears that frequently, though by far not each time, language requirements are requested. Most often the knowledge of Luxembourgish and French is required, and sometimes a third language like German or English is requested; in rare cases even 4 languages are required. It is a requirement imposed on a case-by-case basis. The effect is that Luxembourg nationals are often more able to speak cumulatively the 3 languages requested. At the same time, if for example the knowledge of French, German and English is being asked, the latter language may be more difficult to master for some Luxembourgers. Likewise in *Lithuania*, when reviewing the job advertisements, it is quite clear that Lithuanian language requirements are frequently imposed as a general requirement for the majority of jobs. Similarly in *Denmark* job adverts occasionally stipulate that a certain level of linguistic ability is required from employees as a prerequisite for (mostly private) employment. Lately, such requirements are seen with regard to languages other than Danish; namely Eastern European languages.

Similar issues with job advertisements appear in *Czech Republic*, where a high level of linguistic knowledge is sometimes required in particular situations and for certain jobs. To the knowledge of the Czech experts, when language requirements are in fact imposed, this happens on a case-by-case basis per job in question. The practice is so diverse that the experts were unable to evaluate it, especially because no case law where the language requirements were challenged and also no data sources could be found, which would provide relevant information on these aspects. However, an interesting intervention of the Czech Public Defender of Rights (Czech Ombudsperson) is mentioned by the experts: The Ombudsperson criticized job advertisements for being discriminatory (every 6th advertisement pursuant to his analysis) in June of 2011. The Ombudsperson pointed out at the discriminatory character of advertisements in their requirements of e.g. specific gender, marital status, age or knowledge of Czech language, where he explicitly mentioned the necessity to comply with relevant EU laws. Some of the firms approached the Ombudsperson with questions regarding their advertisements and the Ombudsperson then prepared in cooperation with an operator of 2 main advertisement portals (www.job.cz and www.prace.cz) a guide to fair recruitment of employees. Also State Labour Inspection Office regularly penalizes firms for publishing discriminatory advertisements (discriminatory for the reason of age).

And in *Finland*, the Occupational Safety and Health Authority screens job announcements. If the Authority comes across announcements containing requirements concerning particular citizenship or disproportionately high language skills, it may issue to the employer a reprimand. No statistical information on the number of such reprimands is available, however. Furthermore, the Occupational Safety and Health Authority does not disaggregate the information concerning the cases it has handled by citizenship. There is therefore no information available on incidents of discrimination against EU citizens on the basis of citizenship or language.¹²²

¹²¹ Fondazione Leone Moressa, *Osservatorio sull'occupazione straniera nelle piccole e medie imprese in Italia*, August 2012.

¹²² Etelä-Suomen aluehallintovirasto, työsuojelun vastuualue. Raportti. Työsuojelun asiakasaloitteinen valvonta vuonna 2012: http://www.tyosuojelu.fi/upload/Raportti_TYOSYRJINTA_asiakasaloitteet_2012_final.pdf.

IV.II.III. The impact of the accent of foreigners on employment

Problematic examples of rejections of employment of foreigners due to the accent of those foreigners were found in *Denmark* and *The Netherlands*. In *The Netherlands*, the Board of Human Rights (appeal body for the Equal Treatment legislation) ruled that the rejection of a Croatian woman by an intermediary agency for a possible job at a call center because she had an accent was discriminatory. According to the Board, the employer should be the one to decide whether her capability of the Dutch language is sufficient (Opinion No. 2013-66).

A very similar example is found in *Denmark*, where the Board of Equal Treatment has dealt with an employer's refusal to hire a Bulgarian citizen to handle i.a. telemarketing, due to the fact that the complainant spoke English with an Eastern European accent. While the Board found that an additional requirement on English linguistic ability was reasoned, the Board found that the decisive criterion for the employer was the complainant's Eastern European accent. The Board hence found it to be rendered sufficiently probable that the employer violated the Act on Prohibition against Discrimination on the Labour Market by refusing to hire the complainant due to the fact that the complainant spoke English with an Eastern European accent (Case No. 2500116-09).

Likewise in *Sweden*, any kind of language accent may not be used by employers as a reason for not giving some job seekers employment.

IV.II.IV. Dismissals of employees due to insufficient language skills

Examples of dismissals of employees due to insufficient language skills were found in *Germany*, where the Federal Labour Court (BAG) has held that the dismissal of a Spanish worker, working in an enterprise for automobile parts in charge of supervising the mechanical functioning of packing machines and similar work for low skilled workers due to insufficient knowledge of the German language is justified, since the worker was not able to understand written labour instructions, after he had unsuccessfully given the chance to pass a German language course on the expense of the employer. The Court stated that it is a legitimate requirement to be able to understand German language oral and written instructions.¹²³ Similar decisions were made by other Labour Courts in deciding on requirements of German language knowledge.¹²⁴

In *Denmark*, the Maritime and Commercial Court noted in a similar vein that it is left for the employer - and not the Court - to decide on whether the employee's linguistic ability is sufficient for the task. This was done in a case where the Supreme Court dealt with the dismissal of a Dutch employee due to his linguistic abilities in connection with the restructuring of a company and the employees' tasks to include telemarketing targeted at the Danish market. The Maritime and Commercial Court found that the employer substantiated that the language requirement imposed in this specific situation, where the task of the employee included establishing the initial contact with potential customers, was reasonable justified. The Supreme Court upheld the verdict of the Maritime and Commercial Court and added i.a. that the language requirement was reasoned justified and that there was no basis for the Court to disregard the assessment of the employer (Case UfR2010.1415H).

¹²³ Bundesarbeitsgericht (Federal Labour Court) BAG, judgment of 28 January 2010, 2 AZR 764/08.

¹²⁴ See Decisions of the Berlin Labour Court, as reported by Herberth /Oberrath, Neue Justiz 2011, 8-15.

Likewise in *Sweden*, there are some Labour Court cases concerning employment protection in connection with dismissals for redundancies where language skills have been important for the right to continued employment. For obtaining a right to continued employment when the priority list for dismissals should be settled, the worker must have sufficient qualifications for the work. In accordance with legal practice from the Labour Court, the starting point is that the worker must have the general qualifications that are needed in order to carry out the work (see for instance Cases AD 1992 No. 14 and AD 1996 No. 54). When considering this, the employee should also have a right to a certain period to learn the work to be done (see for instance Case AD 1983 No. 51).

IV.III. Whether the language requirements are imposed on all workers, regardless of nationality, or imposed on workers only of certain nationalities

IV.III.i. Comments about the structure of this section

Within this section, a clear distinction between the private and public sector, except for the medical sector, is upheld. Due to the distinctive characteristics of the medical sector, a special paragraph is dedicated to this sector.

IV.III.ii. Summary of findings

Some experts address the issue of whether the language requirements are imposed on all workers, regardless of nationality, or whether those requirements are imposed only on workers of certain nationalities. As adequately articulated by the Swedish expert, “[...] if the language requirements are imposed on workers [only] of certain nationalities, there obviously is a risk that the employer is breaking the rules of non-discrimination [...].” Moreover, as described above para. I.iii, according to CJEU case law, apart from pursuing a legitimate aim, language requirements must be applied in a non-discriminatory and proportionate manner in order for such requirements to justify restrictions of rights conferred on EU citizens by EU free movement law.¹²⁵ As observed by Iris Goldner Lang “the statement that the language requirement must be provided in a non-discriminatory manner is questionable, since the language requirement itself can be understood as constituting indirect discrimination.”¹²⁶

It should be noted that it appears to be the general situation that more strict requirements are imposed in the Member States on third country nationals than on EU citizens, which falls outside the scope of this report.

With regard to the *private sector*, except for the medical sector, in most Member States, language requirements are imposed on all workers, regardless of nationality (*Austria, Czech Republic, Denmark, Estonia, Lithuania, Slovakia and Sweden*). By contrast, in *Cyprus*, the ‘priority for employing Cypriots’ initiative and the ‘gentlemen’s agreement’ about a quota on ‘foreign workers’ at 70-30 ratio, in part using Greek language as a policy instrument, seems to be a *prima facie* case of nationality discrimination, and human rights and migrant support organizations speak of widely practiced policies of discrimination and exclusion of migrants, including EU nationals.

¹²⁵ See Iris Goldner Lang in ‘Languages as a Barrier to Free Movement of Persons in the European Union’, in *Curriculum, Multilingualism and the Law* (ed. L. Socanac, C. Goddard, L. Kremer), Nakladni zavod Globus, 2009, pp. 175-191, part 3.

¹²⁶ *Ibid.*

And in *Croatia*, language requirements are imposed only on foreigners since they are the ones who are considered not to have sufficient language skills, unless they can prove otherwise. However, EEA nationals have preferential treatment in many sectors as compared to third country nationals.

In a few other Member States, certain language requirements relating to certain posts or institutions are imposed only on EU nationals (and possibly also on third country nationals). This applies to *Italy*, where one piece of legislation is intended to apply only to EU nationals and regulates access to the post of captain and chief mate on board ships flying Italian flag; *Romania*, in the case of credit institutions, where if no one of directors or the members of the directorate has Romanian citizenship, at least one of them must know the Romanian language; and *Latvia*, where foreign experts and members of the foreign administration bodies of enterprises, who work in Latvia, must know and use official language at level necessary for the performance of their functions or must provide themselves with translation into official language. Moreover, administrative practice of the State Language inspectors reveals possible incompliance with the general principles of law, as the State Language inspectors i.a. apply law in practice stricter towards Latvian Russian-speaking population than towards EU workers, which runs contrary to non-discrimination principles under human rights law.

With regard to the *public sector*, except for the medical sector, in most Member States, language requirements are imposed on all workers, regardless of nationality (*Austria, Czech Republic, Italy, Lithuania, Slovakia* and *Sweden*). By contrast, in *Greece*, language requirements appear to be imposed only on non-nationals and non-Cypriot nationals; and in *Estonia*, the language requirements will be the same only for all foreigners, without any distinction does somebody come from the EU Member States or from a third country.

Notably in *Bulgaria*, the nationality requirement is the main obstacle to access to work in the public sector for other EU nationals. That is why there is no administrative and judicial practice on the issue of language requirements in *Bulgaria*.

With regard to language requirements for employment in the *medical sector*, being private or public, language requirements appear to be imposed only on EU and/or EEA and/or Swiss nationals (and/or on third country nationals) in some Member States (*Bulgaria, Croatia, Denmark, Hungary, Lithuania, Poland, Slovakia* and *The Netherlands*). In *United Kingdom*, the British Medical Association has recently commented that it plans to introduce an English language competency test based on a requirement to understand and communicate in English throughout the medical profession. Traditionally, the General Medical Council has not applied an English language test on EEA nationals.

IV.III.I. Language requirements in access to employment and working conditions, promotion or salary in the private sector in general, except for the medical sector

In *Austria*, the language requirements seem to be imposed on all workers, regardless of the candidate's nationality. In general the language skills are also demanded if the candidate is an Austrian national. However, in some cases language requirements are used as a means to discriminate candidates on ground of their ethnic origins.

Likewise in *Sweden*, language requirements are imposed on all workers, regardless of nationality. General information is provided from the Discrimination Ombudsman that demands that language skills could mean discrimination if such requirement goes too far and if they cannot be legitimised. And in *Slovakia*, as regards legislation, the language requirements are imposed on all workers,

regardless of nationality. In *Denmark*, the language requirement imposed i.a. on personnel on board passenger ships is imposed on all workers, regardless of nationality.

Also in *Czech Republic*, the language requirements are imposed on all workers, regardless of nationality to the knowledge of the Czech experts. However, the Slovak language is being considered as equal when examining the linguistic knowledge for regulated professions.

Similarly in *Estonia* and *Lithuania*, the language requirements in the private sector are imposed on all workers, regardless of their nationality. However, regarding *Lithuania* it is not excluded that certain nationalities might be more targeted with language requirements in practice, but it is very difficult to establish such facts and prove them, since they are not 'visible' in publicly available information as long as there are no concrete complaints.

By contrast, in *Cyprus*, the 'priority for employing Cypriots' initiative launched during 2012-2013, and the 'gentlemen's agreement' about imposing a quota on 'foreign workers' at 70-30 ratio, in part using Greek language as a policy instrument, seems to be a *prima facie* case of nationality discrimination, something officials deny, however. Human rights and migrant support organizations speak of widely practiced policies of discrimination and exclusion of migrants, including EU nationals.¹²⁷

And in *Croatia* language requirements are imposed only on foreigners since they are the ones who are considered not to have sufficient language skills, unless they can prove otherwise. However, EEA nationals have preferential treatment in many sectors as compared to third country nationals.

In *Italy*, one piece of legislation is intended to apply only to EU nationals and regulates access to the post of captain and chief mate on board ships flying Italian flag. Access is conditional on the knowledge of Italian language and legislation. Captains and chief mates, who are EU nationals and qualified in another Member State, can have access to posts on board ships flying Italian flag after passing an examination on Italian language and legislation.

Likewise in *Romania*, in the case of credit institutions, where if no one of directors or the members of the directorate has Romanian citizenship, at least one of them must know the Romanian language.¹²⁸

And in *Latvia* foreign experts and members of the foreign administration bodies of enterprises, who work in Latvia, must know and use official language at level necessary for the performance of their functions or must provide themselves with translation into official language. Moreover, administrative practice of the State Language inspectors reveals possible non-compliance with the general principles of law, as (a) The State Language inspectors in practice require employees of private sector whose level of knowledge is not defined by Regulation No.733 to know Latvian language in the level which is one level lower than required for employees of the public sector, which runs contrary to the administrative law principle - that administrative fines may be imposed only on the basis of law; and (b) The State Language inspectors apply law in practice stricter towards Latvian Russian-speaking population than towards EU workers, which runs contrary to non-discrimination principles under human rights law.

¹²⁷ The executive director of KISA, Doros Polycarou has repeated this on many occasions; in fact he claims that there is a consistent policy directions by the current Government, Doros Polycapou, 'Overview of the migrants' rights condition in Cyprus,' at the conference organised 12.7.2013, prior to the presentation of the documentary 'An interview with the 'invisible' other.'

¹²⁸ Art. 22 (3) of Romanian Nation Bank Regulation No. 11/2007.

In *Poland*, legislation covers the private as well as the public sector, and there are language requirements which are imposed regardless of nationality as well as language requirements in the medical sector imposed only on EU citizens (and on third country nationals). In *Poland*, the possibility of the Polish Financial Supervision Authority to depart from the obligation of two members of the management boards of banks and national insurance institutions to be proficient in Polish has been tested against EU free movement law. Accordingly, although none of the relevant Acts makes a difference as regards nationality of potential candidates (EU or non-EU), and the only decisive factor shall be the objective assessment of the risk exposure and not the origin of the potential candidate, the Administrative Court in Warsaw stated that the requirement to prove knowledge of Polish language has been treated as an exception from the general rule of free movement of workers as stated in the TFEU. Therefore according to the Court, the possibility to release from such an obligation shall be analysed in the light of EU provisions of free movement of persons. The Court ruled that in the light of proportionality test, only reasons of public security, public order or public health may explain lack of departure from such an obligation for EU citizens.¹²⁹ However, the Supreme Administrative Court in Warsaw has taken a slightly different approach in comparison with the Administrative Court in Warsaw. The issue of the requirement to prove Polish language by EU citizens was analysed by the Supreme Administrative Court in 2006 on the basis of the Act of insurance activity. One of the insurance agencies tried to declare the obligation to prove knowledge of Polish language by an Austrian citizen as incompatible with EU free movement rights. However, the Polish court ruled (in the opinion of the Polish expert in a correct way) that posing such a requirement is fully compatible with EU law in the light of Article 3 of Regulation 1612/68 according to which it is acceptable and compatible with EU law to apply requirements as regards linguistic knowledge required by reason of the nature of the post to be filled.¹³⁰

IV.III.II. Language requirements in access to employment and working conditions, promotion or salary in the public sector, except for the medical sector

In *Austria*, language requirements are imposed on all workers, regardless of their nationality. Also Austrian nationals have to prove good commands in word and writing. Likewise in *Sweden*, language requirements are imposed on all workers, regardless of nationality. General information is provided from the Discrimination Ombudsman that demands that language skills could mean discrimination if such requirement goes too far and if they cannot be legitimised.

Also in *Czech Republic*, the language requirements are imposed regardless of nationality to the knowledge of the Czech experts. The experts note that in general the employer can have different requirements according to the announced job vacancy, promotion, etc. but the requirements must not be discriminatory. The person who meets the criteria should be treated regardless of her/his nationality, age, etc. However, the Slovak language is being considered as equal when examining the linguistic knowledge for regulated professions due to the common history of Czechs and Slovaks and also the extensive similarity of the languages. Also in *Slovakia*, the language requirements are imposed regardless of nationality. And in *Lithuania*, language requirements are - at least at the legislative level - not linked to a certain nationality.

Also in *Italy*, the language requirement is general, applying to all posts and functions not reserved to Italian nationals. And in *Poland*, legislation covers the private as well as the public sector, and there are language requirements in the medical sector which are imposed only on EU citizens (and

¹²⁹ File No. VI SA/Wa 1760/05 of 7 December 2005r.

¹³⁰ File No. II GSK 62/06.

also third country nationals). Also, within the public sector, there are cases, unlike the private sector, where certain language requirements are imposed on all workers, regardless of nationality.

In *Estonia*, the language requirements will be the same for all foreigners without any distinction does somebody come from the EU Member States or from a third country.

And in *Greece*, the language requirements appear not to be imposed on Greek nationals and citizens of Cyprus, as Greek language is the official language of Cyprus.

In *Bulgaria*, regarding which it is recalled that the scope of posts reserved for Bulgarian nationals remains questionable as to its conformity with Article 45 (4) TFEU, the nationality requirement in public employment precludes EU migrant workers from public employment. The nationality requirement is the main obstacle to access to work in the public sector for other EU nationals. That is why there is no administrative and judicial practice on the issue of language requirements.

IV.III.III. Language requirements in access to employment and working conditions, promotion or salary in the medical sector

In some of the Member States, language requirements within the medical sector appear to be imposed only on EU and/or EEA and/or Swiss nationals (and/or third country nationals). This is the case in *Bulgaria*, where EU, EEA or Swiss citizens whose medical professional qualification has been recognized in Bulgaria, should be provided with conditions for acquiring the necessary language knowledge and professional terminology in Bulgarian by the Ministry of Health and the high schools ‘when this is in their interest and in the interest of their patients.’ The same applies to *Poland*, where the Regulation on midwives and nurses applies only to EU/EEA and Swiss Confederation citizens. Furthermore, EU citizens must confirm language knowledge in the case of doctors, dentists, pharmacists, barber-surgeons, and veterinary doctors. And in *Hungary*, EEA nationals and their family members who wish to exercise a regulated profession are subject to language requirements under general rules; which is the case also in *The Netherlands*, where migrant professionals whose vocational qualifications are recognized or who is admitted as a service provider, must possess the language skills that are required to practise the regulated profession concerned in The Netherlands. Likewise in *Slovakia*, the Act on Providers of Health Care provides that a foreigner is required to know Slovak language and special terminology in the Slovak language to the extent necessary for the medical profession. This language requirement is hence imposed only on foreigners (including EU citizens and third country nationals alike). Similarly in *Denmark*, the requirement on language proficiency for health personnel is imposed on EU/EEA citizens (and TCNs) with educations completed in an EU/EEA country, or in countries outside the EU/EEA when the certificate is recognized in another EU/EEA country and the person has 3 years’ of professional experience in the EU/EEA country concerned. And in *Croatia*, provisions of the Health Care Act generally prescribe that in the health care field, the condition of knowing Croatian language is a condition applicable to health care workers who have a private practice. The same applies to the employment of doctors in line with the Act on Medical Practice, with the exception of doctors who perform temporary diagnostic and therapeutic procedures, as the performance of such activities does not necessitate verbal communication with the patient or if the communication is possible through an intermediary. However, both of these sources of law have more lenient approach to EU nationals, since for EU nationals not a general language requirement provision applies, but a milder one, prescribing that they have to have ‘knowledge of Croatian language at least at the level that is required for the smooth and the necessary communication with the patient.’ Such milder provisions for EU nationals can be also found in other laws regulating

regulated professions, for example in the Act on Pharmacy the Act on Medical and Biochemical Activities and the Act on Nursing.

In *Lithuania*, EU, EEA and Swiss nationals may provide temporary services even if they do not have a license. Thus language requirement is not, at least explicitly, provided. However, according to the Lithuanian expert, it would be worthwhile to include a special exemption concerning language proficiency requirement for doctors who are EU, EEA and Swiss nationals, due to the fact that when doctors, who are EU nationals, apply for a license, they may be requested to provide documents, attesting Lithuanian language proficiency by the State Service for Accreditation of Health Care Supervision at the Ministry of Health Care (the institution responsible for issuing the licenses).

And in *United Kingdom*, from 21 March 2013 a new policy has been put into place by the National Health Service to ensure that any individual involved in the delivery of NHS services has the required level of linguistic skills to enable them to undertake their role effectively and to assure the delivery of safe care to patients. Also, there has been recent controversy regarding the requirement under EU law to allow *doctors* and *nurses* from the EU to practice in the UK without a requirement to speak English. The British Medical Association has recently commented that it plans to introduce an English language competency test based on a requirement to understand and communicate in English throughout the medical profession. Traditionally, the General Medical Council has not applied an English language test on EEA nationals.

IV.IV. Whether the language requirements are having the effect of excluding EU migrant workers from accessing certain employment or from achieving or earning certain working conditions, promotion or salary in the private or public sector

IV.IV.i. Comments about the structure of this section

Within this section, a clear distinction between the private and public sector is upheld.

IV.IV.ii. Summary of findings

Some experts address the issue of whether language requirements are having the effect of excluding EU migrant workers from accessing certain employment or from achieving or earning certain working conditions, promotion and salary in the private as well as the public sector.

With regard to the *private sector*, in some Member States, language requirements might be having the effect of excluding EU migrant workers from accessing certain employment or placing them in a less favorable position when accessing employment, despite of the fact that language requirements are imposed on all workers, regardless of nationality. This is the case in *Austria*, *Cyprus*, *Lithuania*, *Luxembourg* (with regard to self-employment) and *Sweden*. And in *Latvia*, only provided a profession within the private sector is not regulated by Regulation No. 733 Appendix II and interests of consumers hence are protected, language requirements do not form an obstacle with regard to the private sector.

In *Croatia*, regarding which it is recalled that language requirements are imposed only on foreigners, EU migrant workers could be excluded from accessing employment if not being able to prove the required Croatian language knowledge level.

Notably in *Cyprus*, the ‘priority for employing Cypriots’ initiative launched during 2012-2013, and the ‘gentlemen’s agreement’ about imposing a quota on ‘foreign workers’ at 70-30 ratio, in part

using Greek language as a policy instrument, seems to be a *prima facie* case of nationality discrimination.

In *Lithuania*, according to the representative of the Equal Opportunities Ombudsmen Service, the language issue is very relevant for foreigners (including EU nationals) as concerns the access to the labour market. According to information from the Lithuanian Youth Council, young people from other EU Member States residing in *Lithuania* indicate local language as a barrier for access to employment.

By contrast, in other Member States, the information available to the experts suggests that language requirements are not having the effect of excluding EU migrant workers from accessing certain employment in the private sector. This is the case in *Czech Republic, Estonia, Poland* and *Slovakia*. And also in *Finland*, where however, studies concerning integration of immigrants from third countries notably indicate that the lack of knowledge of the national languages is one of the most significant impediments for the access of third country nationals to the Finnish labour market.

With regard to the *public sector*, in some Member States, language requirements might be having the effect of excluding EU migrant workers from accessing certain employment etc., despite of the fact that language requirements might be imposed on all workers, regardless of nationality. This is the case in the three Member States where State Language Acts are in place: *Estonia*, where notably the access to the posts in the public sector could be more restrictive than is allowed by EU law; *Latvia*, with regard to the higher positions where the higher level of knowledge of Latvian language is required; and *Lithuania*.

Notably in *Lithuania*, considering that language requirements (be it formal or informal) are the main barrier for EU workers to access employment in Lithuania, it can be concluded that it has a clearly negative effect on free movement. Concerning the working conditions, there has been at least one case recorded in the beginning of 2012 when a state owned company applied reduction of salary for 11 employees who did not use the Lithuanian language.

Furthermore, within a few of those Member States, EU workers are precluded from obtaining certain assistance from public institutions, such as employment agencies, as some services are provided mainly or solely in the respective national language. This applies to *Latvia* with regard to vocational (professional) training for jobseekers, which may hamper the access to employment, and *Lithuania* where foreigners as a result are not sure where they should apply for processing of documents or make arrangements concerning their matters.

In addition, nationality requirements may preclude EU migrant workers from accessing employment in the public sector. This is the case in *Bulgaria*, where the nationality requirement is the main obstacle to access to work in the public sector for other EU nationals.

By contrast, in other Member States, language requirements are not having the effect of excluding EU migrant workers from accessing employment in the public sector. This is the case in *Italy* and *Slovakia*, where, however, such effect cannot be excluded in the latter country.

IV.IV.I. Language requirements in access to employment and working conditions, promotion or salary in the private sector

In *Austria*, the language requirements might have the effect of excluding EU migrant workers from access to certain jobs which require good command of the German language. However, these linguistic skills are demanded irrespective of the candidates' nationality. Likewise in *Sweden*, where even if language requirements are reasonable and in accordance with law, they could mean that migrant workers from other Member States in practice could be in a less favorable situation.

In *Cyprus*, it seems that the imposition of the requirement of Greek is motivated by factors others than what is genuinely essential for the industry: Rather they seem to pander anti-migrant workers sentiments and depicted as a measure to combat rising unemployment of Greek-Cypriots. A major issue, however, is the fact that the policy for 'priority for Cypriots policy', in part using Greek language as a policy instrument, not only fails to properly take account of the free movement acquis, but also fails to take into account that migrant workers, EU and third country citizens have been in Cyprus since 1991. Consequently, the 'priority for employing Cypriots' initiative launched during 2012-2013, and the 'gentlemen's agreement' about imposing a quota on 'foreign workers' at 70-30 ratio, in part using Greek language as a policy instrument, seems to be a *prima facie* case of nationality discrimination, something officials deny.

A rather distinct example of language requirements constituting barriers for EU workers both in accessing employment as well as in achieving working conditions in general is found also in *Lithuania*, regarding which it is recalled that a State Language Law is in place. According to the representative of the Equal Opportunities Ombudsmen Service, the language issue is very relevant for foreigners (including EU nationals) as concerns the access to the labour market. Concerning the access generally to employment, according to information from the Lithuanian Youth Council, young people from other EU Member States residing in *Lithuania* indicate local language as a barrier for access to employment. Young people claim that the lack of local language skills significantly decrease the possibilities of employment. There are only very few jobs available where Lithuanian language is not required (usually these jobs are in much specialised areas - and experience is required) and all of these are in major cities. Concerning the working conditions, there has been at least one case recorded in the beginning of 2012 when a state owned company applied reduction of salary for 11 employees who did not use the Lithuanian language. The issue was raised by the Ministry of Culture in the context of national minorities. The Ministry did not question the order of the administration of the company (Rules on the Use of State Language approved by the Director of the company), but rather two concrete cases whereby the salaries were reduced for welder and wheel-stopper. There is no publicly available information on situation in the private sector companies.

Likewise in *Latvia*, regarding which it is recalled that there is a State Language Law in place, language requirements do not form an obstacle in access to employment, working conditions, promotion and salary in the private sector, in so far a profession is not regulated by Regulation No. 733 Appendix II and interests of consumers hence are protected.

In *Luxembourg*, the knowledge of French might be a requirement in order to work as a *self-employed* as e.g. *real estate agent, asset manager, architect* and *interior designer*, as the Luxembourg Law of 22 September 2011 on access to independent professions provides that in order to carry on one of the occupations mentioned by it, the worker concerned must obtain a permission

to establish, which would be delivered only under certain conditions. For example, if the worker does not hold a diploma recognized by the Grand-Duchy of Luxembourg, she/he will have to undergo additional training and to pass a final test. The problem is that according to the Grand-Duchy Regulation of 3 February 2012, the trainings and the tests are all in French in principle. This may exclude EU migrant workers from accessing certain self-employment in the private sector.

And in *Croatia*, EU migrant workers could be excluded from accessing employment if not being able to prove the required Croatian language knowledge level. However, if accepted to the job, they should be equally treated as regarding promotion or salary. Even more so, EU migrant workers could be in a better position if salary would depend on the number of languages spoken and used in work.

By contrast, in *Czech Republic*, language requirements are not having the effect of excluding EU migrant workers to the knowledge of the Czech experts. Moreover it has to be noted that such situation would most probably be considered as a violation of relevant anti-discrimination legislation of the *Czech Republic* (Antidiscrimination Act, relevant provisions of the Employment Act, etc.). The experts note that in general the employer can have different requirements according to the announced job vacancy, promotion, etc. but the requirements must not be discriminatory. The person who meets the criteria should be treated regardless of her/his nationality, age, etc. Violations of antidiscrimination legislation can be brought to a court. Such cases have already appeared; however, none of them concerned language requirements.

Likewise in *Estonia*, regarding which it is recalled that there is a State Language Act in place, there is no information suggesting that the language requirements would be viewed as an obstacle for certain working conditions or promotion in the private sector. And in *Finland*, no information was found on the impact of the language requirements on EU workers' access to the labour market and on their position there. However, studies concerning integration of immigrants from third countries indicate that the lack of knowledge of the national languages is one of the most significant impediments for their access to the Finnish labour market. The Occupational Safety and Health Authority screens job announcements. If the Authority comes across announcements containing requirements concerning particular citizenship or disproportionately high language skills, it may issue to the employer a reprimand. No statistical information on the number of such reprimands is available. Furthermore, the Occupational Safety and Health Authority does not disaggregate the information concerning the cases it has handled by citizenship. There is therefore no information available on incidents of discrimination against EU citizens on the basis of citizenship or language.¹³¹ Regarding *Poland*, no cases of any problems concerning the access to specific posts due to insufficient knowledge of Polish language have been reported; and in *Slovakia*, there appear to be no such effects of language requirements.

¹³¹ Etelä-Suomen aluehallintovirasto, työsuojelun vastuualue. Raportti. Työsuojelun asiakasaloitteinen valvonta vuonna 2012: http://www.tyosuojelu.fi/upload/Raportti_TYOSYRJINTA_asiakasaloitteet_2012_final.pdf.

IV.IV.II. Language requirements in access to employment and working conditions, promotion or salary in the public sector

In *Bulgaria*, regarding which it is recalled that the scope of posts reserved for Bulgarian nationals remains questionable as to its conformity with Article 45 (4) TFEU, the nationality requirement in public employment precludes EU migrant workers from public employment. The nationality requirement is the main obstacle to access to work in the public sector for other EU nationals. That is why there is no administrative and judicial practice on the issue of language requirements.

In *Estonia*, regarding which it is recalled that there is a State Language Act in place, the language requirements are more strictly followed in the public sector than is the case in the private sector. Hence, the language requirements in the public sector could have discriminatory impact, and the access to the posts in the public sector could be more restrictive than is allowed by EU law, according to the Estonian expert.

Likewise in *Latvia*, regarding which it is recalled that there is a State Language Law in place; language requirements may form an obstacle in access to employment, working conditions, promotion and salary in the public sector as far the higher positions where the higher level of knowledge of Latvian language is required. Furthermore, access to employment might be hampered from the perspective of the access to employment services, as the State Employment Agency provides vocational (professional) training for jobseekers only in the Latvian language.

And in *Lithuania*, where, considering that language requirements (be it formal or informal) are the main barrier for EU workers to access employment in Lithuania, it can be concluded that it has a clearly negative effect on free movement. However, the effect on certain working conditions, promotion or salary is not clear, because the legislation does not relate the knowledge of language with these issues.

Concerning the working conditions, there has been at least one case recorded in the beginning of 2012 when a state owned company applied reduction of salary for 11 employees who did not use the Lithuanian language. The issue was raised by the Ministry of Culture in the context of national minorities. The Ministry did not question the order of the administration of the company (Rules on the Use of State Language approved by the Director of the company), but rather two concrete cases whereby the salaries were reduced for welder and wheel-stopper.

Concerning assistance from public institutions in *Lithuania*, language barriers also prevent foreigners from obtaining any kind of assistance from many institutions, since quite a large number of employees of these institutions do not speak foreign languages. As a result, foreigners are not sure where they should apply for processing of documents or make arrangements concerning their matters in Lithuania.

Conversely in *Italy*, language requirements do not hinder access to public employment. Regarding *Slovakia*, no information suggests such effects of language requirements, but it cannot, however, be excluded by the Slovakian expert.

V. Access to social benefits: Specific requirements to have a certain level of linguistic ability or to be a mother tongue speaker imposed on EU workers when accessing social benefits at the national or sub national/local level

V.i. Comments about the structure of this section

Within this section, a distinction between those Member States within which language proficiency is not a prerequisite for EU workers in accessing social benefits and those Member States within which language skills are relevant when accessing social benefits is upheld.

V.ii. Summary of findings

In all Member States but one (*The Netherlands*), language proficiency is in general not a prerequisite for EU workers in accessing social benefits (*Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom*). Consequently, with the exception of a few of those Member States, where language requirements are in fact relevant with regard to specific benefits (*Belgium, Denmark and Germany*), language knowledge is legally irrelevant when EU workers are accessing social benefits.

However, in some of those Member States, EU migrant workers may face difficulties in communicating with public institutions about social benefits, due to the fact that the Member States' native language is applied in the communication with the public institution as a rule. Such difficulties may in practice form an obstacle for enjoyment of social rights in some Member States, as adequately observed by the expert from *Latvia* (regarding *Latvia*). This is mentioned specifically by the experts regarding *Italy, Latvia and Lithuania*.

In contrast to this, and as an example of good practice, *United Kingdom* issues information brochures on applying for social benefits in all the main languages spoken in the UK. Similarly, public employment offices in *Cyprus* provide services in the Greek, English, Romanian and Bulgarian languages. On some occasions, services are provided in other EU languages also.

In four Member States, measures to link language requirements to entitlement to certain social assistance benefits exist. Consequently, with regard to those Member States, language knowledge is legally relevant when EU workers are accessing certain social benefits (*Belgium, Denmark, Germany and The Netherlands*). In some of those Member States, the language measures relate to unemployment benefits/social assistance for unemployed and appear to be substantiated by *improving the employment opportunities* of the applicant concerned (*Denmark, Germany and possibly The Netherlands*). In some of the Member States, language requirements relate to social housing (under the Flemish Housing Code) or social assistance (*The Netherlands*), and appear to be substantiated by *an element of integration* (possibly *Belgium and The Netherlands*) and/or *linguistic and cultural policy* (possibly *Belgium*). Within one of those Member States, the language requirement appears to assume character of a requirement on language skills *per se* for receiving social benefits (*The Netherlands*).

V.I. Member States within which language proficiency is not a prerequisite for EU workers in accessing social benefits

In the vast majority of the Member States, national law or administrative practice does not at all require EU workers to have a certain level of linguistic ability or to be a mother tongue speaker when accessing social benefits. This applies to *Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Slovenia* and *United Kingdom*.¹³² Also, in *Denmark* and *Germany*, language skills are generally not a condition to access social benefits, and language requirements are hence not imposed in *Denmark* and *Germany* as a prerequisite for accessing those social benefits *not* relating to unemployment.

However, within some of those Member States not making language knowledge a prerequisite for accessing social benefits, EU migrant workers may face difficulties in communicating with public administration about social benefits, unless they are assisted by an association or the like, due to the fact that the Member States' native language is applied in the public institutions' communication as a rule. This is mentioned by the experts specifically with regard to *Italy*, where application forms shall be filled in the native language; and *Latvia*, where lack of knowledge of Latvian language may in practice form an obstacle for enjoyment of social rights, because according to the administrative practice applied by the State Language inspectors on the State Language Law, administrative institutions are precluded from posting in public places information materials in any other language than Latvian. Such information may, however, be provided if an administrative institution considers it necessary and when a person without knowledge of Latvia requires respective information in a foreign language. Concerning assistance from public institutions also in *Lithuania*, language barriers prevent foreigners from obtaining any kind of assistance from many institutions, since quite a large number of employees of these institutions do not speak foreign languages. As a result, foreigners are not sure where they should apply for processing of documents or make arrangements concerning their matters in Lithuania.

By contrast, in *United Kingdom* information brochures on applying for social benefits are issued in all the main languages spoken in the UK. As new language groups become important (such as Polish or Lithuanian) new brochures in those languages are published. Likewise in *Cyprus*, public employment offices provide services in the Greek, English, Romanian¹³³ and Bulgarian languages. Knowledge of English language or other main EU language is an essential qualification for access to the post of Labour Officer. In some occasions services are provided in other EU languages also. Approximately 25% of the customers of the Public Employment Services are EU nationals from other Member States in *Cyprus*.

Also, regarding *Estonia*, the expert specifically refers to the fact that it is the task of the public institutions to ensure that a person will understand the content of a decision regarding social benefits, regardless of the national Language Act.

¹³² Within those Member States, other requirements may, however, be imposed on applicants as a prerequisite for accessing social benefits; for instance residence requirements. This is the case with regard to e.g. the French RSA (the former RMI).

¹³³ In 2009 the amount of €1700 was spent to buy the translation services in Romanian.

V.II. Member States within which language proficiency is relevant for EU workers accessing certain social benefits

In four Member States, knowledge of that specific Member State's language is relevant for EU workers accessing certain social benefits. In some of those Member States, the language measures appear to be substantiated by considerations on *improving the employment opportunities* of the applicant concerned. And in some Member States, the language requirements appear to be substantiated by *an element of integration* or *linguistic and cultural policy*.

An example of language requirements appearing to be substantiated by *an element of integration* and/or *linguistic and cultural identity* is found in *Belgium*, where Chapter VII of the Flemish Housing Code makes access to social housing in the Flemish region conditional upon the tenant demonstrating his willingness to learn the Dutch language. Since the level of language skills seems to be limited to a mere willingness to learn Dutch by i.a. following a specific integration course - as opposed to i.a. finishing a language course with success, the requirement does not appear to constitute a requirement on language skills *per se* for receiving social benefits; see more below section VII.I on the requirements for proof. This condition is applicable without distinction as regards nationality and concerns EU citizens and Belgian citizens alike. The Decree introducing this requirement into the Housing Code was challenged before the Belgian constitutional court without success; see more below section IX.I on justifications.

An example of language measures substantiated by *improving the employment opportunities* of the applicant concerned is found in *Denmark*, where refusals to participate in Danish courses having the purpose of improving that person's employment possibilities may have an impact on the payment of the benefit concerned with regard to unemployment benefits and social assistance requiring fulfillment of an obligation to be available to the labour market. This is caused by the fact that in order to be eligible for unemployment benefits or social assistance on the sole ground of being unemployed, the unemployed must be available to the labour market and/or actively seek to use her/his working possibilities. Hence, the unemployed must i.a. register with a municipal job centre; be actively job seeking; register her/his CV with the CV database at www.jobnet.dk, continuously confirm being job seeking as a minimum once every 7th day; participate in interviews, offers, courses and other activities from relevant actors; take on jobs offered and provide the job centre with the information required. Thus, if a member of an unemployment fund refuses to take on jobs which the unemployed is referred to; rejects an activity, offer or job interview; or ceases her/his work, offer or activity - on more specified terms, the unemployed is no longer considered available to the labour market. Consequently, the unemployed is no longer eligible for unemployment benefits. Likewise, if a person receiving social assistance rejects offers etc., ceases work etc. on more specified terms, social assistance may be reduced or ceased on more specified terms. Notably, the website www.jobnet.dk, with which the unemployed is i.a. required to register, is available in Danish, only.

Also, the Board of Equal Treatment has dealt with a language requirement imposed on an unemployed German citizen by a job centre as a prerequisite for working in a kitchen as part of an activation course. Initially, the Board found that the language requirement constituted indirect discrimination. However, as the purpose of the complainant's participation in the activation project was to *improve her language skills*, and as the complainant was informed by the activation project that there were language difficulties in connection with her working in the kitchen, the decision to change the activation initiatives made by the job centre was found to be reasoned (Case No. 240/2012 of 14 March 2012).

A situation very similar to that of *Denmark* is found in *Germany*, where if the Federal Office of Employment concludes that access to the labour market is hampered by a lack of language skills, it may suggest and, in certain circumstances, require the job seeker to improve her/his chance to find a job. The measures which the Labour Office might suggest in these circumstances are not limited to the improvement of language skills. It may, similarly, ask the job seeker to participate in training courses for computers, undergo advice on how to formulate job applications, etc. Since these are positive support measures to improve language skills, they do not, however, make access to social benefits conditional or limit access for those who do not have sufficient language skills.

In addition, one special instrument which the Federal Labour Office might activate in such circumstances is the ‘labour market participation contracts,’ which are concluded on the basis of Section 37 of the Social Code III (SGB III). Such labour market participation contract does, however, not concern language skills, only, and is a regular instrument, also for German nationals. A labour market participation contract would establish reciprocal rights and obligations of both the Labour Office and the job seeker. The Labour Office would, for instance, provide language classes or other activation measures for free, while the job seeker would agree to participate. In case the job seeker does not comply with the contract, the Federal Labour Office may sanction this non-compliance by limiting the access to social benefits of the job seeker.

In *Germany* as well as in *Denmark*, exceptions apply to certain TCNs who explicitly must attend language courses in both Member States pursuant to respectively the Danish Integration Act and the German Residence Act. Furthermore, EU citizens may attend i.a. language and integration courses on a voluntary basis in both Member States.

In *Denmark* and *Germany* alike, the requirements concerned do not appear to assume character of requirements on language skills *per se* for receiving social benefits, but rather to constitute requirements to attend language courses for those having insufficient language skills for the labour market; see more below section VII.II on the requirements for proof and section IX.II on the justifications. Not finishing respectively a Danish or German language course with success appears to have no impact on benefits (as long as the unemployed does not refuse to participate in courses).

Another example of language requirements possibly substantiated by *improving the employment opportunities of the applicant* and/or as *an element of integration* is found in *The Netherlands*, where since 2010 a bill introducing language requirements for the reception of Social Assistance benefits is pending in the Second Chamber. According to the government, this Bill will only propose a requirement - also applicable to EU nationals - to prove sufficient knowledge of the Dutch language in cases where language knowledge will improve the job opportunities of the applicant. The government assured that the new requirement will be applied in a proportional and non-discriminatory manner. However, in April 2013 the Dutch government announced the policy plan that anyone who does not speak Dutch and applies for social assistance must take a course in Dutch and finish it with success. If the applicant does not meet this requirement, the social benefit will be reduced or stopped; see more below section VII.III on the requirements for proof and section IX.III on justifications.

While the Dutch 2010-Bill appears to be very similar to the measures applicable in *Denmark* and *Germany*, as described above, the 2013-policy plan’s requirement on finishing a language course with success entails that the Dutch 2013-policy plan *de facto* assumes a character of a requirement on language skills *per se* for receiving social benefits, rather than constituting a requirement on attending i.a. language courses (as opposed to *Belgium*, *Denmark*, *Germany*; see above). The level of language skills required is, however, not known.

B. Requirements for proof

VI. Access to employment and working conditions, promotion or salary: Requirements for proof imposed on workers of language proficiency in access to employment, working conditions, promotion or salary in the private and public sector

VI.I. Proof of language skills required by law, regulation, administrative action or practice, or by collective or individual agreement or any other collective regulation in the private and public sector

VI.I.I. Proof of language skills required by generally applicable State Language Acts for employment in the private sector specifically

VI.I.I.i. Summary of findings

Language ability may be certified by a diploma from primary, secondary or higher educational establishments where studies are carried out in the national language, or by language examination organised by the Language Board/State Language Proficiency Examination Commission in *Estonia* and *Latvia*. “It seems that such provisions might not be in conformity with the case law of the CJEU, in particular *Angonese* (C-281/98)”¹³⁴ as adequately articulated by the expert from *Latvia*,¹³⁵ nor with *Groener* (C-379/87).¹³⁶

However, when the private sector is not covered by the Language Act in *Estonia*, case law established that it is not important whether an employee possesses a certificate about her/his language abilities.

Conversely in *Lithuania*, where the means of proof are not specified by law in general, and the job interview is thus likely to form the basis of an assessment of the applicant’s language skills. Systematic language tests are likely not to be carried out in a standardized form in the private sector. For specific areas, such as aviation, however, language tests are applied.

VI.I.I.ii. Findings

In *Estonia*, usually in the private sector, employers do not require any proof of Estonian language abilities. It is enough if an employee is able to communicate in Estonian and if she/he can understand the tasks to be fulfilled. The case law on individual employment in Estonia has stated that it is not important whether an employee has a certificate about the language abilities; rather it is important whether she/he really should use the language and if there are complications in understanding employment tasks and complications in interactions with other colleagues.

However, private sectors will be covered by the Language Act, if this is justified by protection of public interests or by protection of basic rights and freedoms. Accordingly, the ability to communicate in Estonian will be proved by language examination. If the person who has taken the language examination was not satisfied with the result, it is possible to turn to the administrative court. The examination of Estonian language consists of four parts: 1) listening 2) reading 3) writing and 4) speaking.

¹³⁴ Paras. 43-45 and 47.

¹³⁵ Concerning specific provisions of Latvian law, however.

¹³⁶ Para. 23.

In order to assess the Estonian Language ability, the three levels A, B, C, as described above para. IV.I.II, are applied.

Estonian language examination should not be taken by a person, who has obtained education in Estonian at least on one of the following levels: 1) Basic education; 2) Secondary school education; 3) Professional education; or 4) Higher education.

Also, the Language Board can order that a person should undergo the language examination, if the Language Board learns that a worker or official is not in the position to communicate in Estonian on the required level. To get an official paper about the language ability, the examination will be organised by the Language Board.

A similar situation is found in *Latvia*, where Regulation No.733 provides for specifically defined means of proof of knowledge of the state language. It could be proved either by a diploma of primary, secondary or higher educational establishment where studies are carried out in Latvian or a diploma issued by the state language proficiency examination commission. In order to assess the Latvian language ability, there are three proficiency levels, as described above para. IV.I.II. To the Latvian expert, it seems that such provisions might not be in conformity with the case law of the CJEU, in particular *Angonese* (C-281/98).

Conversely in *Lithuania*, the means of proof of language are not specified in the Language Proficiency Resolution, but in practice the private sector companies would most likely verify the language level during the interview with a potential worker. In some specific areas, concrete language proofs are required (e.g. for chief pilots - language test).

Systematic language tests are likely not to be carried out in a standardized form in the private sector, as evidenced for instance by the Order on Language proficiency for chief pilots (in this case the language test is approved by the Civil Aviation Administration).

VI.I.II. Proof of language skills required by law etc. for employment within the medical sector

VI.I.II.i. Summary of findings

Systematic language tests are carried out in *Cyprus* (nurses) and by large also in *Czech Republic* (paramedical professions) and *The Netherlands*, which may raise issues on compatibility.¹³⁷

Accordingly, in *The Netherlands* hospitals have a general knowledge and skills test (AKV) for medical professions, focusing on examining the Dutch communication skills and certifying level C1 language skills. Whilst the AKV test is a mandatory part of the registration procedure for medical personnel that are not automatically recognized, many employers also expect the doctors who have been registered by the automatic recognition system to take this test.

¹³⁷ *Commission Staff Working Document on the transposition and implementation of the Professional Qualifications Directive (2005/36/EC)*, SEC(2010) 1292, Brussels, 22/10/2010, European Commission, para. 2.3, *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* point 16, *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6, and *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.1.

By contrast, in other Member States, standard information on language skills is not required by law or practice in the medical sector; a variety of evidence of language skills may be considered; the applicant's linguistic abilities are i.a. assessed in the course of the job interview on a case-by-case basis, subject to the principle of proportionality, and language tests appear not to be applied systematically. This applies to *Croatia, Denmark, Finland, Germany, Poland, Sweden* and *United Kingdom*, where, however, the NHS policy in the latter Member State states that the UK Government is “currently working to negotiate the revision of the EU law so that tougher mandatory checks can be applied to all European doctors when they apply to work in the UK.”

VI.I.II.ii. Findings

Systematic language test are applied in *Cyprus*, where there are still allegations about language barriers to the *nursing profession*, which continue to practice stringent language tests: Very good knowledge of Greek or English, despite of a relevant decision made by the Equality body about nurses, who have good knowledge of other official EU languages such as French and German. Also in *Czech Republic*, where *doctors, dentists and pharmacists* must be able to understand their patients so the knowledge of the Czech language is required to the extent that is necessary for a pursuit of the medical practice (the language skills are verified by the Ministry of Health.)¹³⁸ The requirements for paramedical qualification are similar.¹³⁹ The precise language testing procedure for paramedical professions is laid down in Sec. 22-24 of the Regulation No. 189/2009 Coll., on Exams according to the Act on Paramedical Professions. To the Czech experts' knowledge there is no standardized form of tests in the private sector. However, sometimes components of language exams are laid down by legislation. For example for *paramedical professions* (belonging to the category of regulated professions) the components are laid down by Regulation No. 189/2009 Coll. (reading of specialized texts, reproduction of the read text, oral communication, etc.). For the purpose of testing the knowledge of Czech language, the Ministry of Health considers language exam certificates of Czech or Slovak language, or education which was carried out in Czech or Slovak language.

And in *The Netherlands*, hospitals have a general knowledge and skills test (AKV¹⁴⁰) for *medical professions*. This test focuses on examining the Dutch communication skills. A doctor who passes this test is supposed to have level C1 language skills. The AKV test is a mandatory part of the registration procedure for medical personnel that are not automatically recognized, but many employers also expect the doctors who have been registered by the automatic recognition system to take this test.

By contrast, in other Member States, standard information on language skills is not required by law or practice; a variety of evidence of language skills may be considered; the applicant's linguistic abilities are i.a. assessed in the course of the job interview on a case-by-case basis, subject to the principle of proportionality, and language tests appear not to be applied systematically. This is the case in *Finland*, where a guidebook published by the Finnish Dentist Association, instructs that the employers may assess the linguistic competence in the interview and, for instance, by asking the applicant to read a professional article written in Finnish and to summarize it.¹⁴¹ In general, the

¹³⁸ Sec. 31 of Act on Mutual Recognition of Diplomas on Medical Qualification of Doctors, Dentists and Pharmacists.

¹³⁹ Sec. 82 Act No. 96/2004 Coll., on Paramedical Professions.

¹⁴⁰ Algemene kennis- en vaardighedentoets.

¹⁴¹ *Foreign Dentists in Finland. A Guidebook*, Finnish Dentist Association 2013, see

http://www.hammaslaakariliitto.fi/fileadmin/pdf/Hammaslaakariliitto/Julkaisut/Opas_ulkomaalaiset_hml_net.pdf.

employers in the private sector may decide by themselves what kind of proof the employees have to establish on their knowledge of languages.

Likewise in *Germany*, where, when adequate language skills for certain *medical professions* were introduced, the official explanations state explicitly that the question of language skills should not be part of the recognition process of professional qualifications. I.e. state authorities should not require standard information on language skills. They may in particular not require applicants to pass language tests as a matter of principle. Instead, they should consider each individual case with due consideration to the principle of proportionality. This gives state authorities some flexibility.¹⁴²

Similarly in *Poland*, neither *nurses nor midwives* are obliged to present any language certificate. They shall only prove that their knowledge of Polish language is enough for the communication with patients and to understand written text as well as ability to write in Polish.¹⁴³ The Regulation makes the distinction between the level of knowledge of Polish language as regards competences between nurses and midwives. It lists the medical spheres in which nurses and midwives shall be able to communicate. The regulation on midwives and nurses applies only to EU/EEA and Swiss Confederation citizens. There is no separate regulation on the requirement of knowledge of Polish language for third country nationals; however, in the Act there is an obligation for nurses and midwives being third country nationals to prove sufficient knowledge of Polish language written and oral. However, neither the Act nor the Regulation contains acceptable ways of proving knowledge of Polish language. Therefore all methods are acceptable.

With regard to *doctors and dentists*, according to the Regulation, third country nationals are obliged to pass a special language exam that is organized by the Polish Medical Council. No such obligation is applicable to EU citizens. They can prove sufficient knowledge (not only a fluent knowledge) in all possible ways (even in a form of conversation with an employer).

As regards *pharmacists*, there is an obligation to pass language exam before the Polish Pharmacy Council. However, this requirement applies to foreigners only. As the definition of a foreigner according to the Act on Pharmacy Councils excludes EU nationals,¹⁴⁴ EU nationals may prove knowledge of Polish language in every possible way, just like doctors.

With regard to *barber-surgeons*, the Act of July, 20 1950 on barber-surgeon¹⁴⁵ Art. 1.3 states that for EU citizens it is enough to make a statement confirming knowledge of Polish language. Exams are only required for third country nationals.

As regards *veterinary doctors*, the Act of December 21, 1990 on the veterinary and veterinary councils demands from EU citizens to make a statement of knowing Polish language. Ways of proving the knowledge of Polish language are not listed; therefore all possible ways are acceptable.¹⁴⁶

¹⁴² See the official explanation for the Bill in BT-Drs. 16/5385 v. 21. 5. 2007, p. 30 (for doctors), available online at <http://dip21.bundestag.de/dip21/btd/16/053/1605385.pdf>.

¹⁴³ Ustawa z dnia 20 lipca 1950 o felczerach, Regulation of Ministry of Health of July 9, 2012 on the level of knowledge of Polish language written and orally, necessary to carry out a profession of a nurse and midwife (Rozporządzenie Ministra Zdrowia w sprawie szczegółowego zakresu znajomości języka polskiego w mowie i w piśmie, niezbędnego do wykonywania zawodu pielęgniarki i położnej), Journal of Laws of 2012, no. 817.

¹⁴⁴ Journal of Laws of 2011, No. 75, item 406.

¹⁴⁵ Ustawa z dnia 20 lipca 1950 o felczerach, Journal of Laws of 2004, No. 53, item 531.

¹⁴⁶ Ustawa o zawodzie lekarza weterynarii i izbach lekarsko-weterynaryjnych, the Regulation of Minister of Agriculture and Rural Development of August 25, 2004 on the level of the knowledge of Polish language necessary to carry out a profession of veterinary doctor, Journal of Laws of 2004, No. 205, item 2100.

Likewise in *Denmark*, where with regard to *health personnel*, TCNs are required by law to pass Danish language tests and possibly other tests.¹⁴⁷ However, no such requirements are imposed by law on EU/EEA citizens with educations completed in an EU/EEA country, or in countries outside the EU/EEA when the certificate is recognized in another EU/EEA country and the person has 3 years' of professional experience in the EU/EEA country concerned.¹⁴⁸

The same applies to *Sweden*, where proof of sufficient language skills could be certificates, language tests, interviews before employment etc. And in *Croatia* EU workers may prove their linguistic abilities by any means and systematic language tests are not carried out in a standardised form in the private sector. The Croatian expert notes that it is to be seen what will be the practice in the future.

Likewise in *United Kingdom*, where the legislation governing *doctors* seeking work in the NHS is The Medical Profession (Responsible Officers) (Amendment) Regulations 2013. These regulations require the appointment of responsible officers (ROs) whose job it is to assure themselves that the doctors they are responsible for, have the appropriate level of language competency to enable them to practice safely. There is no jurisprudence on this subject or the regulations yet.

The NHS policy rejects systematic testing of all applicants. It states: "Decisions about what evidence is required to satisfy the employer about the applicant's English language knowledge must be proportionate and made on a case by case basis, particularly in relation to the work the individual is going to undertake, and taking into consideration other evidence the individual has been able to provide at interview." The note states that the UK Government is "currently working to negotiate the revision of the EU law so that tougher mandatory checks can be applied to all European doctors when they apply to work in the UK. The Government hopes to have an agreement on a revised directive in Autumn 2013."

According to the new NHS guidance, in order to show language ability, applicants may have: 1) Pursued part of their education in the UK; 2) been taught in English in a recognised institution abroad; 3) recently passed language tests or obtained certificates of language knowledge provided by recognised institutions outside the UK; 4) worked in an English speaking country or in an organisation or institution in which communications were in English; or 5) lived in a multi-lingual household in which a relative or carer used English as their primary form of communication.

Employers are advised to consider any such evidence of knowledge of English when making decisions about whether or not an applicant has sufficient knowledge of English.

No information is available about the proof required in *Bulgaria*. With regard to EU, EEA or Swiss citizens whose *medical professional qualifications has been recognized* in Bulgaria, Article 186, Paragraph 2 of the Law on Health provides that the Ministry of Health and the high schools should provide those citizens with conditions for acquiring the necessary language knowledge and professional terminology in Bulgarian "when this is in their interest and in the interest of their patients." In comparison, Paragraph 3 of the same provision stipulates that third country nationals are allowed to practice their medical profession in Bulgaria only after it has been established in

¹⁴⁷ Bekendtgørelse om autorisation af visse sundhedspersoner, der er statsborgere i og/eller uddannet i lande uden for EU/EØS ('Executive Order on Authorization of Certain Health Personnel, who are Citizens in and/or Educated in Countries outside the EU/EEA'), No. 478 of 10 May 2013.

¹⁴⁸ Bekendtgørelse om EU- og EØS-statsborgeres adgang til udøvelse af virksomhed som autoriseret sundhedsperson ('Executive Order on EU and EEA citizens' Access to the Exercise of Work as an Authorized Health Person'), No. 49 of 13 January 2010.

accordance with the rules in a Minister's ordinance that they know the Bulgarian language and the respective professional terminology in Bulgarian.

In *Hungary*, *recognition of health care diplomas* requires the applicants to indicate her/his language knowledge. However, lack of language knowledge does not have any kind of consequences.

VI.I.III. Proof of language skills required by law etc. for employment within the marine and aviation sector

VI.I.III.i. Summary of findings

Systematic language tests are carried out in *Italy* and *Lithuania*. In *Lithuania*, *chief pilots and candidate chief pilots* are required a certain level of Lithuanian language proficiency for unlimited duration in order to obtain the licence for student of chief pilot.

VI.I.III.ii. Findings

Systematic language tests are applied in *Italy*, where *captains and chief mates*, who are EU nationals and qualified in another Member State, can have access to posts on board ships flying the Italian flag after passing an examination in Italian language and legislation.¹⁴⁹

Likewise in *Lithuania*, where *chief pilots and candidate chief pilots* are required level 6 of Lithuanian language proficiency for unlimited duration, in order to obtain the licence for student of chief pilot. This level of language is required for persons who acquired main, secondary, higher or high education in Lithuanian language. However for persons who acquired main, secondary, higher or high education in non-Lithuanian language, but possessing a 3rd state language level category, they are required a 4th language level. In all other cases, the language proficiency level is established or extended based on Lithuanian language proficiency establishment test, approved by the Civil Aviation Administration.¹⁵⁰ The level of language proficiency is included in the licence of chief pilot/student and while extending the chief pilots' qualifications.

VI.I.IV. Proof of language skills required by law etc. for employment within the education sector or child care personnel

VI.I.IV.i. Summary of findings

In *Ireland*, language requirements are part of the recognition procedure, and persons will thus not be granted recognition to teach in any capacity in a national school until English language competence is established through a special DES test (with regard to the English language requirement) and aptitude test/adaption period (with regard to the Irish language requirement). This seems to be in line with EU law, as making recognition of qualifications subject to linguistic knowledge is contrary to Directive 2005/36/EC, unless linguistic knowledge belongs to the qualification (i.e. in language-related industries, such as speech therapists or teachers teaching the

¹⁴⁹ Decree of the Ministry of Infrastructures and Transport 1-2-2012, (OJ 8-2-2012 No. 32) Art. 2.

¹⁵⁰ Paras 1.2- 1.4 of the Order on Evaluation of Chief pilots language proficiency level, approved .by the Director of Civil Aviation Administration on 26 October 2012.

language of the host country).¹⁵¹ Moreover, Member States may apply compensation measures in terms of aptitude tests or adaptation periods in certain circumstances.¹⁵²

However, specified certificates issued by or exams/tests taken at institutions within the territory of that Member State is the only proof accepted in *Czech Republic* with regard to kindergarten teachers and teachers of first stage education in elementary schools (when the applicant gained her/his education in other language than Czech), *Ireland* (where, with regard to the English language requirement, the Department of Education and Skills (DES) will require the individual to take a test conducted by a DES inspector, when English is not the person's first language or if they have received their teaching qualification from a country where English is not the first language) and *Sweden* (where, however, exceptions apply to Nordic universities), which may raise issues on compatibility.¹⁵³

Proof of language ability may be certified by only one specific certificate in *Greece* (where teachers must possess a Level D certificate, which is issued by examination centres approved by the Centre for the Greek Language; and teachers of Secondary, Primary and Nursery School must possess a special language certificate, only, however, when the candidates do not possess a Bachelors certificate from a Greek High School), and *Portugal* (where teachers in pre-school, primary and secondary education must possess a certificate issued by the Centre of Evaluation of Portuguese as a Foreign Language), which may raise issues on compatibility.¹⁵⁴

By contrast, in other Member States, specific certificates or diplomas are not required. This applies to *Croatia*; *Germany*, where a specific diploma of a Goethe-Institute is required only when the skills are not proven otherwise; and *Poland*, where the possibility of certifying the knowledge of the Polish language before a state exam commission shall not be understood as stating the only way of proving knowledge of Polish language.

VI.I.IV.ii. Findings

Specified certificates issued by or exams taken *only in institutions of that Member State* are accepted as proof in *Czech Republic* with regard to kindergarten teachers and teachers of first stage education in elementary schools. Accordingly, for *pedagogical workers*, proof of knowledge of the Czech language is required, when the applicant gained her/his education in other language than

¹⁵¹ *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.1. See also *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6, and *USER GUIDE, Directive 2005/36/EC, Everything you need to know about the recognition of professional qualifications, 66 questions - 66 answers*, part V, and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* Point 16.

¹⁵² Directive 2005/36/EC Article. 14.

¹⁵³ *Groener* (C-379/87) para. 23 and *Angonese* (C-281/98) paras. 43-44.

¹⁵⁴ *Angonese* (C-281/98) paras. 43-45 and 47, *Communication from the Commission - Free movement of workers: Achieving the full benefits and potential* part 2.3, COM (2002) 694 final and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/35/EC* point 16 and *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.

Czech. Basic knowledge of the Czech language can be proven by an exam taken at any institute for Czech language of any of the public universities, at any language school equipped with the right to carry out state exams, or at institutions ensuring further professional training of pedagogical workers. Teachers who will be teaching foreign language or conversation in a foreign language only, or will be working at a school with working language other than Czech, are not obliged to prove their knowledge of Czech language.¹⁵⁵ Law No. 563/2004 Coll. on Pedagogical (Educational) Workers Section 4 (5) explicitly stipulates that pedagogical workers can prove their knowledge of Czech language also by presenting a certificate on a language exam taken abroad. This, however, does not apply to *kindergarten teachers and teachers of first stage education* in elementary schools (1st-4th year of elementary schools). In other words, these two categories have to take the exam only in institutions of the Czech Republic.

Likewise in *Sweden*, where there are certain tests with questions on teachers' ability to communicate with pupils, parents and colleagues. Thus, a teacher on lower levels (pupils normally aged around 7–10 years) must fulfill a requirement on depth knowledge of the basic reading and writing skills in Swedish. This can be achieved through service as a teacher for one year. If this is not possible, some additional training is required or an aptitude test might be conducted.¹⁵⁶

The aptitude test could - in accordance with administrative regulations - embrace the applicant's ability to transfer information and lead students in their learning process and the ability to meet students in Swedish and around a topic contents, ability to apply methods for reading and writing in Swedish, and ability to communicate and collaborate with colleagues, students and parents.¹⁵⁷

Further, a teacher in Swedish language must - independent of nationality - show that he or she is educated in teaching Swedish. Proof on such competence should be shown by certificates of studies or examination at a Swedish university. However, concerning a position as a school teacher in Swedish language, applicants - independent of nationality - who have studied Swedish at a Nordic university must not show a certificate issued by a Swedish university.

Similarly in *Ireland*, where to be eligible for recognition as a *teacher* in an Irish primary or post-primary school, an individual must be competent to teach English and to teach the various aspects of the curriculum in the English language. Where English is not the person's first language or if they have received their teaching qualification from a country where English is not the first language, the Department of Education and Skills (DES) will require the individual to take an oral and/or written test conducted by a DES inspector. A person will not be granted recognition to teach in any capacity in a national school until English language competence is established.

In relation to Irish language requirements, primary school teachers trained in another EU Member State (and currently teachers trained outside the EU) whose qualifications have been assessed and accepted by the DES but who do not possess an appropriate Irish language qualification, will be

¹⁵⁵ Information provided on the webpage of the Ministry of Education, Youth and Sports of the Czech Republic: <http://www.msmt.cz/mezinarodni-vztahy/zadost-o-uznani-odborne-kvalifikace-ziskane-v-clenskem-state>.

¹⁵⁶ See the administrative regulation issued by The National Agency for Education (Skolverket): SKOLFS 2011:36 Skolverkets föreskrifter om villkor för behörighet för lärare och förskollärare med utländsk utbildning, available on http://www.skolverket.se/regelverk/2.3134/skolfs?_xurl=http%3A%2F%2Fwww5.skolverket.se%2Fwtpub%2Fws%2Fskolfs%2Fwpubext%2Ffs%2FRecord%3Fk%3D2139 (Internet 2013 June 21).

¹⁵⁷ See the Attachment to the administrative regulation issued by The National Agency for Education (Skolverket): SKOLFS 2011:36 Skolverkets föreskrifter om villkor för behörighet för lärare och förskollärare med utländsk utbildning, available on http://www.skolverket.se/regelverk/2.3134/skolfs?_xurl=http%3A%2F%2Fwww5.skolverket.se%2Fwtpub%2Fws%2Fskolfs%2Fwpubext%2Ffs%2FRecord%3Fk%3D2139 (Internet 2013 June 21).

granted a 5-year period of provisional recognition to teach in Irish national schools. During this period, teachers must work towards meeting the Department's Irish language requirements. Primary school teachers must satisfy the DES that they can not only teach the Irish language but also teach the range of primary school subjects through Irish. In order to gain full recognition as a primary school teacher, applicants must either pass an Aptitude Test¹⁵⁸ or undertake an Adaptation Period,¹⁵⁹ both of which involve written, aural and oral elements as well as certification that the applicant has completed an approved three-week course in the Gaeltacht (the Irish speaking region).

Proof of language ability may be certified by *one specific certificate* or possibly by a diploma from national education institutions in *Portugal*. Thus, with regard to *teachers* in pre-school, primary and secondary education, the certificate of Portuguese language required from EU workers must be issued by the Centre of Evaluation of Portuguese as a Foreign Language.¹⁶⁰

Likewise in *Greece*, where Ministerial Decision 256/1998 provides that *teacher* candidates shall possess a Level D certificate, which is issued by examination centres approved by the Centre for the Greek Language when persons are in a "position to understand - and express themselves in - oral and written language with a high degree of accuracy, to use complex expressions and perform linguistic functions within their personal and professional experiences, and to respond to situations which are unfamiliar to them. They should be able to extract information and to understand implied statements in conversations, which may involve some unknown topics and a number of speakers talking at normal rate. In speaking, candidates should be in a position to express views efficiently, within their personal and professional experiences, with a high degree of fluency and accuracy and to participate in conversations which involve situations unknown to them. Writing candidates should be in a position to perform in a wide variety of topics related to everyday needs and aspects of personal and professional activities."

Concerning the requirements of the post of employment as a teacher of Secondary, Primary and Nursery school, Art. 14 (10), Art. 13 (3) and Art. 12 (3) of Law 1566/1985 provided the candidates do not possess a Bachelors certificate from a Greek High School, a special language certificate is required. The above certificate should prove "the complete and fluent knowledge of the Greek language." The above language requirement concerns all specialties of teachers and there is no distinction. Therefore, even professors of foreign languages are included.

By contrast, in other Member States, *specific certificates or diplomas are not required*. This applies to *Croatia*, where EU workers may prove their linguistic abilities by any means, and systematic language tests are not carried out in a standardised form in the private sector. The Croatian expert notes that it is to be seen what will be the practice in the future.

Specific certificates or diplomas are neither required in *Germany*, where the *Länder* have sole responsibility in so far as *teachers* are concerned, i.e. there are slightly different rules in each *Land*. By way of example, in Bavaria the access of Union citizens to the teaching profession¹⁶¹ has been amended particularly with respect to the requirement of knowledge of the German language. Section 14 of the new law provides for the possibilities to prove the required German language

¹⁵⁸ SCG - An Scrúdú le hAghaidh Cáilíochta sa Ghaeilge.

¹⁵⁹ OCG - Oiriúnú le hAghaidh Cáilíochta sa Ghaeilge.

¹⁶⁰ Article 3 (3) (f) of Portaria No. 967/2009 of 25 August 2009, implementing Law No. 9/2009, of 4 March 2009, which transposes Directive 2005/36/EC.

¹⁶¹ EG-Richtlinienverordnung für Lehrer of 30 December 2005, DVBl. 2006, p. 51 as amended by the Verordnung zur Änderung der EG-Richtlinienverordnung für Lehrer of 10 January 2008, Bayerisches Gesetz- und Verordnungsblatt No. 1/2008, p. 17.

skills by specific diploma of a Goethe-Institut, if there are doubts as to the level of language skills (this means that if the skills are proven otherwise, the person concerned is not required to have the diploma of the Goethe-Institute).¹⁶²

Likewise in *Poland*, where Article 11a of the Act on Polish language provides a possibility to certify the knowledge of Polish language before a state exam commission (it is not only applicable to *teachers*, but is of general nature). Such a possibility is opened to foreigners or Polish citizens permanently residing outside territory of Poland. On the basis of this provision, the Minister of Education and Sport has issued on October 15, 2003 the Regulation on exams on Polish language as a foreign language.¹⁶³ However, in order to be compatible with EU law, this Art. 11 a shall not be understood as stating the only way of proving knowledge of Polish language for categories of individuals listed in the Act.

VI.I.V. Proof of language skills required by law etc. for employment or self-employment within legal professions, as certified auditors, members of management boards in certain institutions, patent counsels, notaries, insurance brokers, (real) estate agents, asset managers, architects, engineers, interior designers or mechanical engineering

VI.I.V.i. Summary of findings

As described above para. IV.I.VII, in some instances, exams/aptitude tests are required and conducted in the national language (*Croatia, Hungary, Slovakia, Spain and The Netherlands*) which seems to be in line with EU law, due to the fact that under the general system of recognition, Member States may apply compensation measures in terms of aptitude tests or adaption periods in certain circumstances.¹⁶⁴

In other instances, tests or training forming the basis of being registered with the relevant authorities or associations, or for being authorized to practice that specific profession, are conducted in the national languages; or specific documents necessary for registration must be translated into the national language (*Cyprus, Hungary and Luxembourg*). Notably, in *Cyprus*, regarding *building contractors* and *mechanical engineering*, qualifications earned abroad have been ignored in practice.

This may in some instances raise issues on compatibility, also with regard to freedom of establishment¹⁶⁵ (as regards access to work as a self-employed in *Luxembourg*, where the training and tests for obtaining a permission to establish is in French; as regards auditors providing auditor service in *Hungary*, who shall be registered by the tax authority based on their regular (yearly) training, managed in Hungarian. Without this training, deletion from the registry means loss of their entitlement to supply service; and as regards exams in Greek or translation of documents into Greek in *Cyprus*).

By contrast, in other Member States, the applicant is not obliged to pass a formal exam, but rather to make a conversation with the relevant representatives. This applies to *Poland* and *Romania* with

¹⁶² Para. 14: Nachweis der deutschen Sprachkenntnisse.

¹⁶³ Rozporządzenie w sprawie egzaminów z języka polskiego jako obcego, Journal of Laws of 2003, No. 191, item 1871.

¹⁶⁴ Directive 2005/36/EC Article. 14.

¹⁶⁵ I.a. *Wilson* (C-506/04) and *Commission of the European Communities vs. Grand Duchy of Luxembourg* (C-193/05), judgment of 19 September 2006.

regard to members of the *management boards of banks or insurance institutions or credit institutions*.

VI.I.V.ii. Findings

Regarding proof of language skills required by law etc. in the *legal profession*, proof of language ability may be established by various tests, when candidates do not possess a certificate from a national school in *Germany*. Thus, access to the practical training¹⁶⁶ requires either a State Exam with a German law school (which is always held in German) or a test which certifies equivalent knowledge for those who studies law outside Germany.¹⁶⁷ As a result, only those speaking good German may enrol for the practical training for legal professions.

In other Member States, qualification exams for the access to exercise of the profession are held in the national language. This is the case in *Slovakia*, where Article 5 of the Act No. 586/2003 Coll. on Advocacy provides that in order to be enrolled in the List of Advocates in Slovakia, EEA citizens have to pass a legal qualification exam in Slovak, if they did not provide legal services in Slovakia for three years as settled attorneys at law (Slovak law used the term settled Euroadvocate).

Likewise in *Spain*, where pursuant to Resolution of September 7, 2012,¹⁶⁸ the General Directorate for the Administration of Justice, exams are held for access to the exercise of the legal profession in Spain by citizens of the EU and EEA. The exam is held in Spanish and has two phases. The first one will be a writing exercise on Spanish Law and the second one will be an oral exam. The oral exam will consist of the reading of the exercise, before the Commission Assessment, which can be do questions about the purpose of the oral exam, as well as about Spanish Judicial Organization and Professional Ethics, for a maximum of fifteen minutes.

Similarly in *Croatia* where the aptitude tests required for EU attorneys who have not been providing services in Croatia for three years or more is performed in the Croatian language. And in *The Netherlands*, where there is no language skills test with regard to *judiciary*, but the competence test (admittance of foreign professionals) is taken in Dutch. Also, with regard to *notaries*, the ministerial regulation on the recognition of professional qualifications of candidate notaries and candidate bailiffs stipulate that the aptitude test is to be conducted in Dutch.

The same applies with regard to *certified auditors* in *Hungary*, where without membership of the Chamber of Certified Auditors, mandatory certified auditors cannot be employed or work as entrepreneurs. Accession to the Chamber shall be ensured if an applicant proves that she/he has i.a. taken a successful difference exam. This exam, managed by the Chamber, shall be taken in Hungarian in writing and orally, evidencing the applicant's knowledge that she/he obtained the necessary information about Hungarian laws and ethical rules. The detailed material, fee and procedure are determined by the Chamber. Furthermore, auditors providing auditor service shall be registered by the tax authority that is based on their regular (yearly) training. Without this training deletion from the registry means loss of their entitlement to supply service. After deletion a new entry into the register is possible after two years. However, the training is managed in Hungarian.

¹⁶⁶ Referendariat.

¹⁶⁷ See Section 112a Deutsches Richtergesetz (DRiG), available online at <http://www.gesetze-im-internet.de/drig/BJNR016650961.html>.

¹⁶⁸ Official Gazette, num.222, de 14 de septiembre de 2012.

Tests are conducted in the national language also in *Luxembourg*, where the Luxembourg Law of 22 September 2011 on access to *independent professions*¹⁶⁹ may exclude EU migrant workers from accessing certain self-employment in the private sector. Indeed, this law provides that in order to carry on one of the occupations mentioned by it, the worker concerned must obtain a permission to establish,¹⁷⁰ which would be delivered only under certain conditions. For example, if the worker does not hold a diploma recognized by the Grand-Duchy of Luxembourg, she/he will have to undergo additional training and to pass a final test.¹⁷¹ The problem is that according to the Grand-Duchy Regulation of 3 February 2012, the trainings and the tests are all in French in principle. However, if the candidate asks for it, the jury may authorize her/him to answer the test in German or in English. Such possibility will depend on the goodwill of the jury.

Relevant documents and certificates must be translated into Greek and/or qualifications earned abroad have been ignored in practice in *Cyprus*. Thus, the Labour Bureau confirmed that the Building Contractors' Registration Council requests all applications and relevant certificates to be translated into Greek, irrespective of the applicant's nationality. The Equality Body has also considered a complaint submitted by a foreign national whose application to the Registration Council of Building Contractors was not processed because his certificates, evidencing his qualification as a building contractor, were in English. Regarding *mechanical engineering*, in 2012 there was a Supreme Court decision on the case of a repatriated Cypriot who applied to ETEK to be registered in its Mechanical Engineering Branch, so as to be able to work as a mechanical engineer in Cyprus *Kyriakos Varnava v. ETEK*. ETEK declined his application for lack of a university degree in mechanical engineering, ignoring his qualification earned in the UK as a member of the IMechE.

By contrast, in other Member States, the applicant is not obliged to pass a formal exam, but rather to make a conversation with the relevant representatives. This applies to *Poland*, where, with regard to the language requirement imposed on members of the *management boards of banks or insurance institutions*, in practice, the applicant is not obliged to pass a formal exam, but to make a conversation with representatives of the Commission who assess the level of knowledge of Polish language. Practice shows that the Commission is not very strict when assessing language competences. Before passing such an exam, the Commission may issue a conditional decision accepting a relevant foreigner for a given post in a bank under the condition of proving knowledge of Polish language within a prescribed period. However, it is possible that the Polish Financial Supervision Authority¹⁷² will depart from the requirement concerning proven knowledge of Polish language, provided it is not necessary for prudential supervision, taking into account in a particular level of permissible risk or the scope of the activity of bank. This rule applies equally to banks and insurance institutions. There is no difference between conditions to apply such an exemption based on the nationality of the candidate.

A similar situation is found in *Romania*, where the language requirement imposed on *credit institutions* entails that if a person does not have documents proving her/his language proficiency, it is enough to prove her/his language abilities in the discussions with the Romanian National Bank.

¹⁶⁹ Reglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales.

¹⁷⁰ Autorisation d'établissement.

¹⁷¹ Article 7, Article 8 (1) c, Article 9 b, Article 10 (1) b of the Law of 22 September 2011.

¹⁷² Komisja Nadzoru Finansowego.

With regard to the language requirement imposed on notaries in *Lithuania*, the means of proof of language skills are not specified in the Language Proficiency Resolution.

VI.I.VI. Proof of language skills required by law etc. for employment in the security sector or in certain risky occupations

VI.I.VI.i. Summary of findings

A specific language certificate issued only by an institution within that country is required in *Spain*, where a certification of a DELE Exam is required, which may raise issues on compatibility.¹⁷³

VI.I.VI.ii. Findings

A *specific language certificate* is required in *Spain*, where the Order INT/2850/2011¹⁷⁴ regulates the recognition of professional qualifications for the exercise of professions and activities in the private security sector of nationals of the Member States of the European Union. Article 4, paragraph 9 requires the worker in the private security sector to have enough knowledge of Spanish language skills for the normal performance of private security functions. The Order determines in Article 9 that the level of Spanish knowledge must be intermediate (B1) or advanced (C1). The person concerned must present a certification of DELE Exam (Diplomas of Spanish as a Foreign Language). DELE “is the official accreditation of the degree of fluency of the Spanish Language, issued and recognised by the Ministry of Education, Culture and Sport of Spain. The Instituto Cervantes is the institution in charge of organising the exams, while the University of Salamanca is in charge of the preparation, correction and final evaluation of all the tests.”¹⁷⁵

VI.I.VII. Proof of language requirements imposed on translators or interpreters by law etc.

In *Hungary*, in absence of standardized language and experience test of translators and interpreters¹⁷⁶ - including nationals as well as non-nationals - there is a bit chaotic situation in the supplies of translation and interpretation. It is problematic in authentication of translation and interpretation in authority proceedings, legal actions but in whole Europe this diversity is disturbing, according to the Hungarian expert.¹⁷⁷

In practice the OFFI has Union citizen partners with assignment contact if their knowledge is demanded and they have tax registration number (freelance translator) and certificate (qualification) obtained in another Member State. It is not a regular practice that a test translation is required before assignment is concluded, it depends on personal conditions.

¹⁷³ Groener (C-379/87) para. 23, Angonese (C-281/98) paras. 43-45 and 47, *Communication from the Commission - Free movement of workers: Achieving the full benefits and potential* part 2.3, COM (2002) 694 final and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* point 16 and *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.

¹⁷⁴ Order No. INT/2850/2011 of October 11. RCL 2011 \ 1910.

¹⁷⁵ Cf. <http://www.dele.org/>.

¹⁷⁶ ISO 12616, ISO/DIS 17100, EN 15038 would be applicable.

¹⁷⁷ See the conference papers at the European Legal Interpreters and Translators Association EULITA <http://eulita.eu>.

VI.I.VIII. Proof of language skills required for employment in the public sector specifically

VI.I.VIII.i. Summary of findings

With regard to proof of language skills required by generally applicable *State Language Acts* for employment in the public sector specifically, the language ability may be certified by a diploma from primary, secondary or higher educational establishments where studies are carried out in the national language, or by language examination organised by the Language Board/State Language Proficiency Examination Commission in *Estonia* and *Latvia*. “It seems that such provisions might not be in conformity with the case law of the CJEU, in particular *Angonese* (C-281/98)”¹⁷⁸ as adequately articulated by the expert from *Latvia*,¹⁷⁹ nor with *Groener* (C-379/87).¹⁸⁰ In *Lithuania*, the Law on Public Service does not specify proficiency of language level, but reference is made to the Lithuanian language exam, which is mandatory when requesting citizenship of Lithuania or EU long-term residence permits. Language tests approved by various public organisations are also considered as proof of proficiency. There is no official information available on other means to prove linguistic ability in the public sector.

With regard to proof of language skills required by *Language Acts and/or constitutional provisions* for employment in the public sector specifically, candidates for positions within the Civil Service who pass an Optional Language Test in Irish are entitled to extra marks at the interview in *Ireland*. Also, an existing Civil Servant who enters competition for promotion can establish bilingual proficiency and thus benefit from extra marks if she/he pass a Gaeleagras Triail Inniulachta test or attend a Gaeleagras course leading to a certificate of competence. And in *Belgium*, one specific language certificate is the only way of proof for candidates who have not followed education in the national languages in certain instances with regard to the French Community and the Brussels-Capital, where SELOR hence is still the only organisation that can deliver language certificates. This raises issues on compatibility¹⁸¹ and the European Commission recently decided to refer Belgium to the CJEU “[...] because of discriminatory conditions for candidates wishing to work in the local public sector in the French and German speaking regions, as well as the Brussels region, and who have not followed education in Dutch, French or German. In particular, candidates' knowledge of languages is only recognised if they obtain a certificate issued by the Belgian governmental recruitment service (SEJOR). No other certificates are accepted as proof of language knowledge.”¹⁸²

Language tests are applied to persons who have not followed education in the national languages in *Italy* with regard to *Valle d'Aosta*, and in *Luxembourg*.

A more flexible approach is found in *Finland*, where, as a rule, proof of language proficiency likewise comprises national language tests and certificates proving education in the national languages at a national institution. However, other evidence may be equated with official Finnish

¹⁷⁸ Paras. 43-45 and 47.

¹⁷⁹ Concerning specific provisions of Latvian law, however.

¹⁸⁰ Para. 23.

¹⁸¹ *Angonese* (C-281/98) paras. 43-45 and 47, *Communication from the Commission - Free movement of workers: Achieving the full benefits and potential* part 2.3, COM (2002) 694 final and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* point 16 and *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.

¹⁸² Press release IP/13/868.

exams which will be certified by a certificate issued by the Board on Language Exams. Likewise in *Ireland*, within which exams may be equated with regard to access to the *Gardaí*. Similarly in *Italy* with regard to the *Province of Bolzano*, within which also other certificates than the ‘*attestato di bilinguismo*’ may certify bilingual knowledge. Yet, the literal interpretation of the relevant provision leads to the result that the schools or Universities or institutions issuing the diploma or certificate shall be sited in *Italy*, which raises issues on compatibility.¹⁸³ Conversely in *Malta* within which appropriate comparable qualifications obtainable from abroad are also accepted.

Proof of language skills may be attested in the course of an interview in *Ireland* with regard to the Defence Force, and competition exams are held in the national languages in *Italy* and *Romania* in certain instances.

With regard to proof of language skills required in Member states with *neither Language Acts nor Constitutional provisions governing language requirements and where legislation and/or administrative practice otherwise governing the public sector* regulates possible language requirements in the public sector, certificates proving education in the national languages at a national institution is required for most posts - especially senior posts - in *Cyprus*. Likewise are specific certificates either proving education from a national school or a special language certificate issued by the Center of Greek Language required in *Greece*; the selection process may involve oral exams in *Spain*; in *Slovenia*, a special certificate issued by the Centre of Slovene may be required; and in *Poland* proof of language proficiency comprises national language test before a state commission or certificates proving education in the national languages at a national institution. Such requirements for proof raise issues on compatibility, “[a]s any other certificate than listed [...] is not acceptable (especially the ones granted [abroad]) and hence is insufficient to prove [national] language when applying for posts in civil service or self-government institutions, such provisions are too strict in the light of CJEU jurisprudence and the obligation to apply the proportionality principle,” as adequately articulated by the expert from *Poland*.¹⁸⁴

No standard proof of language skills (e.g. systematic language testing or specific language certificates) is required in *Austria*, where, however, standardized tests are applied in some areas; *France*, *Germany*, *Hungary*, *Slovakia* and *Sweden*. However, competition exams are held in the national language in *France*.

Within those Member States, language proficiency is likely to be proved i.a. implicitly by certificates of the required education and assessed in the course of the job interview.

VI.I.VIII.I. Proof of language skills required by generally applicable State Language Acts for employment in the public sector specifically

The language ability will be proven by language examination organised by the Language Board in *Estonia*. If the person who has taken the language examination is not satisfied with the result, it is possible to turn to the administrative court. The examination of Estonian language consists of four parts: 1) listening 2) reading 3) writing and 4) speaking. In order to assess the Estonian Language ability, the three levels A, B, C, as described above, are applied.

¹⁸³ *Groener* (C-379/87) para. 23 and *Angonese* (C-281/98) paras. 43-44.

¹⁸⁴ Concerning specific provisions of Polish law, however. Cf. *Groener* (C-379/87) para. 23 and *Angonese* (C-281/98) paras. 43-45.

Estonian language examination should not be taken by a person who obtained education in Estonian at least on one of the following level: 1) Basic education; 2) Secondary school education; 3) Professional education; or 4) Higher education.

Also, the Language Board can order that a person should undergo the language examination, if the Language Board learns that a worker or official is not in the position to communicate in Estonian on the required level. To get an official paper about the language ability, the examination will be organised by the Language Board.

Similarly in *Latvia* where Regulation No.733 provides for specifically defined means of proof of knowledge of the state language. Language ability could be proved either by a diploma of primary, secondary or higher educational establishment where studies are carried out in Latvian or a diploma issued by the state language proficiency examination commission. In order to assess the Latvian language ability, there are three proficiency levels, as described above. “It seems that such provisions might not be in conformity with the case law of the CJEU, in particular *Angonese* (C-281/98)”¹⁸⁵ as adequately articulated by the expert from *Latvia*,¹⁸⁶ nor with *Groener* (C-379/87).¹⁸⁷

In *Lithuania* the Law on Public Service does not specify proficiency of language level, but reference could be made to Lithuanian language exam, which is mandatory when requesting citizenship of Lithuania or EU long-term residence permits. The level of proficiency for language exam is based on European Council A2 level. The Lithuanian expert is yet of the opinion that higher proficiency would be requested in practice, e.g. for working in the ministry.

Language tests approved by various public organisations are also considered as proof of proficiency. There is no official information available on other means to prove linguistic ability in the public sector.

Thus, there is a Lithuanian language exam for requesting citizenship of Lithuania or EU long-term residence permit, which is applied to public service officials and it is carried out in a standardized format. The State language exam is composed of two parts: Test and conversation and all four linguistic skills are verified: Reading, writing, listening and speaking, respectively. There are three categories that could be assigned based on the results of the exam (first-lowest and third - highest). However, other language tests are carried out in other formats in broader context of public sector (e.g. language test approved by the Civil Aviation Administration).

VI.I.VIII.II. Proof of language skills required by Language Acts and/or constitutional provisions for employment in the public sector specifically

In *Belgium* problems may arise as regards the proof that can be made of the knowledge of those languages required (French, Dutch or German). Mention was made in the previous general report by the Belgian expert of specific language requirements in the local public sector. The Commission took issue with Articles 15 and 53 of Belgian legislation on the use of languages for administrative purposes which provides that candidates in the local public sector and who have not followed education in the Dutch, French or German language may prove their linguistic abilities in the language of the region concerned only by obtaining a certificate issued after passing exams

¹⁸⁵ Paras. 43-45 and 47.

¹⁸⁶ Concerning specific provisions of Latvian law, however.

¹⁸⁷ Para. 23.

organised by the ‘SELOR’ (the Belgian public sector recruitment office).¹⁸⁸ Although it was not part of the Commission’s letter of complaint, it is important to the Belgian experts to note that a certificate issued by SELOR is also the only proof of language which is accepted for candidates that have not followed their education in the Dutch, French or German language who wish to apply for the regional public sector of the French-speaking, Dutch-speaking or German-speaking regions. On the contrary, no such certificates are required for candidates that wish to take the exam for the local or regional administration of Brussels-Capital or for the federal public service. However, when an exam is not organised before hiring civil servants in Brussels-capital or at the federal level, candidates who have not studied in Dutch or French also need to provide a language certificate issued by SELOR.

The Flemish Decree of 18 November 2011¹⁸⁹ now provides that, for those who have not followed education in the Dutch language, the linguistic abilities necessary to work in the local or regional public sector of the Dutch-speaking region can be proved by obtaining a certificate issued by the bodies the Flemish government deems responsible for delivering such certificates or a certificate issued by *other* bodies, as long as it meets the conditions for approval determined by the Flemish government. The Flemish government has highlighted in its project of Decree that its implementing orders would not distinguish whether the said bodies are localised in Belgium or not. In order to establish the equivalence with its own certificates, it intends to make use of the European Language Levels (CEFR) frame of reference.

So as to satisfy fully the Commission’s request for Belgium’s compliance with EU law, it was said in the previous general report that the Flemish Decree should be complemented by a Decree of the French Community which is competent for the local and regional public service located in the French-speaking administrative region and a Law of the federal legislator which is competent for local and regional public services located in the bilingual administrative region of Brussels-Capital, for local and regional public services located in the German-speaking region and for federal public services. However, the Belgian experts cannot find any evidence that legislative compliance has been discussed by the competent legislative assemblies and the federal public service for staff and resources informed the experts in a letter dated 7 May 2013 that SELOR is still the only organisation that can deliver language certificates.

Recently, the European Commission decided to refer Belgium to the CJEU “[...] because of discriminatory conditions for candidates wishing to work in the local public sector in the French and German speaking regions, as well as the Brussels region, and who have not followed education in Dutch, French or German. In particular, candidates' knowledge of languages is only recognised if they obtain a certificate issued by the Belgian governmental recruitment service (SELOR). No other certificates are accepted as proof of language knowledge.”¹⁹⁰

Language test are applied to persons who have not followed education in the national languages in *Luxembourg*. Thus, where candidates wishing to get a job in the Luxembourg public service at the national or at the local level, have to demonstrate their knowledge of the three Luxembourg administrative languages, namely Luxemburgish, French and German. For that, they have to pass preliminary language level tests in order to qualify to sit for the further examinations.

The examination content is precisely specified by a Grand-Ducal Regulation, according to which the examination consists of two components, namely an oral test and an oral comprehension test.

¹⁸⁸ Press release IP/11/602.

¹⁸⁹ *M.B.*, 16 December 2011, p. 78594.

¹⁹⁰ Press release IP/13/868.

It is also important to note that the candidates may be dispensed from one or more language tests under certain conditions.¹⁹¹ Indeed, the candidate whose secondary school certificate¹⁹² or the graduate degree given access to the public job in question, has been obtained in a French or German speaking region or Country, is exempt from the preliminary French or German test. Then, the candidate will only have to pass the tests which apply to the second and third languages.

Likewise in *Italy* with regard to *Valle d'Aosta*. The exams, upon which access to the public sector in Valle d'Aosta is conditional, comprise an examination on the knowledge of French. Those who took a particular exam of French during secondary school or hold a University degree issued or recognised in the Region are exempted from the examination on the knowledge of French.¹⁹³

A more flexible approach is found in *Finland*, where, as a rule, proof of language proficiency also comprises national language tests and certificates proving education in the national languages at a national institution. Thus, the means by which an applicant for a post can establish that she/he has reached the required level of language proficiency are national language tests and certificates showing that the person concerned has completed her/his education and passed a maturity test at a Finnish university in the given language. According to Section 14 of the Act on Language Proficiency, the Board on Language Exams¹⁹⁴ may upon application issue a certificate on excellent command of Finnish or Swedish language to a person who can show that she/he has reached the required language proficiency by other means than those specified in the Language Decree. Hence, the Board on Language Exams may upon application decide that, for instance, language studies completed abroad may be equated with official Finnish exams. Where there are no statutory language requirements, the employee may assess the linguistic competence of the job seekers and employees freely. There are language tests, but the linguistic competence can also be shown by other means.

Likewise in *Ireland*, exams may be equated with regard to the Gardaí. Thus, specific qualifications in either English or Irish are required to join the Gardaí. Candidates must have obtained in the Leaving Certificate either a D3 in Ordinary Level English or a C3 in Foundation Level Irish at the minimum or alternatively, like grades in another examination which in the opinion of the Minister for Justice and Equality is not of a lower standard than the above. Proof of language skills may be attested in the course of interview in *Ireland* with regard to the Defence Force: There are no education requirements for candidates for the Defence Forces, but they must satisfy the Interview Board and Recruiting Officer that they have a sufficient level of education. Also, candidates for positions within the Civil Service who pass an Optional Language Test in Irish are entitled to extra marks at the interview. And an existing Civil Servant who enters competition for promotion can establish bilingual proficiency and thus benefit from extra marks if they pass a Gaeleagras Triail Inniulachta test or attend a Gaeleagras course leading to a certificate of competence.

Similarly in *Italy* with regard to the *Province of Bolzano*. Hence, evidence of bilingual knowledge of Italian and German for access to the public sector in the Province of Bolzano can be given by the

¹⁹¹ Art. 6 of the Grand-Ducal Regulation of 12 May 2010 fixant les modalités du contrôle de la connaissance des trois langues administratives pour le recrutement des fonctionnaires et employés des administrations de l'Etat et des établissements publics.

¹⁹² Certificat d'études.

¹⁹³ Law 16-5-1978 n. 196, Norme di attuazione dello statuto speciale della Valle d'Aosta (OJ, 23-5-1978, n. 141). Art. 51.

¹⁹⁴ Kielitutkintolautakunta.

so called ‘*attestato di bilinguismo*,’ that is a diploma issued in the Province (on which, see the *Angonese* (case C-281/98)), or by any other certificate attesting the knowledge of German and Italian, or by secondary school and University diplomas, issued by schools and Universities where courses are taught in Italian and/or in German.¹⁹⁵ The provision does not explicitly state that the schools or Universities or institutions issuing the diploma or certificate shall be sited in Italy, but the literal interpretation leads to this result, according to the Italian expert. Conversely in *Malta*, where, when a formal qualification obtainable only locally is required as evidence of linguistic ability, appropriate comparable qualifications obtainable from abroad are also accepted.

Competition exams are held in the national languages in *Italy*. Thus, in *Italy* EU nationals are not required to give evidence that their knowledge of Italian is adequate. In fact, access to the employment in the public sector is conditional upon the passing of competitions and exams. The exams are the same for Italian and EU nationals alike. The application forms are in Italian and shall be filled in Italian, and the written and/or oral examinations are held in Italian. No case, even anecdotal, of EU nationals which had been denied access to a post in the public sector for reasons concerning to linguistic requirements has been reported. Evidence of knowledge of Slovenian is not regulated by law in *Italy*.

And in *Romania* according to Article 16 of the Government Decree No. 1206/2001, the employment of persons that know the mother tongue of the citizens belonging to the respective minority in the positions regarding public relations is possible by competition organized in accordance with the legal provisions on public sector employment. This is why in certain competitions for the fulfillment of a civil servant position; a mandatory language requirement is imposed.

VI.I.VIII.III. Proof of language skills required by general legislation applicable to the public sector and/or administrative practice for employment in the public sector specifically

Certificates proving education in the national languages at a national institution is required for most posts in *Cyprus*. Thus, in the public sector, if the job description for a job vacancy in the public sector requires ‘excellent’, or ‘very good’ or ‘good knowledge’ of the Greek language, both the meaning of each of the aforementioned terms as well as what constitutes evidence to that effect has been defined by the Public Service Board. Consequently, if a citizen of an EU Member State wishes to apply for a job in the Public Service for which knowledge of Greek is required, she/he has to provide the necessary documentary evidence that she/he possesses the knowledge required in the same way as a Cypriot national applying for a position in the public sector has to do by law. For most posts, especially more senior posts, it is required that the candidates have ‘very good knowledge’ of Greek, which is certified by the possession of a Greek secondary school certificate or A’ Level in Greek or to be a graduate from a Greek university. In one case the Committee of Educational Service initially rejected the diploma of a Greek national, who had a philology degree from a Greek University which would entitle her to teach in Greece. However, she was eventually allowed to apply for the post of teacher following a complaint and an intervention by the Cypriot Equality Authority.

Likewise are specific certificates either proving education from a national school or a special language certificate issued by a national centre required in *Greece*. In *Greece*, systematic language tests are not carried out in a standardised form in the public sector, and the degree of knowledge of

¹⁹⁵ Decree of the President of the Republic, 1976 n. 752, Art. 3.

the Greek language is defined each time by proclamation taking into account the requirements of the post of employment. As proof of the degree of knowledge of the Greek language, the proclamation often requires either a Bachelors certificate from a Greek High School or a special language certificate granted by the Center of Greek Language. Thus, other ways of proving the degree of knowledge of the language are not provided in the proclamation of the posts, e.g. the fact that the candidate has executed the same job for a long period in Greece.

And in *Slovenia*, when for specific work in the public sector a condition of nationality is not required, a possible condition of active knowledge of the Slovene language sometimes may be applied. In that case when we talk about persons that are not Slovene nationals (they may be EU nationals or third country nationals) they prove their knowledge with a special certificate issued by the authorised Centre of Slovene as second/foreign language working under the auspices of the Department of Slovene Studies at the Faculty of Arts of the University of Ljubljana.¹⁹⁶

The same applies to *Poland*, where, as regards access to civil service and to self-government administration, there is a requirement to prove knowledge of Polish language in a very formal way. The same rules are applicable to these two categories of posts (according to the Act of November 21, 2008 on civil service- and Act of November 21, 2008 on self-government employees¹⁹⁷).

These rules apply without distinction to EU nationals and other foreigners (unlike for instance requirements that are applicable to doctors, pharmacist, etc.). The Regulation of the Prime Minister of April 23, 2009 lists documents which are enough to prove sufficient knowledge of Polish language by foreigners¹⁹⁸ and which release from the obligation to pass an exam before a state commission. These documents are as following: 1) Certificate of knowledge Polish language on intermediate level issued by the State Commission Proving Knowledge of Polish Language as Foreign Language; 2) Document proving completion of higher education in Polish language; 3) Maturity certificate awarded in Polish education system; or 4) Certificate of certified translator issued by Minister of Justice.

As any other certificate than listed in the Regulation is not acceptable (especially the one granted outside Poland) and hence is insufficient to prove Polish language when applying for posts in civil service or self-government institutions, such provisions are too strict in the light of CJEU jurisprudence and the obligation to apply the proportionality principle, according to the Polish expert. However, as the scale of employment in civil service and self-governing bodies for foreigners, including EU citizens is marginal, there have been no reported cases as regards infringements with EU law. No systematic language tests are carried out.

And in *Spain*, Paragraph 2 of Article 61 of the Law 7/2007, of April 12, the Civil Service Basic Statute¹⁹⁹ establishes that the Selection Committee can require in the selection process oral exams. This requisite implies the knowledge of Spanish, but the Article does not precise the level of knowledge.

¹⁹⁶ Web page: <http://www.centerslo.net/index.asp?LANG=eng>.

¹⁹⁷ Ustawa o służbie cywilnej and Ustawa o pracownikach samorządowych, Journal of Laws of 2008, No. 227, item 1505 and 2008, No. 223, item 1458, respectively.

¹⁹⁸ Rozporządzenie Prezesa Rady Ministrów w sprawie dokumentów potwierdzających znajomość języka polskiego przez osoby nieposiadające obywatelstwa polskiego, ubiegające się o zatrudnienie w służbie cywilnej, Journal of Laws of 2009, no. 64, item 539.

¹⁹⁹ Official Gazette, num 89 de 13 de Abril de 2007.

No systematic language testing is applied in the public sector in *France*; neither in *Austria*, within which the law does not foresee any special requirements of proof and also in practice these are not commonly used. In general the public administration does not demand special language certificates or carry out language tests. This goes i.a. for the Vienna city administration. In Vienna the common method of assessment is the job interview. In some areas standardized tests are foreseen to assess the professional skills. Candidates with insufficient command of German language will not be able to pass these tests. In many cases the language skills are proved implicitly by certificates of the required education (i.a. university diplomas or school reports). This practice regarding the Vienna city administration seems to be exemplary for the public sector.

Neither are systematic language tests applied in *Germany*. For access to the position of civil servants: when the requirement of adequate language skills was introduced in 2007, the official explanations state that the question of language skills should not be part of the recognition process for professional qualifications, i.e. state authorities should not require standard information on language skills. They may in particular not require applicants to pass language tests or show a certain language certificate as a matter of principle. Instead, they should consider each individual case with due consideration to the principle of proportionality. This gives state authorities some flexibility.²⁰⁰ Legal databases and commentaries do not report that the implementation of the rule raises much concerns or problems in practice.

Similarly in *Sweden*, where proof of sufficient language skills could be certificates, language tests, interviews before employment etc. The Swedish expert refers to the information provided concerning the private sector as well as the corresponding principles concerning the public sector: The expert cannot find any common used and standardised form in the private sector. Further, there is almost no information to be found regarding disputes on language tests on the private sector, and case law on the matter is very rare. In Case 2005 No. 75 the Labour Court touched upon the issue but the main focus was not on the used test and no general statements were made on this issue. In a decision in 1999 the Discrimination Ombudsman found that a language test used in the recruitment procedure was against the former law against ethnic discrimination.

And in *Hungary*, neither formally, nor informally has the Hungarian language competences of foreigners and its testing method been developed. Despite of the ongoing reform in public administration, it is neglected to determine the level of (Hungarian) language skills to which task or to regulate how to make an objective test of communication ability, while there are more and more persons as candidates with dual nationality to the public sector. The documentation of foreign language exam (bilingual examination) is regulated obtaining a wage supplement, but the Hungarian is considered as *per se* known. It relates to decades of inflow of ethnic Hungarians. In practice the mentioned non-regulation is accompanied by non-practice of language test because Union citizens are ethnic Hungarians or their family member speaking Hungarian. Moreover, the growth of new Hungarian citizens (multiple nationalities) due to accelerated naturalisation (of ethnic Hungarians) since 2011 has marginalised the relevance of the language test.

Likewise in *Slovakia*, there are no specific provisions on how the knowledge of the Slovak language is examined, or how deep the knowledge should be. In *The Netherlands* language knowledge is not to be tested during the procedure on the recognition of the qualifications acquired in another

²⁰⁰ Official explanation of the Gesetz zur Neuordnung und Modernisierung des Bundesdienstrechts (Dienstrechtsneuordnungsgesetz – DNeuG) of 2007 in BT-Drs. 16/7076 of 12 November 2007, p. 104, available online at <http://dip21.bundestag.de/dip21/btd/16/070/1607076.pdf>.

Member State, but afterwards in the appointment procedure. This is the case also in Denmark within which language tests may be part of an employment procedure. However, no information is available on the extent of the application of language tests or controls in the employment procedure. Also, an applicant's language knowledge is likely to be clarified during the course of the job interview.

Competition exams are held in the national language in *France*. Accordingly, the main recruitment process public sector is the recruitment by competitive examination. The tests for these competitive examinations are written in French and have to be answered in French.

VI.II. Proof of language skills required in practice by private entities

VI.II.i. Summary of findings

No standardised rules appear, and private employers would usually neither require specific certificates, nor apply standardised language tests in *Austria, Croatia, Czech Republic, Denmark, Finland, Germany, Hungary, Portugal, Romania, Slovakia, Sweden* and *United Kingdom*.

Within those Member States, employers are thus free to choose the method of proof and testing, and are likely to assess the linguistic ability i.a. in the course of the job interview on a case-by-case basis, or on the basis of tests specifically designed for the job or company concerned, or on the basis of language school certificates, which is considered an advantage in i.a. *Romania*, or via an assessment centre.

However, oral tests will usually be carried out in *Luxembourg*, and there may also a written test, but less often. Yet, most employers will not use standardized criteria, and there are no standardized tests in the private economy.

The expert from *Hungary* makes the observation that “[s]ome articles and news prove how competition among professionals may upgrade the level of tests.”

VI.II.ii. Findings

Private employers would usually not require specific certificates, nor apply standardised language tests in *Germany*. There are many ways to show your proficiency. Of course, certified language schools are very reliable and may be treated preferentially. At the end of the day, each company would decide independently. There are no standardised rules. Similarly in *Portugal*, the practice of systematic Portuguese language tests carried out in a standardized form in the private sector is unknown. Workers may prove their linguistic abilities by any means. And in *Croatia* EU workers may prove their linguistic abilities by any means and systematic language test are not carried out in a standardised form in the private sector. The Croatian expert notes that it is to be seen what will be the practice in the future.

Likewise in *Austria*, where, according to information provided by the employment agency Salzburg to the Austrian expert, most companies assess the linguistic ability of candidates in the course of the job interview. Accordingly, most companies assess the language skills of candidates for lower qualified jobs on a case-by-case basis in course of the job interview. For higher qualified jobs, the employers either assess the linguistic ability during a longer job interview or an assessment centre or they use language tests designed for the specific requirements of the company. Standardized tests

are not commonly used. There is also no information on companies who would require certain language certificates. It does not seem to be a usual practice to require specific certificates.

Similarly in *Czech Republic*; for non-regulated professions, no standard proof of linguistic knowledge is laid down in the laws of the Czech Republic. It may happen that in specific cases, a specific qualification is demanded as a proof, however, the Czech experts are not aware of any such case where such a requirement was challenged before the court/the ombudsperson or any relevant body on the territory of the Czech Republic. To the Czech experts' knowledge, there is no standardized form of tests in the private sector.

Likewise in *Finland*, as there is no legislation, administrative orders, etc. on the language requirements in the private sector, save in exceptional cases, the employers are free to decide themselves what kind of proof they require from job seekers or workers to establish whether they have the required knowledge of languages. No systematic information is available on what kind of proof is generally required in practice. Apparently, though, it is rather common that the employees themselves assess the linguistic competence of the job seeker in course of the job interview.

And in *Hungary*, the method of how to check the language competence requirement is not explicitly regulated. Employers in Hungary are free to offer employment on terms laid down by them. In these cases, the degree of necessary language abilities is set by the employer; however, they are required to comply with the case law of the CJEU. Some articles and news prove how competition among professionals may upgrade the level of tests. And in *Slovakia*, in other fields than regulated professions, no standardized form of tests in the private sector exists. There is no proof of knowledge of Slovak language established by the law. The only proof with regard to regulated professions is the language test.

Likewise in *Romania*, the proof of language abilities is required by the employer, who can accept any documentation in this regard, or even no documentation when the abilities can be verified directly. There are a lot of possibilities to get different certificates on language abilities, organized by universities, cultural institutions operated in Romania from different EU Member States (UK, Germany, France etc.), or private organizations. Such a certificate is generally considered an advantage in the case of a job application. Standardised and systematic language testing for private sector is inexistent; each certificate issuer has its own standards.

And in *Sweden* proof of sufficient language skills could be certificates, language tests, interviews before employment etc. The expert cannot find any common used and standardised form in the private sector.

Further, there is almost no information to be found regarding disputes on language tests on the private sector, and case law on the matter is very rare. In Case 2005 No. 75 the Labour Court touched upon the issue but the main focus was not on the used test and no general statements were made on this issue. In a decision in 1999 the Discrimination Ombudsman found that a language test used in the recruitment procedure was against the former law against ethnic discrimination.

Likewise in *Denmark*, language tests may be part of an employment procedure. However, no information is available on the extent of the application of language tests or controls in the employment procedure. Also, an applicant's language knowledge is likely to be clarified during the course of the job interview.

Neither in *United Kingdom* is there information suggesting that there systematic language tests are carried out in the private sector. There are a number of education institutions which offer language testing. Among the best known is <http://www.ielts.org/> which offers a service to check knowledge of English and markets the reliability of its assessments widely to companies. On the IELTS website one can search a section by country and sector where the results of their exams are accepted as evidence of knowledge of English. A search under UK England, employers performed by the UK expert did not turn up any results.

In *Luxembourg*, there are no standardized tests in the private economy. Usually there will be an oral test, just to check the oral ability of the candidate, as speaking those languages is often requested. There may also a written test, but less often. Most employers will not use standardized criteria.

VII. Access to social benefits: Requirements for proof imposed on workers of language proficiency in access to social benefits/advantages

VII.i. Summary of findings

As described above, in four Member States measures to link language requirements to entitlement to certain social assistance benefits exist (*Belgium, Denmark, Germany and The Netherlands*).

It would appear that any proof of language proficiency is accepted in *Belgium*, as the applicant's willingness to learn the Dutch language may be demonstrated through various means, including a certificate that the future tenant follows a specific integration course. This integration course is compulsory to foreigners, except to EU citizens - as well as Belgian citizens - who have used their freedom to circulate within the Union.

As regards *Denmark* and *Germany*, no information is available about how an EU citizen might substantiate sufficient language skills, which might imply that there are no specific requirements for proof as such for language proficiency in *Denmark* and *Germany*. However, those job seeking, unemployed EU citizens receiving unemployment benefits and/or social assistance whose language skills are deemed insufficient for the labour market, appear to be required to attend specific language courses selected and/or provided by the authorities or actors concerned.

Regarding *The Netherlands*, other than information about the requirement on finishing a language course with success under the 2013-policy plan, there is no information available on the specific requirements for proof of language proficiency pursuant to the 2010-Bill or the 2013-policy plan, neither on the level required.

VII.I. Belgium: Social housing under the Flemish Housing Code

In *Belgium*, Chapter VII of the Flemish Housing Code makes access to social housing in the Flemish region conditional upon the tenant demonstrating his willingness to learn the Dutch language which may be demonstrated through various means, including a certificate that the future tenant follows a specific integration course.

The specific integration course is organized by the Flemish authorities and involves Dutch-speaking classes which are compulsory for foreigners that want to settle in the Flemish region, on pain of administrative penalty. EU citizens as well as Belgian citizens who have used their freedom to circulate within the Union are, however, exempted from that obligation. The Walloon and the

Brussels-capital regions are contemplating the possibility of introducing the same kind of integration courses. The government of the Walloon region has recently reached an agreement on a project of Decree which exempts EU citizens from the obligation to take the integration course which it intends to set up.

VII.II. Denmark and Germany: Access to unemployment benefits and/or social assistance for unemployed

In *Denmark* and *Germany* those job seeking, unemployed EU citizens receiving unemployment benefits and/or social assistance whose language skills are deemed insufficient for the labour market appear to may be required to improve their job opportunities by attending i.a. language courses selected and/or provided by the authorities or actors concerned. The courses appear to be free of charge to the attendees in both countries.

Yet, those unemployed who do in fact have sufficient language skills for the labour market are likely not to be met with a requirement on attending language courses. However, no information is available about how an EU citizen might substantiate sufficient language skills, neither about the level of language skills regarded as sufficient.

VII.III. The Netherlands: Access to social assistance

With regard to the Bill pending in *The Netherlands* since 2010 and introducing language requirements for the reception of Social Assistance benefits, there is no information available about the specific requirements for proof of sufficient knowledge of the Dutch language in cases where language knowledge will improve the job opportunities of the applicant, neither on the level of language skills required.

Regarding the policy plan announced in April 2013 by the Dutch government and entailing that anyone who does not speak Dutch and applies for social assistance must take a course in Dutch and finish it with success on pain of reduction or ending of the social benefit, there is no information available on how applicants might substantiate sufficient language skills; which course applicants may be required to take; whether such course is free of charge or the level of language skills required.

C. Justifications

VIII. Access to employment and working conditions, promotion or salary: Justifications of specific requirements to have a certain level of linguistic ability or to be a mother tongue speaker when accessing employment or in order to secure or earn certain working conditions, promotion or salary in the private and public sector

VIII.I. Justifications of language skills required by law, regulation, administrative action or practice, or by collective or individual agreement or any other collective regulation in the private and public sector

VIII.I.I. Justifications of language skills required by generally applicable State Language Acts for employment in the private sector specifically

VIII.I.I.i. Summary of findings

Issues on compatibility in terms of proportionality with the aims pursued emerge in *Estonia*, *Latvia* and *Lithuania*, due to the fact that language requirements are imposed on workers on a general basis, rather than on a case-by-case basis, without taking the nature of a particular job into consideration. In *Latvia*, the justification is to ensure that the Latvian language, which is the official language, could be used freely within every field of life and protection and preservation of Latvian cultural identity. And in *Lithuania*, the justification is the need to provide services to the residents in the local language or security requirements.

Notably, in *Latvia* different levels of knowledge of Latvian language for the same professions is required, depending on whether the employment is in the public or the private sector, which in itself reveals that the language requirements have not been assessed from the perspective of the principle of proportionality.

According to the expert from *Latvia*, who conducted a thorough analysis of national law and practice as well as CJEU case law, it follows from case law of the CJEU, that EU law allows requiring the knowledge of an official language in a level *exceeding the level necessary for the performance of a work* in question, if such requirement is *necessary* for the attainment of the *aims under national language policy* and is *proportionate* in relation to such policy aims, cf. *Groener* (C-379/87).²⁰¹ The author of this report is yet of the opinion that the *linguistic and cultural policy* pursued by a government has in practice by the CJEU been held to *correspond to what is necessary for a post*, provided that the level of knowledge required is *not disproportionate* in relation to the objective pursued in *Groener* (C-379/87).²⁰² Notwithstanding those minor differences in opinion, the fact remains that the CJEU has acknowledged a Member State's *linguistic and cultural policy* as a legitimate aim.²⁰³ Moreover, the requirement on *proportionality* of linguistic measures prevails.²⁰⁴ Since the language requirements are imposed for employment in the private sector on a general basis in the three Member States concerned, rather than on a case-by-case basis, without taking the nature of a particular job into consideration, the proportionality of those language requirements is thus highly questionable.

²⁰¹ Paras. 19-20.

²⁰² Para. 21; see para. I.iii above.

²⁰³ *Groener* (C-379/87) para. 19, *Las* (C-202/11) paras. 25-27, and *Runevic-Vardyn and Wardyn* (C-391/09) paras. 85-87.

²⁰⁴ Cf. also *Las* (C-202/11) para. 29.

VIII.I.I.ii. Findings

The aim of the State Language Act in *Latvia* is to ensure that the Latvian language could be used freely within every field of life and protection and preservation of Latvian cultural identity. According to Article 3 (1), the official language in Latvia is the Latvian language.

It follows from CJEU case law, that requirements on knowledge of an official language must be proportionate with regard to the aims pursued by the policy for the protection and promotion of a language of a Member State, *Groener* (C-379/87).²⁰⁵ Furthermore, there is a difference between the right to require language requirement for the performance of a work in question and the right to require such language requirement for the performance of a work with a view to attain language policy aims. Under the first approach, the language requirements may not exceed what is necessary for the performance of a work, while under the second approach the language requirements may exceed the knowledge of an official language what is necessary for the performance of a work but what is necessary to attain language policy aims, like, for example, stressed in the *Groener* case, where knowledge of the Irish language was not necessary for the performance of her work in question; however, such knowledge was necessary for the attainment of the aims of Irish language policy aims.²⁰⁶

According to the Latvian expert, it hence follows from CJEU case law that EU law allows requiring the knowledge of an official language in a level exceeding the level necessary for the performance of a work in question if such requirement is necessary for the attainment of the aims under national language policy and is proportionate in relation to such policy aims, cf. *Groener* (C-379/87).

However, it is doubtful if the legal regulation on the particular level of knowledge for the particular posts (professions) is compatible (proportionate) with the aims pursued by Latvian language policy. First, there are no documents testifying that the particular language level requirements for the particular posts (professions) provided by Annexes of the Regulation No.733 have ever been estimated from the perspective of proportionality.

Second, the legislator (the Cabinet of Ministers) has made some ‘mistakes’ which demonstrates explicitly that the particular language knowledge requirements have never been estimated from the perspective of proportionality. It follows from the fact that Appendix I of the Regulation No.733 requires B.1 level knowledge for chambermaid, while Appendix II only requires A.1 level knowledge. It follows that in case a chambermaid is employed by a hotel belonging to the state or a municipality she/he must know the Latvian language better than a chambermaid employed at a hotel owned by a private person. The same applies for example, to bathhouse attendants. It is obvious that for the professions mentioned, the work duties do not differ on account of a status of employer and owner or a business (public or private). Such examples explicitly demonstrate that the Latvian language requirements as stipulated by the Regulation No.733 do not correspond to the principle of proportionality.

In conclusion, the EU law according to the interpretation given by the CJEU requires that an official language requirement must be proportionate with the aims of an official language policy of a Member State. Such margin of appreciation given to the Member State under the EU law is wider

²⁰⁵ Para. 19. See also in that regard decision in case C-391/09, *Malgožata Runevič-Vardyn un Łukasz Paweł Wardyn pret Vilniaus miesto savivaldybės administracija, Lietuvos Respublikos teisingumo ministerija, Valstybinė lietuvių kalbos komisija un Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyrius*, OJ C 312, 19 December 2009, paras. 83-88.

²⁰⁶ Para. 20.

than the right to require proportional official language requirements only with regard to a particular post (profession).

Furthermore, the legal provisions of the Latvian law and in particular, norms of the Regulation No.733 requiring different level of knowledge of Latvian language for the same posts (professions) in public and in private sector, reveal themselves that they have not been assessed from the perspective of the principle of proportionality.

Moreover, the State Language inspectors in practice require employees of the private sector whose level of knowledge is not defined by Regulation No.733 to know the Latvian language in the level which is one level lower than required for employees in the public sector. However such practice runs contrary to the administrative law principle - that administrative fines may be imposed only on the basis of law. In addition, the State Language inspectors apply the law different with regard to Latvian Russian-speaking population and EU workers, which runs contrary to non-discrimination principles under the human rights law.

According to the Latvian expert, it follows that requirements on the level of knowledge of an official language for a particular post (profession) with regard to all or several posts might be incompatible with the principle of proportionality in the context of official language policy aims and thus with EU law.

A somewhat similar situation is found in *Lithuania*, where the justification following the general requirements in the Law on State Language is the need to provide services to the residents in the local language. While this justification is well-grounded, not all jobs in the private sector that are mentioned in the Language Proficiency Resolution may require the language knowledge on a case-by-case basis. Justification of language requirements in the maritime sector, for instance, is based on security of navigation, thus is quite valid, according to the Lithuanian expert.

The justification in the case recorded in the beginning of 2012, when a state owned company applied reduction of salary for 11 employees who did not use the Lithuanian language, was safety at work and safety of the railway transport. These justifications are valid, but most problems occur in the private sector, where imposition of the language requirement is very discretionary and there may be hidden reasons to prevent the employment of certain foreigners. However, this is extremely difficult to prove in practice.

With regard to whether the language requirements appear to be reasonable and necessary, as concerns the general requirements for persons in the servicing sector, they may be reasonable and necessary, but the concern is that they may be applicable automatically as general requirements without taking consideration of a nature of a particular job.

Likewise in *Estonia*, regarding which it is doubtful whether it is necessary to have the language requirements foreseen in legislation for everyone. Accordingly, one could ask if non-following the requirements to have A2 level is justified. The case law in individual employment law has stated that it is not important whether an employee has a certificate about the language abilities, rather it is important whether he or she really should use the language and if there are complications in understanding employment tasks and complications in interactions with other colleagues. As previously mentioned, the language requirements are mainly controlled and observed especially in case of Russian speaking population as this constitutes the main problem. The language requirements are, however, justified for doctors and nurses, also for public sector and for services e.g. for people who are working in supermarkets, according to the Estonian expert.

VIII.I.II. Justifications of skills required by law etc. for employment within the medical sector

VIII.I.II.i. Summary of findings

Language skills are required to the extent necessary for practising the specific position in the majority of the Member States concerned (*Bulgaria, Croatia, Czech Republic, Denmark, Finland, Germany, Ireland, Poland, Slovakia, Sweden, The Netherlands and United Kingdom*). Accordingly, the justifications of the language requirements are the ability to perform one's tasks, the quality of medical services, patient security, safe care, and the ability to communicate effectively with one's patients, colleagues and relatives. With the possible exception of a few Member States (see further below), no compatibility issues have been reported regarding this sector.

Thus, to the experts from *Germany* it seems that the legal rules for medical professions in *Germany* are comprehensible and respond to legitimate concerns about the quality of medical services and good relations among medical personal and patients in line with earlier CJEU cases on language requirements for dentists in *Germany*,²⁰⁷ also considering that the official explanations explicitly call upon regional authorities, which are responsible for the implementation of these rules in the day-to-day practice to handle them flexible with due regard to the circumstances of each individual case. Likewise do the requirements seem to be reasonable and necessary to the experts in *Croatia, Poland and Sweden*.

However, the question of whether or not a 'speak English only' policy can be justified has not yet been tested in the tribunals and courts under the Equality Act 2010 in *United Kingdom*. And in *Cyprus*, an open question remains whether it is justifiable to retain language requirements for nurses higher than the requirement for doctors in *Cyprus*. Also, regarding *Germany*, the German experts question the proportionality of the general legal requirement of adequate language skills imposed on medical and technical assistants working in laboratories, but legal databases do not reflect major disputes which might indicate a flexible approach in practice.

VIII.I.II.ii. Findings

Required language knowledge and knowledge of special terminology is justified by the extent necessary for the medical profession in *Slovakia*; and in *Czech Republic*, where *doctors, dentists and pharmacists* must be able to understand their patients, so the knowledge of the Czech language is required to the extent that is necessary for a pursuit of the medical practice. Likewise in *Croatia* where due to the importance of direct and accurate communication with patients (for the purpose of avoiding misunderstandings and consequently hazardous effect of a doctor or pharmacist's work on patient's health), the required minimum level of Croatian language knowledge in the health care field areas is to be considered as necessary, appropriate and proportionate, and hence in line with the EU acquis, according to the Croatian expert. A language requirement milder than the general one on knowing Croatian language applies to EU nationals, prescribing that they have to have 'knowledge of Croatian language at least at the level that is required for the smooth and the necessary communication with the patient.' Also in *Finland*, where health care professionals must have sufficient linguistic competence to be able to perform their tasks, which is the case also in *Ireland*; where medical practitioners must have sufficient English language skills to perform their duties and communicate effectively with patients and colleagues. Similarly in *Sweden*, where a person must have the sufficient skills for a certain position; the language understanding between

²⁰⁷ *Haim II* (C-424/97).

doctor and patient can be of vital importance. On the other hand, the same does not apply if the doctor's task, by example, is to take and analyze roentgen pictures. And in *The Netherlands*, the Recognition of EC Vocational Qualifications Act²⁰⁸ lays down the general requirement that the migrant professional whose vocational qualifications are recognized or who is admitted as a service provider must possess the language skills that are required to practise the concerned regulated profession in the Netherlands. In an opinion of the Board of Human Rights, the Board decided that the rejection of a Bulgarian woman for the job as a dermatologist because she did not command the Dutch language sufficiently was justified. The hospital has a good reason for making this distinction: Good communication between doctor and patient and doctors among each other is essential for the function of a dermatologist.²⁰⁹

The objective of the language requirement imposed on *health personnel* in *Denmark* is to ensure that the work is exercised with the care and conscientiousness presupposed in the Act governing health personnel's authorizations.²¹⁰ It is imposed for the sake of patient security, i.a. to ensure safe communication with patients, relatives and other health personnel etc.²¹¹

Considerations on medical personnel being able to undertake their role effectively and to assure the delivery of safe care to patients appear to be the justification also in *United Kingdom*. The question of whether or not a 'speak English only' policy can be justified has not yet been tested in the tribunals and courts under the Equality Act 2010.

Required language knowledge is justified by what is necessary and in the interest of the persons and their patients also in *Bulgaria*. Furthermore, the Law on Protection against Discrimination sets boundaries to language requirements, as it stipulates that there is no discrimination if certain treatment/requirement is reasoned with the nature of a particular occupation or activity, or of the conditions in which it is performed, if such a characteristic constitutes an essential and decisive occupational requirement, the aim is legitimate and the requirement does not go beyond what is necessary for its achievement.

Similarly in *Germany*; the official explanations elaborate on communication skills and thus state that a physician and the other medical professions must be able to communicate with his patients and inform them about implications and side-effects of any treatment. The standard formulation in German law is "...shall have a knowledge of languages necessary for practising the profession"²¹² and takes up the wording of Art. 53 Directive 2005/36/EC for matters of the recognition of professional qualifications and the similar language in Art. 3 of Regulation 492/2011. This rather open formulation leaves room for interpretation, and case law established that persons who are members of the obligatory illness insurance system were not entitled to be treated by persons speaking the language of their home country.²¹³

To the German experts it seems that the legal rules for *medical professions* are comprehensible and respond to legitimate concerns about the quality of medical services and good relations among medical personal and patients in line with earlier CJEU cases on language requirements for dentists

²⁰⁸ Algemene wet erkenning EG-beroepskwalificaties.

²⁰⁹ Opinion No. 2012-204.

²¹⁰ Lov om autorisation af sundhedspersoner og om sundhedsfaglig virksomhed ('Act on Authorization of Health Personnel and on Health Professional Activity'), Consolidation Act No. 877 of 4 August 2011.

²¹¹ Regarding doctors, cf.

<http://www.sst.dk/Uddannelse%20og%20autorisation/Soeg%20autorisation%20udenlandsk%20uddannet/Laege.aspx>, accessed 12 July 2013.

²¹² Über die für die Ausübung der Berufstätigkeit erforderlichen Kenntnisse der deutschen Sprache verfügt.

²¹³ Judgement of 5 February 2008, B 6 KA 40/06 R, EuroAS 2008, 120.

in Germany,²¹⁴ also considering that the official explanations explicitly call upon regional authorities, which are responsible for the implementation of these rules in the day-to-day practice to handle them flexible with due regard to the circumstances of each individual case.

However, with regard to *medical and technical assistants* working in laboratories, a general legal requirement of adequate language skills may be debatable, but legal databases do not reflect major disputes, which might indicate that authorities are willing to show some leeway when the profession in question does not require enhanced German language skills. The wording of the law, at least, is flexible enough to support such flexible handling.

The nature of the job and the tasks to be assigned as well as communication skills is also the main justification in *Poland*. Thus, the main justification is to be able to communicate in Polish language as justified by the nature of the job and tasks to be assigned. The requirements seem to be reasonable and necessary to the Polish expert. There are no reported administrative or judicial cases on the non-conformity with EU regulations on this aspect.

In *Cyprus* an open question remains whether it is justifiable to retain language requirements for nurses higher than the requirement for doctors in Cyprus.

VIII.I.III. Justifications of skills required by law etc. for employment within the marine and aviation sector

VIII.I.III.i. Summary of findings

Communication skills and/or traffic security is provided as the justification in most of the Member States concerned (*Denmark, Greece, Hungary and Lithuania*). No compatibility issues regarding this sector have been reported.

VIII.I.III.i.ii. Findings

Communication skills is stated as a reason in *Greece*, where Presidential Decree 5/2011 provides that ‘sufficient knowledge’ of the Greek language is required for the *posts of master and his substitute* (chief mate) of merchant ships flying the Greek flag to be manned by EU citizens. The law hence states as a reason of this provision the need to communicate with Greek authorities and to understand the Greek maritime legislation.

Traffic security is the justification in *Hungary* of the language requirements imposed on *skilled workers*, i.e. stagier, junior and senior worker, in air navigation service that is operated by a private company. Likewise is security the justification in *Lithuania* with regard to the language requirements imposed on certain *captain or chief officers* of certain ships and *chief pilots and candidate chief pilots*. The justification following the general requirements in the Law on State Language is the need to provide services to the residents in local language or security requirements (e.g. in case of civil aviation, sea navigation, etc.). Justification of language requirements in the maritime sector, for instance, is based on security of navigation, thus is quite valid to the Lithuanian expert.

Considerations on communication skills and security constitute the justification of the language requirement imposed on *personnel on board passenger ships* also in *Denmark*. The language

²¹⁴ *Haim II* (C-424/97).

requirement was adopted following the Scandinavian Star accident in 1990, and has the purpose of ensuring that crew members handling tasks in connection with fires/evacuations are able to communicate with the passengers.

VIII.IV. Justifications of language skills required by law etc. for employment within the education sector or child care personnel

VIII.IV.i. Summary of findings

The nature of the job and the tasks to be assigned as well as communication skills are the main justifications for language requirements imposed on teachers in *Croatia, Germany, Greece* and *Poland*. Likewise in *Romania*, where there are no language requirements imposed by law on teachers, however, but generally the language requirement is indirectly necessary and determined by the language of the subjects taught. The fact that teaching is conducted in the national language respectively within the public education sector or in lower levels is the justification in *Denmark* and *Sweden*, respectively. The language skills that are required to practise the regulated profession concerned constitutes the justification in *The Netherlands*.

The constitutional position of the language as the first official language is given as the justification in *Ireland*. Furthermore, the Irish language is a crucial part of the State's heritage and culture, and thus ensuring its protection through teaching of the language at primary and post-primary levels is an important part of public policy. Also, the language requirements for teachers appear to be justified by the nature of the teaching profession which requires strong communication skills. English proficiency is particularly vital in this profession because the worker is engaged with the significant task of educating children and young people.

Communication skills constitute the justification in *Greece* of language requirements imposed on *teachers*.

With the possible exception of one Member State, no compatibility issues have been reported regarding this sector. The expert from *Poland* accordingly notes that the requirement in *Poland* is not imposed on foreign language teachers, and seems to be reasonable and necessary. By contrast, the language requirements concern all specialties of teachers in *Greece*. Therefore, even professors of foreign languages are included in *Greece*.

VIII.IV.ii. Findings

Communication skills constitute the justification in *Greece* of language requirements imposed on *teachers*; i.e. the need to communicate correctly with the public and the colleagues. The language requirements concern all specialties of teachers and there is no distinction. Therefore, even professors of foreign languages are included.

Conversely in *Poland*, where the nature of the job and the tasks to be assigned as well as communication skills is also the main justification regarding language requirements imposed on *teachers*. Thus, the main justification is to be able to communicate in Polish language as justified by the nature of the job and tasks to be assigned. The requirement is not imposed on foreign language teachers, and seems to be reasonable and necessary, according to the Polish expert. There are no reported administrative or judicial cases on the non-conformity with EU regulations on this aspect. And in *Germany* the degree of language skills for *teachers* depends on what is necessary for the successful realisation of a job. Similarly in *Croatia*, educational work is as a rule conducted in

Croatian language, unless something else is provided. Therefore, the Croatian expert is of the opinion that the special requirement on the knowledge of the Croatian language and Latin script in the measure that allows the execution of educational work is proportionately stipulated allowing flexibility by reason of the nature of the vacancy involving educational work and the right of children to acquire knowledge in an adequate and understandable manner. Hence, the provision concerned should be considered in line with the EU *acquis*.

Likewise in *Sweden*, where a *teacher* on lower levels (pupils normally aged around 7–10 years) must fulfill a requirement on depth knowledge of the basic reading and writing skills in Swedish. The teacher must hence have the ability to transfer information and lead students in their learning process and the ability to meet students in Swedish and around a topic contents, ability to apply methods for reading and writing in Swedish, and ability to communicate and collaborate with colleagues, students and parents. Similarly in *Denmark* where language requirements are imposed in access to employment within the public education sector (municipal primary and lower secondary school or upper secondary school), due to the fact that teaching is conducted in Danish within the Danish education system.

The language skills that are required to practise the regulated profession concerned constitutes the justification in *The Netherlands*. The Recognition of EC Vocational Qualifications Act establishes the general principle that the migrant professional whose vocational qualifications are recognized or who is admitted as a service provider must possess the language skills that are required to practise the concerned regulated profession in the Netherlands. There are no additional requirements for employees who work in i.a. education (Recognition of EC Vocational Qualifications Educational Personnel Regulation).

The position of the language as the first official language is given as the justification in *Ireland* as regards the Irish language requirement imposed on *teachers*. Thus, the Irish constitution recognises Irish as the first official language of the State (Article 8 (1)).

Furthermore, the Irish language is a crucial part of the State's heritage and culture, and thus ensuring its protection through teaching of the language at primary and post-primary levels is an important part of public policy.

Also, the language requirements for teachers appear to be justified by the nature of the teaching profession which requires strong communication skills.

English proficiency is particularly vital in this profession because the worker is engaged with the significant task of educating children and young people.

In *Romania* there is no language requirement imposed by law on teachers. However, generally the language requirement is indirectly necessary and determined by the language of the subjects taught.

VIII.I.V. Justifications of language skills required by law etc. for employment or self-employment within legal professions, as certified auditors, members of management boards in certain institutions, patent counsels, notaries, insurance brokers, (real) estate agents, asset managers, architects, engineers, interior designers or mechanical engineering

VIII.I.V.i. Summary of findings

The nature of the job and the tasks to be assigned and/or communication skills constitute the justifications in *Croatia, Luxembourg, Poland, Romania* and *Sweden*. Language knowledge to the extent necessary for practising a particular regulated profession is the justification in *Slovakia*, which appears also to be the case in *Denmark*. The need to provide service in the local language is the justification in *Lithuania*.

Except for possible issues in two Member States, no compatibility issues have been reported regarding this sector. The experts from *Croatia, Poland* and *Romania* thus conclude that the requirements concerned are reasonable/necessary/justified/proportionate.

However, regarding *Luxembourg*, the Luxembourgish expert notes that it is impossible to control in practice, beforehand, whether the language requirements match the reality of the exercise of the specific job.

And regarding *Lithuania*, the Lithuanian expert makes the observation that as concerns general requirements for persons in the servicing sector, they may be reasonable and necessary, but the concern is that they may be applicable automatically as general requirements, without taking into consideration the nature of a particular job.

VIII.I.V.ii. Findings

The nature of the job and the tasks to be assigned as well as communication skills are the main justification in *Poland* with regard to i.a. *certified auditors, patent counsels* and *members of management boards of banks and national insurance institutions*. Thus, the main justification is to be able to communicate in Polish language as justified by the nature of the job and tasks to be assigned. The requirements seem to be reasonable and necessary to the Polish expert. There are no reported administrative or judicial cases on the non-conformity with EU regulations on this aspect.

Likewise in *Luxembourg*, it seems that the nature of the job commands the knowledge of the languages in i.a. *independent professions*. However, while this is true in theory, it is impossible to control in practice, beforehand, whether the language requirements match the reality of the exercise of the specific job.

Likewise in *Sweden* with regard to i.a. *architects*, it is the starting point for the recognition of language requirements that the demand for such skills is relevant and justified due to the nature of work. In Case AD 2005 No. 98 from the Labour Court, the court thus found that the employer's language requirement was justified. The court meant that the employee as an architect in many decisions should be dealing with building permits and with numerous parties involved. These parties must understand the decisions, which are the basis for a building permit. This means that there should be high demands on skills in Swedish language for the employment (Case AD 2005 No. 98).

Communication skills are also the justification in *Romania* with regard to the language requirements imposed on *members of the management of credit institutions* as well as *notaries*. Thus, access to Romanian banking regulations, communication to the supervising authority (the Romanian National Bank) is a right reason. As one can observe, only one of the directors must know proper level and not mother tongue level of Romanian, therefore the proportionality of this requirement is met as well. The public notary must write and edit Romanian language documents, so the situation is similar. Hence, the public notary must know Romanian to fulfill her/his duties according to law.

The need to provide service in the local language is the justification in *Lithuania* with regard to i.a. *notaries*. While this justification is well-grounded, not all jobs in the private sector that are mentioned in the Language Proficiency Resolution may require the language knowledge on a case-by-case basis. Justification of language requirements in the maritime sector, for instance, is based on security of navigation, thus is quite valid to the Lithuanian expert. These justifications are valid, but most problems occur in the private sector, where imposition of the language requirement is very discretionary and there may be hidden reasons to prevent the employment of certain foreigners. However, this is extremely difficult to prove in practice. As concerns general requirements for persons in the servicing sector, they may be reasonable and necessary, but the concern is that they may be applicable automatically as general requirements without taking consideration of a nature of a particular job.

Regarding *Croatia*, taking into account the nature of activities and powers vested to public *notaries*, assisting notary public and notary public trainee, the Croatian expert finds that requirement of active knowledge of language for the performance of notaries public activities is to be considered as justified and proportionate requirement and, therefore, compatible with the EU acquis.

Language knowledge to the extent necessary for practising a particular regulated profession is the justification in *Slovakia* for language requirements imposed on i.a. *advocates*. There is no case law in this regard and no public information about practices. The wording of the legislation itself provides for knowledge of Slovak language in regulated professions to the extent necessary for the execution of a particular regulated profession, which implies that the language requirements appear reasonable and necessary. The same appear to be the case in *Denmark*, where *assistant attorney-at-law* must substantiate i.a. mastering the Danish language at a level rendering it possible for the applicant to conduct a court hearing in a safe manner.

VIII.I.VI. Justifications of language skills required by law etc. for employment in the security sector or in certain risky occupations

VIII.I.VI.i. Summary of findings

Considerations on security, the nature of job and/or communication skills comprise the justifications in *Estonia*, *Spain* and *The Netherlands*. No compatibility issues have been reported in this regard.

VIII.I.VI.ii. Findings

Language requirements are justified by the nature of the job in *Spain*, where employment in the security sector may in some situations suppose the use of arms. The resolution regulating the access to the security sector justifies the link between the use of arms and the justification based on the notion of public security (the activities of private security are complementary of those deployed for

the public security forces) and the fact that to obtain a firearm license you have to pass an exam before the public security forces (Guardia Civil or Police).

The necessary level of command of the language for carrying out work activities in a responsible fashion in the specific conditions under which work takes place depends on the work and responsibilities of the employee with regard to the language requirements imposed in *certain risky occupations* in *The Netherlands*. The justification appears to be the fact that it is important that in case of emergencies, employers can communicate well with each other and the emergency services. Sufficient language skills to understand and execute directions on labels on plant protection products and biocides and other laws and regulations on plant protection products and biocides appears to be the justification with regard to the language requirement imposed on *crop protection professionals and biocide professionals*.

Considerations on security appear to also constitute the justification in *Estonia* with regard to the language requirements imposed on *security workers*. It is necessary for security workers to have the ability to communicate in Estonian on the level as is required by the law. The language requirements are imposed usually on a case-by-case basis, taking into account the nature of the tasks to be fulfilled by the worker.

VIII.I.VII. Justifications of language requirements in access to employment and working conditions, promotion or salary in the public sector specifically

VIII.I.VII.i. Summary of findings

With regard to those Member States where *generally applicable State Language Acts are enacted*, issues on compatibility in terms of proportionality with the aims pursued emerge in two of the Member States concerned, at large due to the fact that the language requirements are imposed on a general basis, rather than on a case-by-case basis, without taking the nature of a particular job into consideration (*Latvia* and *Lithuania*), cf. the analysis conducted above para. IV.I.II.

Conversely in *Estonia*; communication skills and the nature of the tasks constitute the justification; it is always necessary to assess what is the nature of tasks a worker has to fulfill and the language requirements are acceptable, justified and in line with EU law to the Estonian expert.

In *Latvia*, the justification is to ensure that the Latvian language, which is the official language, could be used freely within every field of life and protection and preservation of Latvian cultural identity. In *Lithuania*, the justification is the nature of the position/function or security requirements, and generally the language requirements seem to be reasonable and necessary for the posts mentioned in the public sector to the Lithuanian expert.

Notably, in *Latvia* different levels of knowledge of Latvian language for the same professions is required, depending on whether the employment is in the public or the private sector, which in itself reveals that the language requirements have not been assessed from the perspective of the principle of proportionality.

As regards those Member States within which language skills are required by *Language Acts and/or Constitutional provisions* for employment in the public sector, the respective languages' position as official languages; and/or the safeguard of national minority languages; and/or the promotion of the national languages, culture and heritage; and the right of citizens to get public service in those languages; and/or communication skills; and/or the exercise of state powers constitute the justifications in *Finland, Ireland, Italy, Luxembourg, Malta* and *Romania*. The fact remains that the

CJEU has acknowledged a Member State's *linguistic and cultural policy* as a legitimate aim,²¹⁵ and in general the language requirements thus have a legitimate aim and appear necessary and proportional within those Member States.

However, with regard to *Finland*, the Finnish expert questions the proportionality of the language requirement imposed on employment in public posts for which the qualification requirement is a university degree, and whether this requirement is always justified by the nature of the job or the tasks. This is caused by the fact that this requirement is applied systematically, regardless of the nature of the job to be filled and the tasks to be assigned. And regarding *Malta*, the Maltese expert notes that there is no specific information on practice that enables the expert to assess to what extent the principle of proportionality is applied. And also in *Romania* the general application of language requirements would appear to raise issues on proportionality similar to those found in *Latvia* and *Lithuania*, cf. above para. VIII.I.VIII.I.

Concerning those Member States with *neither Language Acts nor Constitutional provisions governing language requirements, and where language skills are required by general legislation applicable to the public sector and/or administrative practice for employment in the public sector*, the nature of the job to be filled and the tasks to be assigned and/or communication skills and/or the exercise of powers are the justifications in *Austria, Croatia, Denmark, France, Germany, Greece, Poland, Portugal, Sweden* and *The Netherlands*. In general, the language requirements appear to be imposed on a case-by-case basis and seem necessary and reasonable, and there are no reported cases as regards infringements of EU law in this regard.

Conversely in *Slovakia*, the language requirements are general requirements imposed notwithstanding the job or tasks. No information is available about the justification of the language requirements imposed for employment in the public sector.

Consequently, the general application of language requirements in *Slovakia* would appear to raise issues on proportionality similar to those found in *Latvia* and *Lithuania*, cf. above para. VIII.I.VIII.I.

Also, with regard to *Austria*, the Austrian expert notes that as this assessment is made on a case-by-case basis it is not possible to determine whether or not the language requirements are in fact reasonable and necessary.

Notably in *Cyprus*, language requirements generally appear to be justified by reducing the unemployment of Greek-Cypriot workers and this policy not only seems incompatible with EU free movement law to the Cypriot expert, but there also seems to be a *prima facie* case of nationality discrimination.

VIII.I.VIII.I. Justifications of language skills required by generally applicable State Language Acts for employment in the public sector specifically

Communication skills and the nature of the tasks constitute the justification in *Estonia*, within which the language requirements in the public sector are acceptable, and they seem to be in line with the requirements of European law to the Estonian expert. As the public sector mainly concerns the governmental and local municipal institutions, it is necessary that persons working there could understand and communicate in Estonian. At the same time it is always necessary to assess what is the nature of tasks a worker has to fulfill.

²¹⁵ *Groener* (C-379/87) para. 19, *Las* (C-202/11) paras. 25-27, and *Runevic-Vardyn and Wardyn* (C-391/09) paras. 85-87.

Likewise in *Lithuania*; officially the requirements in legislation refer to justification according to the nature of the position/function (e.g. servicing function, filling in documents for residents, etc.) or security requirements (e.g. in case of civil aviation, sea navigation, etc.). To the Lithuanian expert, generally the language requirements seem to be reasonable and necessary for the posts mentioned in the public sector.

However, the main concern is that they are applied as a general requirement; thus actual necessity would not likely be examined on a case-by-case basis. Also of concern is the fact that language requirements may be imposed for additional posts in the public sector on a discretionary basis. In practice, Lithuanian language requirements are prevailing in the job advertisements.

And regarding *Latvia*, it is doubtful whether the language requirements are proportional to the aim pursued to the Latvian expert. The aim of the State Language Act in *Latvia* - and hence the justification of language requirements - is to ensure that the Latvian language could be used freely within every field of life and protection and preservation of Latvian cultural identity. According to Article 3 (1), the official language in Latvia is the Latvian language.

It follows from CJEU case law, that requirements on knowledge of an official language must be proportionate with regard to the aims pursued by the policy for the protection and promotion of a language of a Member State, *Groener* (C-379/87).²¹⁶ Furthermore, there is a difference between the right to require language requirement for the performance of a work in question and the right to require such language requirement for the performance of a work with a view to attain language policy aims. Under the first approach, the language requirements may not exceed what is necessary for the performance of a work, while under the second approach the language requirements may exceed the knowledge of an official language what is necessary for the performance of a work but what is necessary to attain language policy aims, like, for example, stressed in the *Groener* case, where knowledge of the Irish language was not necessary for the performance of her work in question, however, such knowledge was necessary for the attainment of the aims of Irish language policy aims.²¹⁷

According to the Latvian expert, it hence follows from CJEU case law that EU law allows requiring the knowledge of an official language in a level exceeding the level necessary for the performance of a work in question if such requirement is necessary for the attainment of the aims under national language policy and is proportionate in relation to such policy aims, cf. *Groener* (C-379/87).

However, it is doubtful if the legal regulation on the particular level of knowledge for the particular posts (professions) is compatible (proportionate) with the aims pursued by Latvian language policy. First, there are no documents testifying that the particular language level requirements for the particular posts (professions) provided by Annexes of the Regulation No.733 have ever been estimated from the perspective of proportionality.

Second, the legislator (the Cabinet of Ministers) has made some 'mistakes' which demonstrates explicitly that the particular language knowledge requirements have never been estimated from the perspective of proportionality. It follows from the fact that Appendix I of the Regulation No.733 requires B.1 level knowledge for chambermaid, while Appendix II only requires A.1 level knowledge. It follows that in case a chambermaid is employed by a hotel belonging to the state or a municipality she/he must know the Latvian language better than chambermaid employed at a hotel

²¹⁶ Para. 19. See also in that regard decision in case C-391/09, *Malgožata Runevič-Vardyn un Łukasz Paweł Wardyn pret Vilniaus miesto savivaldybės administracija, Lietuvos Respublikos teisingumo ministerija, Valstybinė lietuvių kalbos komisija un Vilniaus miesto savivaldybės administracijos Teisės departamento Civilinės metrikacijos skyrius*, OJ C 312, 19 December 2009, paras. 83-88.

²¹⁷ Para. 20.

owned by a private person. The same applies for example, to bathhouse attendants. It is obvious that for the professions mentioned, the work duties do not differ on account of a status of employer and owner or a business (public or private). Such examples explicitly demonstrate that the Latvian language requirements as stipulated by the Regulation No.733 do not correspond to the principle of proportionality.

In conclusion, the EU law according to the interpretation given by the CJEU requires that an official language requirement must be proportionate with the aims of an official language policy of a Member State. Such margin of appreciation given to the Member State under EU law is wider than the right to require proportional official language requirements only with regard to a particular post (profession).

Furthermore, the legal provisions of Latvian law and in particular, norms of the Regulation No.733 requiring different level of knowledge of Latvian language for the same posts (professions) in public and in private sector, reveal themselves that they have not been assessed from the perspective of the principle of proportionality.

Moreover, the State Language inspectors in practice require employees of the private sector whose level of knowledge is not defined by Regulation No.733 to know Latvian language in the level which is one level lower than required for employees in the public sector. However such practice runs contrary to the administrative law principle - that administrative fines may be imposed only on the basis of law. In addition, the State Language inspectors apply the law different with regard to Latvian Russian-speaking population and EU workers, which runs contrary to non-discrimination principles under the human rights law.

To the Latvian expert, it follows that requirements on the level of knowledge of an official language for a particular post (profession) with regard to all or several posts might be incompatible with the principle of proportionality in the context of official language policy aims and thus with EU law.

VIII.I.VII.II. Justifications of language skills required by Language Acts and/or constitutional provisions for employment in the public sector

Communication skills and the necessity of same are the justification for the requirements on English language proficiency in *Ireland*. Hence, English language competency is necessary for the majority of public sector positions because employees need to be able to communicate adequately with colleagues and members of the public. This is particularly essential within the health and teaching sectors as well as for members of the Gardaí.

The language's position as the country's first official language under the Constitution is the justification of the extra marks obtainable within the Civil Service for Irish language proficiency. Thus, the Constitution permits the public to conduct its business with the state solely through Irish. As a result, public bodies have a duty to comply with this constitutional right. The Official Languages Act, 2003 also ensures that Government Departments and Public Bodies provide services in the Irish language. Thus, at least some members of the public sector have to have competency with regard to the Irish language.

A similar situation is found in *Finland*, where guaranteeing the right of Swedish and Finnish speaking citizens to get public services in their mother tongue is the purpose of the language requirements; and thus in general the language requirements have a legitimate aim. The Finnish expert notes, however, that it might be questioned whether the statutory requirement laid down in

Section 6 of the Act on Language Proficiency, according to which for public posts for which the qualification requirement is a university degree, the required level of language proficiency in the majority language is excellent oral and written skills and in minority language satisfactory oral and written skills, is always justified by the nature of the job or the tasks. This requirement is applied systematically, regardless of the nature of the job to be filled and the tasks to be assigned.

No case law was found by the Finnish expert that would have clarified or challenged the justifiability of the language requirements in individual cases or at the systemic level.

Likewise in *Luxembourg*, where the law provides for the right of any person to get an answer in one of the three administrative languages used by a citizen when sending a letter to the administration. Also the speaking ability of the civil servants is important in order to deal with the public, in those three languages alternatively. Therefore the language requirements are necessary and appear generally reasonable to the Luxembourgish expert. Indeed, the law of 24 February 1984 on the languages regime²¹⁸ provides for the Luxembourgish language to be the language of the Luxembourgers. It also provides for the law and regulations to be in French. It also proclaims that in administrative matters, French, German or Luxembourg language may be used and that whenever possible, the administration should respond to the citizen in the same language as used by her/him. The only known case law is relating to the French language that is used as a written court language and which has not been successfully challenged. However the use of French in judgments cannot be compared to the issue of the use of administrative languages.

Similarly in *Italy*, where the linguistic requirements that apply for access to public employment in *Valle d'Aosta*, *Provincian Autonoma di Bolzano*, and *Friuli-Venezia-Giulia*, are justified by the safeguard of the linguistic minorities established in the Regions concerned, and are intended to make effective the right of the minorities to address the public authorities in their language. No justifications are expressly given for requiring an adequate knowledge of Italian, but since the level is not pre-defined and, is proportionate to the functions performed, the requirement seems reasonable to the Italian expert and does not hinder access to public employment.

Communication in the national language and promoting the national language are also the justification in *Malta*. Thus, although administrative business is largely handled in English, Maltese is the national language and the language of first preference for most citizens. It is a matter of longstanding Government policy that members of the public are entitled to communicate with public officials in Maltese. Moreover, Article 3 of the National Language Act (2004) obliges the State to promote the use of the Maltese language. A good working knowledge of Maltese is required to communicate with and serve the public. There is no specific information on practice that enables to assess to what extent the principle of proportionality is applied with respect to the knowledge of languages.

The exercising of state powers as well as the official language of the state and the protection of national minority languages are the justification of the language requirements in *Romania*.

²¹⁸ Loi sur le régime des langues - Mémorial 16 du 27.02.1984, page 196.

VIII.I.VII.III. Justifications of language skills required by general legislation applicable to the public sector and/or administrative practice for employment in the public sector

The nature of the job and the related tasks are decisive for the specific language requirements in *Austria*, as the law expressly states that a lower linguistic ability may be sufficient depending on the job in question. It is regarded as a general requirement for employment in the public sector to have a good command of German language.

As this assessment is made on a case-by-case basis, it is not possible for the Austrian expert to judge whether or not the language requirements are in fact reasonable and necessary. In practice this is also a matter of the number of candidates. If there are a sufficient number of candidates with good language skills, the employers in the public sector will prefer them. But if this is not the case, also candidates with lower linguistic ability might be accepted.

The nature of the job to be filled and the tasks to be assigned, as well as the need to communicate correctly with the public and the colleagues, are also the justification of language requirements in *Greece*. The degree of knowledge of the language is defined each time by proclamation taking into account the requirements of the post of employment.

The same applies to *Poland*, where language requirements thus are justified by the nature of the job and the tasks to be assigned. As the scale of employment in civil service and self-governing bodies for foreigners, including EU citizens, is marginal, there have been no reported cases as regards infringements with EU law. Similarly in *Portugal*, within which workers may be required to have the linguistic ability objectively necessary for the proper exercise of the job in question. And regarding *Croatia*, the Croatian expert is of the opinion that a Croatian language requirement could be prescribed for most of the civil servants posts since they involve direct or indirect exercise of powers conferred by public law and duties designed to safeguard the general state interests or interest of the local and regional self-government.

Likewise in *Germany*; while for many decades, the federal law required “The command of the German language in speech and writing is a prerequisite for admission to career,”²¹⁹ the new federal law reads: “The German language has to be mastered to the extent necessary for the performance of the duties of career.”²²⁰ This grants state authorities more flexibility - a flexibility which was introduced in order to comply with Art. 53 of Directive 2005/36/EC and in order to allow the state to hire more people with a ‘migration background’, e.g. from Turkey, in order to render the public administration more culturally diverse.

When it comes to professional careers of civil servants in the public service of the Federation, the *Bundeslaufbahnverordnung*²²¹ contains rules on the recognition of professional experience in the public service of another EU Member State. Yet, there are no rules which legally require promotion to depend on language skills, although many jobs will require language skills, since the working language of most state authorities is German.

There is a variety of specific language requirements for different sectors (e.g. teachers for specific classes, etc.). These are usually not always laid down in general rules, however, but are required at

²¹⁹ Die Beherrschung der deutschen Sprache in Wort und Schrift ist Voraussetzung für die Zulassung zur Laufbahn.

²²⁰ Die deutsche Sprache muss in dem für die Wahrnehmung der Aufgaben der Laufbahn erforderlichen Maß beherrscht werden.

²²¹ Verordnung über die Laufbahnen der Bundesbeamtinnen und Bundesbeamten (*Bundeslaufbahnverordnung* - BLV), available online at http://www.gesetze-im-internet.de/blv_2009/BJNR028400009.html.

the moment of the public tender or the job interview when the degree of language skills which is necessary for the successful realisation of a job is specified.

Similarly in *Sweden*, it is the starting point for the recognition of language requirements that the demand for such skills is relevant and justified due to the nature of work. In Case AD 2005 No. 98 from the Labour Court, a municipality was looking for a new building permit architect (i.e. not on the health care sector). In the ad, a requirement for ‘good ability to express themselves in speech and writing’ was expressed. The court found that the employer's language requirement was justified. The court meant that the employee as an architect in many decisions should be dealing with building permits and with numerous parties involved. These parties must understand the decisions, which are the basis for a building permit. This means that there should be high demands on skills in Swedish language for the employment. Likewise in *Denmark*, where requirements on language knowledge may lie implicit in the exercise of certain positions; e.g. when handling cases and communication with citizens etc., a certain level of Danish is required with regard to oral and written communication.

And in *The Netherlands*, police officers and fire-brigade officers explicitly have to have obtained sufficient knowledge of the Dutch language to perform their job.

Conversely in *Slovakia*, the language requirements are general requirements in order to be admitted into civil service, i.e. everyone in the civil service needs to have knowledge of Slovak language notwithstanding the job or tasks. No further information is available on the justification of the language requirements imposed for employment in the public sector.

The public sector is considered as allotted to the public in France, and each civil servant must be able to answer to a French citizen. To the French expert, the language requirements appear necessary for most of the jobs concerned in *France*.

Language requirements appear to be justified by reducing the unemployment of Greek-Cypriot workers in *Cyprus*, and this policy not only seems incompatible with EU free movement law to the Cypriot expert, but there also seems to be a prima facie case of nationality discrimination. It seems that the imposition of the requirement of Greek is motivated by factors others than what is genuinely essential for the industry: rather they seem to pander anti-migrant workers sentiments and depicted as a measure to combat rising unemployment of Greek-Cypriots. A major issue, however, is the fact that the policy for ‘priority for Cypriots policy’, in part using Greek language as a policy instrument, not only fails to properly take account of the free movement acquis, but also fails to take into account that migrant workers, EU and third country citizens have been in Cyprus since 1991.

VIII.II. Justifications of language skills required in practice by private entities

VIII.II.i. Summary of findings

Communications skills and the nature of the job constitute the justification, and the language requirements appear to mostly be imposed on a case-by-case basis, in *Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Luxembourg, Portugal, Sweden* and *United Kingdom*. Apart from a few Member States, there are no reported cases as regards infringement of EU law, suggesting that the specific language requirements are unreasonable or unnecessary.

Conversely, in *Cyprus*, language requirements are justified by reducing the unemployment of Greek-Cypriot workers in *Cyprus*, and this policy not only seems incompatible with EU free movement law to the Cypriot expert, but there also seems to be a prima facie case of nationality discrimination.

And in *United Kingdom*, shortly after the first year of application of the Act a business announced an English language only policy at a distribution plant. Commentators are in agreement that unless the requirement can be justified (which seems unlikely to the UK expert) it is contrary to the Act. The question of whether or not a 'speak English only' policy can be justified has not yet been tested in the tribunals and courts under the Equality Act 2010.

The expert from *Luxembourg* notes that it is impossible to control in practice, beforehand, whether the language requirements match the reality of the exercise of the specific job.

VIII.II.ii. Findings

Language requirements in the private sector are in general justified by communications skills and the nature of the job in *Austria*, where most employers demand that their employees are able to communicate in German with superiors and colleagues. If the employee has contact with costumers or is responsible for correspondence with business partners, this will usually also require good command of the German language. Another justification is the necessity to understand written warning instructions or safety codes.

Likewise in *Belgium*, language requirements are confined to cases where the knowledge of a language is needed for the proper execution of the contract of employment.

Similarly in *Finland*, regarding which it seems that the justification generally put forth for language requirements is that the employees have to be able to communicate with each other and with the possible clients, and to understand any orders, rules etc. in at least one of the national languages. However, no systematic information on this is available and no case law or administrative practice was found by the Finnish expert that would have clarified this matter.

The nature of the job and the tasks to be assigned are the justification also in *Portugal*. The Portuguese experts are not aware of complaints that the language requirements are not justified by the nature of the job to be filled and by the tasks to be assigned and appear as unreasonable and unnecessary for the job in question. Likewise in *Croatia*; and also in *Germany*: since in general there are no legal language requirements in the private sector in Germany, it is up to every employer to require a certain amount of German language skills as a condition for employment.

Similarly in *Sweden*, it is the starting point for the recognition of language requirements that the demand for such skills is relevant and justified due to the nature of work. Employers have the right

to set language requirements in the recruitment process, provided that specific language skills are needed due to the nature of employment and that the requirement is objectively justified. Hence, ambitious language requirements for skilled professions are - in comparison with unskilled professions - considered to be more legitimate referring to the nature of work and the tasks to be conducted. If such requirements are going beyond what is needed due to the nature of employment and the requirement are not objectively justified, these requirements will be contrary to Swedish law. Hence, a request for language skills in the private sector should be based on the qualifications necessary for the employment and they should be objectively justified.

General information is provided by the Discrimination Ombudsman that demands for language skills could mean discrimination if such requirements go too far and if they cannot be legitimised.

Likewise in *Denmark*, where pursuant to Danish legislation, language requirements may constitute indirect discrimination on grounds of ethnic origin in situations where an employer imposes a language requirement which is not reasoned and objectively justifiable, is disproportionate and without relevance for the maintenance of the job in question. In Case UfR2010.1415H of 12 February 2010, the Supreme Court thus dealt with the justification of the dismissal of a Dutch employee due to his linguistic abilities in connection with the restructuring of a company and the employees' tasks to include telemarketing targeted at the Danish market. The Court found that the defendant substantiated that the language requirement imposed in this specific situation where the task included establishing the initial contact with potential customers, was reasonable justified. The Court further noted that it is left for the employer - and not the Court - to decide on whether the employee's linguistic ability is sufficient for the task. The Supreme Court upheld the verdict of the Maritime and Commercial Court and added i.a. that the language requirement was reasoned justified and that there was no basis for the Court to disregard the assessment of the employer.

Also in *Luxembourg*, it seems that the nature of the job commands the knowledge of the languages. However, while this is true in theory, it is impossible to control in practice, beforehand, whether the language requirements match the reality of the exercise of the specific job.

Similarly in *Bulgaria*, where language requirements are justified by public interest grounds. The Law on Protection against Discrimination stipulates that there is no discrimination if certain treatment/requirement is reasoned with the nature of a particular occupation or activity, or of the conditions in which it is performed, if such a characteristic constitutes an essential and decisive occupational requirement, the aim is legitimate and the requirement does not go beyond what is necessary for its achievement.

Practice in non-regulated professions cannot be evaluated by the experts in *Czech Republic*, as practice is very diverse. Additionally, no relevant data/information sources on this question could be found. However, if the language requirements are not reasonable and necessary for the job in question, then a person may lodge an appeal to a court. No cases are known to the rapporteurs.

In *United Kingdom*, a common language has often been interpreted as a criteria for defining nationality and ethnic or national origins, which are protected characteristics under the definition of race. Thus, assuming that language comes within the protected characteristics, an English language requirement, to be consistent with the Equality Act 2010, must be a proportionate means of achieving a legitimate aim. The employer will need to show that its legitimate business needs are sufficient to outweigh the discriminatory impact on the workforce and cannot reasonably be achieved by less discriminatory methods.

Shortly after the first year of application of the Act a business announced an English language only policy at a distribution plant. Commentators are in agreement that unless the requirement can be justified (which seems unlikely to the UK expert) it is contrary to the Act. The question of whether or not a 'speak English only' policy can be justified has not yet been tested in the tribunals and courts under the Equality Act 2010.

Language requirements are justified by reducing the unemployment of Greek-Cypriot workers in *Cyprus*, and this policy not only seems incompatible with EU free movement law to the Cypriot expert, but there also seems to be a *prima facie* case of nationality discrimination. It seems that the imposition of the requirement of Greek is motivated by factors others than what is genuinely essential for the industry: rather they seem to pander anti-migrant workers sentiments and depicted as a measure to combat rising unemployment of Greek-Cypriots. A major issue, however, is the fact that the policy for 'priority for Cypriots policy', in part using Greek language as a policy instrument, not only fails to properly take account of the free movement acquis, but also fails to take into account that migrant workers, EU and third country citizens have been in Cyprus since 1991.

IX. Access to social benefits: Justifications of specific requirements to have a certain level of linguistic ability or to be a mother tongue speaker imposed on EU workers when accessing social benefits at the national or sub national/local level

IX.i. Summary of findings

On the basis of an assessment of the justification and application of the various national measures, it is concluded that issues on compatibility with EU free movement law in terms of namely the aims pursued and proportionality of the measures may emerge in *Belgium* and *The Netherlands*. In contrast, issues pertaining to compatibility with EU free movement law of the language measures concerned do not appear to arise in *Denmark* and *Germany*; provided various assumptions about the application of those measures hold true.

IX.I. Belgium: Access to social housing

In *Belgium* the requirement of Chapter VII of the Flemish Housing Code applies without distinction based on nationality and concerns EU citizens and Belgian citizens alike, which implies that the requirement is applied in a non-discriminatory manner *per se*. Chapter VII makes access to social housing in the Flemish region conditional upon the tenant demonstrating his willingness to learn the Dutch language, which indicates that the aim of the measure is *an element of integration*.

In addition, the *linguistic and cultural policy* of the Flemish region (and of *Belgium* in general) may be of relevance. Apparently, well-settled case law of the Dutch-speaking section of the Belgian State Council interprets Article 4 of the Belgian Constitution as precluding the use of another language than Dutch in the Dutch-speaking region. Furthermore, the language requirement was justified by the Belgian constitutional court in a case unsuccessfully challenging the requirement on the grounds, i.a. that it breaches Article 9 of Regulation 1612/68 on equal access to social advantages. Thus, the court dismissed the claim and refused to ask for a preliminary ruling on the matter, arguing that basic knowledge of Dutch may be necessary with a view to reach the general interest objectives of ensuring that the tenant and the renter can communicate and of improving quality of life as well as conviviality among tenants (judgment No. 101/2008 of 10 July 2008).

As to the proportionality of this requirement, the applicant's willingness to learn the Dutch language may be demonstrated through various means, including a certificate that the future tenant follows a specific integration course; see more above section VII.I on proof. Furthermore, the requirement appears not to constitute a requirement on language skills *per se* for receiving social benefits, since the level of language skills seems to be limited to a mere willingness to learn Dutch, which renders the requirement less questionable in terms of proportionality in this regard. However, whether basic knowledge of Dutch is in fact necessary to attain the objective of ensuring that the tenant and the renter can communicate and to improve quality of life as well as conviviality among tenants may seem questionable.

Yet, the *linguistic and cultural policy* pursued by a government has been acknowledged in practice by the CJEU and held to *correspond to what is necessary for a post* in *Groener (C-379/87)*,²²² and similar considerations might apply with regard to social benefits under the Flemish Housing Code. This does, however, not seem entirely obvious, since there appears to be a significant difference between respectively filling a specific and - in terms of achieving the aims of the language policy - important post as a teacher, and receiving social benefits when residing in an entire region. Hence, it would indeed have been interesting had the Belgian constitutional court in fact submitted a request for a preliminary ruling to the CJEU on the matter; in particular in light of the recent CJEU ruling in *Las (C-202/11)*, where the CJEU held that Article 45 TFEU precludes legislation of a federated entity of a Member State, which requires all employers to draft cross-border employment contracts exclusively in the official language of that federated entity on pain of nullity.²²³

IX.II. Denmark and Germany: Access to unemployment benefits and/or social assistance for unemployed

In *Denmark* and *Germany* the requirements on attending language courses that may be imposed on those job seeking, unemployed EU citizens receiving unemployment benefits and/or social assistance, apply irrespective of nationality *per se*, and the aim is to *improve the employment opportunities of the applicant* concerned, which seems legitimate.

However, obviously non-nationals are more likely than nationals to be met with a requirement on attending respectively a Danish or German language course, albeit Danish and German policies do not stipulate that language requirements apply only to non-native language speaking persons (exceptions apply to certain TCNs who explicitly must attend language courses in both Member States pursuant to respectively the Danish Integration Act and the German Residence Act). Yet, as unemployed in general may be met with requirements to attend courses or other activities aiming at improving their employment possibilities; *and* as not finishing respectively a Danish or German language course with success appears to have no impact on benefits (as long as the unemployed does not refuse to participate in such language courses), *and* as the requirements do not appear to assume character of requirements on language skills *per se* for receiving social benefits, but rather to constitute requirements to attend language courses for those having insufficient language skills for the labour market (as opposed to the Dutch policy plan; see below), the non-discriminatory application of respectively the Danish and German measures seems less questionable than that of the Dutch announced policy plan.

²²² Para. 21.

²²³ Para. 35.

Furthermore, with regard to proportionality, the Danish and German policies appear to apply only to persons who have a chance to go back to the labour market, making the aim of the language requirement (i.e. to improve the employment opportunities of the person concerned) more reasoned than that of the Dutch policy plan; see below.

Moreover, as not finishing respectively a Danish or German course with success appears to have no impact on benefits (as long as the unemployed does not refuse to participate in such language courses), *and* as the requirements do not appear to constitute requirements on language skills *per se* for receiving social benefits, but rather requirements to attend language courses for those having insufficient language skills for the labour market (as opposed to the Dutch policy plan), the proportionality of the Danish and German measures appears less questionable than that of the Dutch policy plan, provided the policies do in fact apply only to persons who have a chance to go back to the labour market, *and* provided not finishing the language courses with success does in fact have no impact on benefits.

Yet, in *Denmark* as well as in *Germany*, applicants appear to be required to attend specific language courses selected and/or provided by the authorities or actors concerned. This does, however, appear less problematic as the same applies to other activities and measures under those instruments; *and* as the requirements do not appear to constitute requirements on language skills *per se* for receiving social benefits, but rather requirements to attend language courses for those having insufficient language skills for the labour market (as opposed to the Dutch policy plan); *and* as applicants having sufficient language skills, which might possibly be substantiated by other means, are likely not to be met with a requirement on attending language courses; *and* as the courses appear to be free of charge to the applicant in both countries.

IX.III. The Netherlands: Access to social assistance

With regard to the aim of the Dutch 2010-Bill and announced 2013-policy plan, the Bill introduced since 2010 has the aim of *improving the employment opportunities* of the applicant concerned. However, the policy plan announced in April 2013 may have *an element of integration*, as it appears to apply to all applicants of social assistance, regardless of whether those persons might not be able to return to the labour market at all.

As to whether the announced policy's language requirement is applied in a non-discriminatory manner, the 2010-Bill appears to apply to all, regardless of nationality. In addition, the 2013-policy plan does not make a distinction based on nationality *per se*; yet it is explicitly held to apply only to those who do not speak Dutch. Moreover, the requirement on finishing the language course with success entails that the Dutch policy plan *de facto* assumes a character of a requirement on language skills *per se* for receiving social benefits, rather than constituting a requirement on attending language courses (as opposed to *Denmark* and *Germany*; see above). The level of language skills required is, however, not known. Since it is rather obvious that non-nationals are less likely to speak Dutch than nationals; *and* since not finishing the Dutch language course with success, and hence not having sufficient language skills, have an impact on benefits that will subsequently be reduced or stopped, the non-discriminatory application of the language requirement may be questioned.

With regard to the proportionality of the 2013-policy plan, this policy seems to cover anyone who does not speak Dutch and applies for social assistance benefits, and hence to address persons who have a chance to go back to the labour market as well as persons who might not be able to return to the labour market at all. Consequently, the original and official aim of the language requirement of

the 2010-Bill (i.e. to improve the job opportunities of the applicant concerned) appears less reasoned with regard to those persons who might not be able to return to the labour market at all.

Moreover, the requirement on language skills *per se* for receiving social benefits, regardless of whether the applicant are able to return to the labour market, as described above, along with the impact of insufficient language skills on social benefits that will subsequently be reduced or stopped, appear to render the proportionality of the Dutch policy plan questionable.

D. Conclusions

X. General remarks

Some experts address the issue of whether language requirements are having the effect of excluding EU migrant workers from accessing certain employment or from achieving or earning certain working conditions, promotion and salary in the private as well as the public sector.

With regard to employment in the *private sector*, in some Member States, language requirements might be having the effect of excluding EU migrant workers from accessing certain employment or placing them in a less favorable position when accessing employment, despite of the fact that language requirements are imposed on all workers, regardless of nationality. This is mentioned by the experts regarding *Austria, Cyprus, Latvia, Lithuania, Luxembourg* and *Sweden*.

Notably in *Cyprus*, the ‘priority for employing Cypriots’ initiative launched during 2012-2013, and the ‘gentlemen’s agreement’ about imposing a quota on ‘foreign workers’ at 70-30 ratio, in part using Greek language as a policy instrument, seems to be a *prima facie* case of nationality discrimination. And in *Lithuania*, according to the representative of the Equal Opportunities Ombudsmen Service, the language issue is very relevant for foreigners (including EU nationals) as concerns the access to the labour market. According to information from the Lithuanian Youth Council, young people from other EU Member States residing in *Lithuania* indicate local language as a barrier for access to employment. In *Croatia* language requirements are imposed only on foreigners and EU migrant workers could be excluded from accessing employment if not able to prove the required Croatian language knowledge level.

By contrast, in other Member States, the information available to the experts suggests that language requirements are not having the effect of excluding EU migrant workers from accessing certain employment in the private sector. This is the case in *Czech Republic, Estonia, Poland* and *Slovakia*. And also in *Finland*, where however, studies concerning integration of immigrants from third countries notably indicate that the lack of knowledge of the national languages is one of the most significant impediments for the access of third country nationals to the Finnish labour market.

With regard to employment in the *public sector*, language requirements might be having the effect of excluding EU migrant workers from accessing certain employment etc., despite of the fact that language requirements may be imposed on all workers, regardless of nationality, in the three Member States where State Language Acts are in place; see further below para. XI.

In the following paragraphs, an overview of the findings of sections A, B and C as well as an assessment of the compatibility with EU law is presented in relation to each business sector etc.

XI. Language skills required by generally applicable State Language Acts for employment in the private sector specifically

Language requirements in the *private as well as the public sector* are governed by national State Language Acts of a general nature in a few Member States (*Estonia, Latvia* and *Lithuania*). In *Estonia* and *Latvia*, the *private sectors* are covered by the respective Language Act namely when this is justified by public interests. Furthermore, language requirements are imposed in *Latvia* on employees of enterprises whose majority of shares are owned by state or municipality; employees of private sector and self-employed which according to the delegation by normative acts perform

public functions; and foreign experts and members of the foreign administration bodies of enterprises, who work in *Latvia*. In *Lithuania*, language requirements are imposed on persons in the particular sectors of communications, transport, health and other establishments providing services to the residents and also on heads of commercial services.

Regarding language requirements in working conditions and promotion and salary, the Language Board in *Estonia* has a right to propose to the employer to dismiss an employee or an official, if the person concerned does not have the ability necessary to communicate in Estonian. Also the Language Board can order that a person should undergo the language examination.

In *Estonia* and *Lithuania*, the language requirements are imposed on all workers, regardless of nationality. However, regarding *Lithuania*, the imposition of language requirements on workers in the private sector is very discretionary and there may be hidden reasons to prevent the employment of certain foreigners. It is not excluded that certain nationalities might be more targeted with language requirements in practice, but it is very difficult to establish such facts and prove them, since they are not ‘visible’ in publicly available information as long as there are no concrete complaints. In *Latvia* foreign experts and members of the foreign administration bodies of enterprises who work in Latvia, must know and use official language at level necessary for the performance of their functions or must provide themselves with translation into official language.

Language ability may be certified by a diploma from primary, secondary or higher educational establishments where studies are carried out in the national language, or by language examination organised by the Language Board/State Language Proficiency Examination Commission in *Estonia* and *Latvia*. “It seems that such provisions might not be in conformity with the case law of the CJEU, in particular *Angonese* (C-281/98)”²²⁴ as adequately articulated by the expert from *Latvia*,²²⁵ nor with *Groener* (C-379/87).²²⁶

Conversely in *Lithuania*; where the means of proof are not specified by law in general, and the job interview is thus likely to form the basis of an assessment of the applicant’s language skills. Systematic language tests are likely not to be carried out in a standardized form in the private sector.

Issues on compatibility in terms of proportionality with the aims pursued emerge in *Estonia*, *Latvia* and *Lithuania*, due to the fact that language requirements are imposed on a general basis, rather than on a case-by-case basis, without taking the nature of a particular job into consideration. In *Latvia*, the justification is to ensure that Latvian language, which is the official language, could be used freely within every field of life and protection and preservation of Latvian cultural identity. And in *Lithuania*, the justification is the need to provide services to the residents in the local language. Notably, in *Latvia* different levels of knowledge of Latvian language for the same professions is required, depending on whether the employment is in the public or the private sector, which in itself reveals that the language requirements have not been assessed from the perspective of the principle of proportionality. In addition, administrative practice of the State Language inspectors reveals possible incompliance with the general principles of law, as the State Language inspectors i.a. apply law in practice stricter towards Latvian Russian-speaking population than towards EU workers, which runs contrary to non-discrimination principles under human rights law.

²²⁴ Paras. 43-45 and 47.

²²⁵ Concerning specific provisions of Latvian law, however.

²²⁶ Para. 23.

According to the expert from *Latvia*, who conducted a thorough analysis of national law and practice as well as CJEU case law, it follows from case law of the CJEU, that EU law allows requiring the knowledge of an official language in a level *exceeding the level necessary for the performance of a work* in question, if such requirement is *necessary* for the attainment of the *aims under national language policy* and is *proportionate* in relation to such policy aims, cf. *Groener* (C-379/87).²²⁷ The author of this report is yet of the opinion that the *linguistic and cultural policy* pursued by a government has in practice by the CJEU been held to *correspond to what is necessary for a post*, provided that the level of knowledge required is *not disproportionate* in relation to the objective pursued in *Groener* (C-379/87).²²⁸ Notwithstanding those minor differences in opinion, the fact remains that the CJEU has acknowledged a Member State's *linguistic and cultural policy* as a legitimate aim.²²⁹ Moreover, the requirement on *proportionality* of linguistic measures prevails.²³⁰ Since the language requirements are imposed for employment in the private sector on a general basis in the three Member States concerned, rather than on a case-by-case basis, without taking the nature of a particular job into consideration, the proportionality of those language requirements is thus highly questionable.

XII. Language skills required by law etc. for employment within the medical sector

In the majority of the Member States, a certain level of linguistic ability is required for workers within the medical sector, being private or public - either per sector or per post through specific legislation covering health personnel, legislation generally applicable to regulated professions or administrative practice (*Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Ireland, Lithuania, Poland, Slovakia, Slovenia, Sweden, The Netherlands and United Kingdom*). Health personnel appear to be either required to dispose of the required language skills in order to receive recognition (*Hungary and Lithuania*), or the enforcement of language requirements rests with the employer.

Language requirements appear to be imposed only on EU and/or EEA and/or Swiss nationals (and/or third country nationals) in some Member States (*Bulgaria, Croatia, Denmark, Hungary, Lithuania, Poland, Slovakia and The Netherlands*).

Notably, language requirements appear to be part of the *recognition procedure* in some Member States, which may raise issues on compatibility, as making recognition of qualifications subject to linguistic knowledge is contrary to Directive 2005/36/EC, unless linguistic knowledge belongs to the qualification (i.e. in language-related industries, such as speech therapists or teachers teaching the language of the host country).²³¹ Thus, in *Hungary* recognition of health care diplomas requires the applicants to indicate her/his language knowledge. However, lack of language knowledge does

²²⁷ Paras. 19-20.

²²⁸ Para. 21.

²²⁹ *Groener* (C-379/87) para. 19, *Las* (C-202/11) paras. 25-27, and *Runevic-Vardyn and Wardyn* (C-391/09) paras. 85-87.

²³⁰ Cf. also *Las* (C-202/11) para. 29.

²³¹ *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.1. See also *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6, and *USER GUIDE, Directive 2005/36/EC, Everything you need to know about the recognition of professional qualifications, 66 questions - 66 answers*, part V, and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* Point 16.

not have any kind of consequences. And in *Lithuania*, doctors may be required to attest language proficiency when applying for a license.

In *Germany*, the Federal Social Court established that persons who are members of the obligatory illness insurance system are not entitled to be treated by persons speaking the language of their home country, which sits uneasily with *Haim II* (C-424/97).²³²

Systematic language tests are carried out in *Cyprus* (nurses) and by large also in *Czech Republic* (paramedical professions) and *The Netherlands*, which may raise issues on compatibility.

By contrast, in other Member States, standard information on language skills is not required by law or practice in the medical sector; a variety of evidence of language skills may be considered; the applicant's linguistic abilities are i.a. assessed in the course of the job interview on a case-by-case basis, subject to the principle of proportionality, and language tests appear not to be applied systematically (*Croatia, Denmark, Finland, Germany, Poland, Sweden and United Kingdom*).

Language skills are required to the extent necessary for practising the position concerned in the majority of the Member States concerned (*Bulgaria, Croatia, Czech Republic, Denmark, Finland, Germany, Ireland, Poland, Slovakia, Sweden, The Netherlands and United Kingdom*). Accordingly, the justifications of the language requirements are the ability to perform one's tasks, the quality of medical services, patient security, safe care, and the ability to communicate effectively with one's patients, colleagues and relatives, which is in line with EU law, including *Haim II* (C-424/97), in so far as the language requirements are imposed on an individual case-by-case basis.

With the possible exception of a few Member States, no compatibility issues have been reported regarding this sector.

Possible compatibility issues appear in *United Kingdom* where the question of whether or not a 'speak English only' policy can be justified has not yet been tested in the tribunals and courts under the Equality Act 2010. Accordingly, in *United Kingdom*, there has been recent controversy regarding the requirement under EU law to allow doctors and nurses from the EU to practice in the UK without a requirement to speak English. The British Medical Association has recently commented that it plans to introduce an English language competency test based on a requirement to understand and communicate in English throughout the medical profession. And in *Cyprus*, obstacles in the form of excessive language requirements in the job descriptions for nurses are still practiced. An open question remains whether it is justifiable to retain language requirements for nurses higher than the requirement for doctors in Cyprus. Also, regarding *Germany*, the German experts question the proportionality of the general legal requirement of adequate language skills imposed on medical and technical assistants working in laboratories, but legal databases do not reflect major disputes which might indicate a flexible approach in practice.

²³² Para. 60.

XIII. Language skills required by law etc. for employment within the marine and aviation sector

In some Member States, language proficiency is required by law for employment within the marine or aviation sector pursuant to specific legislation governing those sectors (*Denmark, Greece, Hungary, Italy and Lithuania*). Language requirements are imposed only on EU nationals in *Italy*.

Systematic language tests are carried out in *Italy* and *Lithuania*. In *Lithuania*, *chief pilots and candidate chief pilots* are required a certain level of Lithuanian language proficiency for unlimited duration in order to obtain the licence for student of chief pilot.

Communication skills and/or traffic security is provided as the justification in most of the Member States concerned (*Denmark, Greece, Hungary and Lithuania*).

XIV. Language skills required by law etc. for employment within the education sector or child care personnel

Language requirements are imposed on workers within the education sector in a number of Member States (*Croatia, Cyprus, Czech Republic, Denmark, Germany, Greece, Ireland, Poland, Portugal, Romania, Sweden and The Netherlands*) and on child care personnel (*The Netherlands*) - either through specific legislation, general legislation applicable to regulated professions or administrative practice.

In *Ireland*, language requirements are part of the *recognition procedure*, and persons will thus not be granted recognition to teach in any capacity in a national school until English language competence is established through a special DES test and aptitude test/adaption period. This seems to be in line with EU law, as making recognition of qualifications subject to linguistic knowledge is contrary to Directive 2005/36/EC, unless linguistic knowledge belongs to the qualification (i.e. in language-related industries, such as speech therapists or teachers teaching the language of the host country).²³³ Moreover, Member States may apply compensation measures in terms of aptitude tests or adaption periods in certain circumstances.²³⁴

However, specified certificates issued by or exams/test taken at institutions within the territory of that Member State as the only proof in *Czech Republic* (when the applicant gained her/his education in other language than Czech) with regard to kindergarten teachers and teachers of first stage education in elementary schools, *Ireland* (DES test) and *Sweden*, which may raise issues on compatibility.²³⁵

Proof of language ability may be certified by only one specific certificate in *Greece* (certificate issued by examination centres approved by the Centre for the Greek Language), and *Portugal*

²³³ *Evaluation of the Professional Qualifications Directive (Directive 2005/36/EC)*, Brussels 5 July 2011, European Commission, Directorate General Internal Market and Services, Services Free Movement of Professionals, part 12.1. See also *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6, and *USER GUIDE, Directive 2005/36/EC, Everything you need to know about the recognition of professional qualifications, 66 questions - 66 answers*, part V, and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* Point 16.

²³⁴ Directive 2005/36/EC Article 14.

²³⁵ *Groener* (C-379/87) para. 23 and *Angonese* (C-281/98) paras. 43-44.

(certificate issued by the Centre of Evaluation of Portuguese as a Foreign Language), which may raise issues on compatibility.²³⁶

By contrast, in other Member States, specific certificates or diplomas are not required (*Croatia, Germany and Poland*).

The nature of the job and the tasks to be assigned as well as communication skills and possibly the position of the language as the first official language, including State heritage and culture, are the main justifications for language requirements imposed on teachers in *Croatia, Germany, Greece, Ireland, Poland, Romania and The Netherlands*. The fact that teaching is conducted in the national language constitutes the justification in *Denmark and Sweden*.

With the possible exception of one Member State, no compatibility issues have been reported regarding this sector. However, in *Greece*, the language requirements are imposed on all specialties of teachers (as opposed to e.g. *Poland*). Therefore, even professors of foreign languages are included, which may raise issues on proportionality.

XV. Language skills required by law etc. for employment in the hotel/catering and tourism industry

In only one Member State, language proficiency is reported to be required within the hotel/catering and tourism industry. Accordingly, in *Cyprus* a rather disturbing situation is found in terms of a 'priority for employing Cypriots' initiative launched during 2012-2013 in part using Greek language as a policy instrument; and Greek language is made an essential qualification for the jobs in the hotel/catering industry for eight vocations relating to the sector at the different required levels. Also, the President announced that it has a 'gentlemen's agreement' with social partners about imposing a *quota on foreign workers* at 70-30 ratio, i.e. 70% Cypriots and 30% foreigners with the purpose of reducing unemployment. It is not clear how this would operate in practice; however it seems that an important instrument to achieve this ratio is to require Greek language in vocational in job descriptions especially in the hotel and tourism sector. There seems to be a *prima facie* case of nationality discrimination, something officials deny. This has, however, been disputed by human rights and migrant support organisations who speak of widely practiced policies of discrimination and exclusion of migrants, including EU nationals. Moreover, in administrative practice, knowledge of the national language has been required by a semi-governmental tourist organisation.

In general, the Cypriot Equality body seems to play a vital role in *Cyprus*, and a number of complaints have been launched to this body about infringements of EU law.

It seems that the imposition of the requirement of Greek is motivated by factors others than what is genuinely essential for the industry: rather they seem to pander anti-migrant workers sentiments and depicted as a measure to combat rising unemployment of Greek-Cypriots. A major issue, however, is the fact that the policy for 'priority for Cypriots policy', in part using Greek language as a policy instrument, not only fails to properly take account of the free movement acquis, but also fails to

²³⁶ *Angonese* (C-281/98) paras. 43-45 and 47, *Communication from the Commission - Free movement of workers: Achieving the full benefits and potential* part 2.3, COM (2002) 694 final and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* point 16 and *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.

take into account that migrant workers, EU and third country citizens have been in Cyprus since 1991.

XVI. Language skills required by law etc. for employment or self-employment within legal professions, as certified auditors, members of management boards in certain institutions, patent counsels, notaries, insurance brokers, (real) estate agents, asset managers, architects, engineers, interior designers or mechanical engineering

In a number of the Member States, language proficiency is required for employment or self-employment within legal professions (*Croatia, Denmark, Germany, Slovakia, Spain and The Netherlands*), as certified auditors (*Hungary and Poland*) members of management boards in certain institutions and/or patent counsels (*Poland and Romania*), notaries (*Croatia, Lithuania, Romania and The Netherlands*), insurance brokers (*Cyprus*), (real) estate agents, asset managers, engineers and/or interior designers (*Cyprus and Luxembourg*) or mechanical engineering (*Cyprus*) - either through specific legislation, general legislation applicable to regulated professions or administrative practice.

In general, the language requirements appear to be imposed on all workers, regardless of nationality. However, in *Romania*, in the case of credit institutions, where if no one of directors or the members of the directorate has Romanian citizenship, at least one of them must know the Romanian language.

Notably, in *Cyprus* qualifications obtained abroad have been ignored in practice. And in *Denmark* an example of a requirement on being a mother tongue speaker imposed on writers was found. This constituted indirect discrimination on grounds of ethnic origin, according to the Board of Equal Treatment, and the foundation concerned subsequently amended its practice. In *Croatia* the Notaries Public Act requires Croatian citizenship; a requirement that will be removed, according to the Croatian expert.

With regard to the possibility of exemption from the linguistic requirements and whether powers to grant such exemptions are exercised in a non-discriminatory manner as required by EU law;²³⁷ in *Poland* the Polish Financial Supervision Authority may depart from the language requirements imposed on members of management boards in certain institutions based on an objective assessment of the risk exposure, provided meeting the requirement is not necessary for prudential supervision, taking into account in particular the level of permissible risk or the scope of the activity of the institution, which seems to be in line with EU law. In *Luxembourg* the jury may authorize a candidate self-employed to answer the test in German or in English, instead of in French. Such possibility will depend on the goodwill of the jury, which makes the compatibility with EU law of the exercise of the powers to grant exemption difficult to assess.

In some instances, exams/aptitude tests are required and conducted in the national language (*Croatia, Hungary, Slovakia, Spain and The Netherlands*) which seems to be in line with EU law, due to the fact that under the general system of recognition, Member States may apply compensation measures in terms of aptitude tests or adaption periods in certain circumstances.²³⁸

In other instances, tests or training forming the basis of being registered with the relevant authorities or associations, or for being authorized to practice the specific profession, are conducted in the

²³⁷ Cf. *Groener* (C-379/87) para. 22.

²³⁸ Directive 2005/36/EC Article 14.

national languages; or specific documents necessary for registration must be translated into the national language (*Cyprus, Hungary and Luxembourg*).

This “[...] may exclude EU migrant workers from accessing certain self-employment [or employment],” as adequately articulated by the expert from *Luxembourg*,²³⁹ and may in some instances raise issues on compatibility, also with regard to freedom of establishment²⁴⁰ (as regards access to work as a self-employed in *Luxembourg*, where the training and tests for obtaining a permission to establish is in French in principle; as regards auditors providing auditor service in *Hungary*, who shall be registered by the tax authority based on their regular (yearly) training, managed in Hungarian; and as regards exams in Greek or translation of documents into Greek in *Cyprus*).

Accordingly, in *Cyprus*, the Equality body concluded that the requirement imposed on insurance brokers to take an exam in Greek and hence to conduct written examination for a professional license only in the Greek language, amounts to indirect discrimination, identifying this requirement as a case of language being used as a justification for excluding suitably qualified professionals from other Member States, which is prohibited.

The nature of the job and the tasks to be assigned and/or communication skills, possibly including the need to provide services in the local language, appear to constitute the justifications of the language requirements concerned.

XVII. Language skills required by law etc. for employment in the security sector or in certain risky occupations

In a few Member States, language proficiency is required for employment within the security sector or for certain risky occupations pursuant to specific legislation (*Estonia, Spain and The Netherlands*). A specific language certificate issued only by an institution within that country is required in *Spain*, where a certification of a DELE Exam is required, which may raise issues on compatibility.²⁴¹

Considerations on security, the nature of job and/or communication skills comprise the justifications the Member States concerned. No compatibility issues have been reported in this regard.

²³⁹ Concerning specific provisions of Luxembourgian law regarding the permission required for the exercise of independent professions, however.

²⁴⁰ *I.a. Wilson (C-506/04) and Commission of the European Communities vs. Grand Duchy of Luxembourg (C-193/05)*, judgment of 19 September 2006.

²⁴¹ *Groener (C-379/87) para. 23, Angonese (C-281/98) paras. 43-45 and 47, Communication from the Commission - Free movement of workers: Achieving the full benefits and potential part 2.3, COM (2002) 694 final and Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC point 16 and Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.*

XVIII. Language requirements imposed on employment contracts by law etc.

Language requirements are imposed on employment contracts in *Belgium* pursuant to a Decree of the Flemish Community as well as a Decree of the French Community; and also in *Estonia*, where however, the language requirement is not mandatory, which appears to be in accordance with the CJEU ruling in *Las* (C-202/11),²⁴² as described in the following.

Regarding *Belgium*, the CJEU recently dealt with the compatibility of the Decree of the Flemish Community with EU law and delivered its judgment on 16 April 2013 regarding a reference for a preliminary ruling in *Las* (C-202/11). The CJEU considered that “Article 45 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as that in issue in the main proceedings, which requires all employers whose established place of business is located in that entity’s territory to draft cross-border employment contracts exclusively in the official language of that federated entity, failing which the contracts are to be declared null and void by the national courts of their own motion” (para. 35). The national court should deliver its final judgment by the end of the year, while the Flemish parliament has still to deal with the matter. Apparently, the CJEU ruling gave rise to concern in the Flemish Community, i.a. due to the fact that well-settled case law of the Dutch-speaking section of the Belgian State Council interprets Article 4 of the Belgian Constitution as precluding the use of another language than Dutch in the Dutch-speaking region.

A similar problem may arise with regard to the Decree of the French Community of 30 June 1982 which provides that French is the language to be used in the context of employment relationships in the French-speaking region. Yet, in view of the aforementioned ruling, its conformity with EU law may be less problematic in that, contrary to its Flemish counterpart, it allows for the complementary use of the language chosen by the Parties. Another aspect of the Decree of the French Community which attenuates any potential conflict with EU law concerns the sanctions provided therein. The Decree stipulates that the acts and documents drafted in violation therewith are null and void, whereas the Flemish Decree imposes additional penalties, administrative and criminal.

XIX. Language skills required by generally applicable State Language Acts for employment in the public sector specifically

As described above para. XI, State Language Acts govern language requirements for employment in the private as well as the public sector in *Estonia* (where the observance of language requirements in public service is more important than within the private sector. Thus, according to the Language Act, this Act is mainly meant for public institutions. In particular the language requirements will be observed in police forces, to certain extent also in hospitals etc.), *Latvia* (where legislation provides official language proficiency levels for all professions within the public sector) and *Lithuania* (where in the public service the language requirement is imposed on a general basis, and in the public sector (which is wider than the public service) it is imposed in the fields of communications, transport, health and other establishments providing services to the residents). Within those Member States, detailed legislation imposes explicit language requirements of various levels on workers in the public sector on either a general basis (*Latvia* and *Lithuania*) or depending on the nature of the tasks (*Estonia*). In *Estonia*, language requirements appear to be imposed only

²⁴² Paras. 29-33.

on foreigners, without any distinctions does somebody come from the EU Member States or from a third country.

With regard to working conditions, promotion and salary, notably in *Estonia*, the Language Board has a right to propose to the employer to dismiss an employee or an official, if the person concerned does not have the ability necessary to communicate in Estonian. Also, the Language Board can order that a person should undergo language examination. And in *Lithuania* there has been at least one case recorded in the beginning of 2012 when a state owned company applied reduction of salary for 11 employees who did not use Lithuanian language.

Concerning proof of language skills required, the language ability may be certified by a diploma from primary, secondary or higher educational establishments where studies are carried out in the national language, or by language examination organised by the Language Board/State Language Proficiency Examination Commission in *Estonia* and *Latvia*. “It seems that such provisions might not be in conformity with the case law of the CJEU, in particular *Angonese (C-281/98)*”²⁴³ as adequately articulated by the expert from *Latvia*,²⁴⁴ nor with *Groener (C-379/87)*.²⁴⁵ In *Lithuania* the Law on Public Service does not specify proficiency of language level, but reference is made to the Lithuanian language exam, which is mandatory when requesting citizenship of Lithuania or EU long-term residence permit. Language tests approved by various public organisations are also considered as proof of proficiency. There is no official information available on other means to prove linguistic ability in the public sector.

Regarding justifications of language requirements, in *Latvia* the justification is to ensure that Latvian language, which is the official language, could be used freely within every field of life and protection and preservation of Latvian cultural identity. In *Lithuania*, the justification is the need to provide services to the residents in the local language or security requirements. As concerns the general requirements for persons in the servicing sector, they may be reasonable and necessary, but the concern is that they may be applicable automatically as general requirements without taking consideration of a nature of a particular job.

In *Estonia* communication skills and the nature of the tasks constitute the justification; it is always necessary to assess what is the nature of tasks a worker has to fulfill and the language requirements are acceptable, justified and in line with EU law to the Estonian expert.

Notably, in *Latvia* different levels of knowledge of Latvian language for the same professions is required, depending on whether the employment is in the public or the private sector, which in itself reveals that the language requirements have not been assessed from the perspective of the principle of proportionality.

Accordingly, issues on compatibility in terms of proportionality with the aims pursued emerge in *Latvia* and *Lithuania*, at large due to the fact that the language requirements are imposed on a general basis, rather than on a case-by-case basis, without taking the nature of a particular job into consideration, cf. the analysis conducted above para. XI.

Within those three Member States, language requirements might be having the effect of excluding EU migrant workers from accessing employment in the public sector, despite of the fact that language requirements may be imposed on all workers, regardless of nationality. Notably, in

²⁴³ Paras. 43-45 and 47.

²⁴⁴ Concerning specific provisions of Latvian law, however.

²⁴⁵ Para. 23.

Estonia, the access to the posts in the public sector could be more restrictive than is allowed by EU law. And in *Lithuania*, considering that language requirements (be it formal or informal) are the main barrier for EU workers to access employment in *Lithuania*, it can be concluded that it has a clearly negative effect on free movement.

XX. Language skills required by Language Acts and/or constitutional provisions for employment in the public sector

In a number of Member States, specific Language Acts and/or constitutional provisions regulate language requirements for employment in the public sector. This is addressed by the experts regarding *Belgium* (French, Dutch or German), *Finland* (Finnish and/or Swedish), *Ireland* (English). There is no formal Irish language requirement except within the primary education sector. Nonetheless, applicants for certain Irish-speaking posts may have to show that they have the necessary qualifications/competences, and applicants may be assessed for Irish language ability and Irish-speakers may be favoured in the selection process), *Italy* (Italian and/or French, German or Slovenian. Also, an ethnic proportional system applies - '*proporzionale etnica*'. Under this system, all posts in the public sector are distributed among the three linguistic groups), *Luxembourg* (Luxembourgish, French and German), *Malta* (Maltese and English) and *Romania* (Romanian and minority languages).

Within those Member States, national languages - and in some instances also minority languages - enjoy a special status. Language requirements are hence imposed for employment in the public sector on various levels, depending on the post in question, and in various shapes - mainly as explicit, but also as implicit language requirements (e.g. education or citizenship requirement). Notably in *Romania* public sector employment is generally conditioned by Romanian citizenship.

With regard to proof of language skills required, in *Ireland* candidates for positions within the Civil Service who pass an Optional Language Test in Irish are entitled to extra marks at the interview. Also, an existing Civil Servant who enters competition for promotion can establish bilingual proficiency and thus benefit from extra marks if they pass a Gaeleagras Triail Inniulachta test or attend a Gaeleagras course leading to a certificate of competence. And in *Belgium*, one specific language certificate is the only way of proof for candidates who have not followed education in the national languages in certain instances with regard to the French Community and the Brussels-Capital, where SELOR hence is still the only organisation that can deliver language certificates. This raises issues on compatibility²⁴⁶ and the European Commission recently decided to refer Belgium to the CJEU.²⁴⁷

Language tests are applied to persons who have not followed education in the national languages in *Italy* with regard to *Valle d'Aosta* and in *Luxembourg*, which may raise issues on compatibility.

²⁴⁶ *Angonese* (C-281/98) paras. 43-45 and 47, *Communication from the Commission - Free movement of workers: Achieving the full benefits and potential* part 2.3, COM (2002) 694 final and *Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications, National Administrative Practices Falling under Directive 2005/36/EC* point 16 and *Group of Coordinators for the Recognition of Professional Qualifications, Frequently Asked Questions*, Update 22 October 2010, MARKT D3418/6/2006-EN, European Commission, Internal Market and Services DG, part 6.

²⁴⁷ Press release IP/13/868.

A more flexible approach is found when other evidence may be equated (*Finland, Ireland* with regard to the *Gardaí, Italy* and *Malta*). Yet, the literal interpretation of the relevant provision in *Italy* with regard to the *Province of Bolzano*, where also other certificates than the ‘*attestato di bilinguismo*’ may certify linguistic knowledge, leads to the result that the schools or Universities or institutions issuing the diploma or certificate shall be sited in *Italy*, which may raise issues on compatibility.²⁴⁸

Proof of language skills may be attested in the course of the interview in *Ireland* with regard to the Defence Force, and competition exams are held in the national languages in *Italy* and *Romania* in certain instances.

As regards the justification of the language requirements concerned, the respective languages’ position as official languages; and/or the safeguard of national minority languages; and/or the promotion of the national languages, culture and heritage; and the right of citizens to get public service in those languages; and/or communication skills; and/or the exercising of state powers constitute the justifications in *Finland, Ireland, Italy, Luxembourg, Malta* and *Romania*. The fact remains that the CJEU has acknowledged a Member State’s *linguistic and cultural policy* as a legitimate aim,²⁴⁹ and in general the language requirements thus have a legitimate aim and appear necessary and proportional within those Member States.

However, with regard to *Finland*, the Finnish expert questions the proportionality of the language requirement applied systematically, regardless of the nature of the job to be filled and the tasks to be assigned, imposed on employment in public posts for which the qualification requirement is a university degree, and whether this requirement is always justified by the nature of the job or the tasks. And regarding *Malta*, the Maltese expert notes that there is no specific information on practice that enables the expert to assess to what extent the principle of proportionality is applied. And also in *Romania* the general application of language requirements would appear to raise issues on proportionality similar to those found in *Latvia* and *Lithuania*, cf. above para. XIX.

XXI. Language skills required by general legislation applicable to the public sector and/or administrative practice for employment in the public sector

In the majority of the Member States, neither Language Acts nor constitutional provisions govern language requirements, and language requirements for employment in the public sector are governed by general legislation regulating the public sector and/or administrative practice (*Austria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, The Netherlands* and *United Kingdom*). Within those Member States, language requirements are imposed for employment in the public sector on various levels, either on a case-by-case basis, per post, per sector or in general for employment in the public sector (the latter applies to *Slovakia*). Consequently, a certain level of language proficiency is required in terms of national languages; and may be required also with regard to minority languages (*Slovenia* and *Spain*).

Notably in *Cyprus*, there may be requirements for being mother tongue speakers when accessing employment in the public sector; and in *Greece*, language requirements appear to be imposed only on non-nationals and non-Cypriot nationals.

²⁴⁸ *Groener* (C-379/87) para. 23 and *Angonese* (C-281/98) paras. 43-44.

²⁴⁹ *Groener* (C-379/87) para. 19, *Las* (C-202/11) paras. 25-27, and *Runevic-Vardyn and Wardyn* (C-391/09) paras. 85-87.

In one Member State, access to employment in the majority of posts within the public sector is confined to nationals (*Bulgaria*). Notably in *Bulgaria*, the scope of posts in the public sector reserved for Bulgarian nationals remains questionable as to its conformity with Article 45 (4) TFEU, and the nationality requirement is the main obstacle to access to work in the public sector for other EU nationals.

In some Member States, public employment namely involving the exercise of authority is confined to nationals (*Austria, Hungary and Sweden*). In some Member States, employment within the public sector at large is open to EU citizens (*Cyprus, France, Germany and Malta*).

With regard to proof of language skills required, certificates proving education in the national languages at a national institution is required for most posts, especially senior posts, in *Cyprus*. Likewise are specific certificates either proving education from a national school or a special language certificate issued by the Center of Greek Language required in *Greece*; the selection process may involve oral exams in *Spain*; in *Slovenia*, a special certificate issued by the Centre of Slovene may be required; and in *Poland* proof of language proficiency comprises national language test before a state commission or certificates proving education in the national languages at a national institution. Such requirements for proof raise issues on compatibility, “[a]s any other certificate than listed [...] is not acceptable (especially the ones granted [abroad]) and hence is insufficient to prove [national] language when applying for posts in civil service or self-government institutions, such provisions are too strict in the light of CJEU jurisprudence and the obligation to apply the proportionality principle,” as adequately articulated by the expert from *Poland*.²⁵⁰

No standard proof of language skills (e.g. systematic language testing or specific language certificates) is required in *Austria*, where, however, standardized tests are applied in some areas; *France, Germany, Hungary, Slovakia and Sweden*. However, competition exams are held in the national language in *France*.

Within those Member States, language proficiency is likely to be proved i.a. implicitly by certificates of the required education and assessed in the course of the job interview.

The nature of the job to be filled and the tasks to be assigned and/or communication skills and/or the exercise of powers are the justifications in *Austria, Croatia, Denmark, France, Germany, Greece, Poland, Portugal, Sweden and The Netherlands*. In general, the language requirements appear to be imposed on a case-by-case basis and seem necessary and reasonable. However, with regard to *Austria*, the Austrian expert notes that as this assessment is made on a case-by-case basis, it is not possible to determine whether or not the language requirements are in fact reasonable and necessary.

And in *Slovakia*, the language requirements are general requirements imposed notwithstanding the job or tasks. No information is available about the justification of the language requirements concerned.

Consequently, the general application of language requirements in *Slovakia* would appear to raise issues on proportionality similar to those found in *Latvia and Lithuania*, cf. above para. XIX.

Notably in *Cyprus*, language requirements generally appear to be justified by reducing the unemployment of Greek-Cypriot workers, and this policy not only seems incompatible with EU free movement law, but there also seems to be a prima facie case of nationality discrimination.

²⁵⁰ Concerning specific provisions of Polish law, however. Cf. *Groener* (C-379/87) para. 23 and *Angonese* (C-281/98) paras. 43-45.

XXII. Language skills required in practice by private entities

In the majority of the Member States, save those three Member States where State Language Acts are effective, statutory language requirements appear to constitute exceptions to the main rule; otherwise entailing that it is left for employers to decide what level of linguistic competence they require from employees and how the employees are to establish the required competences as a matter of contractual freedom, however, subject to rules on prohibition of discrimination, and the national courts and equality bodies play an important role in this regard (*Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Malta, Portugal, Slovakia, Spain, Sweden, The Netherlands and United Kingdom*). Consequently, the nature and tasks of the specific employment are the decisive criteria in most Member States when employers decide on a reasonable level of requirements on employees' language skills, and language requirements appear by large to be imposed on a case-by-case basis by private entities.

As adequately articulated by the experts from *Belgium*, whether there is in fact discrimination against EU citizens thus depends “[...] on employers’ relative interpretation of the necessity of the knowledge of a language for the proper execution of tasks by employees.” The language proficiency required varies from no or basic language competences in low skilled employment, such as cleaning personnel, to high language competences in high skilled employment, such as IT-professionals, depending on the job in question. Occasionally, language proficiency in languages other than the national languages is required by employers.

With regard to the practice of private employers in the Member States, three main issues emerge: The issue of *job advertisements* stipulating language requirements - including mother tongue; the impact of the *accent of foreigners* on employment; and the issue on *dismissal of employees* due to insufficient language proficiency.

As regards the first issue on job advertisements, it would appear that issues on discriminatory practice by private entities arise from language requirements stipulated in job advertisements in a number of the Member States; and that in some instances, though by far not all, language requirements are used as a means to discriminate candidates on ground of their ethnic origin (*Austria, Czech Republic, Denmark, Germany, Italy, Lithuania and Luxembourg*). Concerning the impact of the accent of foreigners on employment, discriminatory rejections of employment by private entities were found in *Denmark* and *The Netherlands*. As regards the issue on dismissal of employees due to insufficient language skills, this is intimately linked to recruitment. Whether language skills are sufficient for the job concerned, hence falls under the prerogative of employers to decide upon. Examples of such dismissals were found in *Denmark, Germany* and *Sweden*.

As regard proof of linguistic knowledge, no standardised rules appear, and private employers would usually neither require specific certificates, nor apply standardised language tests in *Austria, Croatia, Czech Republic, Denmark, Finland, Germany, Hungary, Portugal, Romania, Slovakia, Sweden* and *United Kingdom*. Within those Member States, employers are thus free to choose the method of proof and testing, and are likely to assess the linguistic ability i.a. in the course of the job interview on a case-by-case basis, or on the basis of tests specifically designed for the job or company concerned, or on the basis of language school certificates, which is considered an advantage in i.a. *Romania*, or via an assessment centre.

However, oral tests will usually be carried out in *Luxembourg*, and there may also be a written test, but less often. Yet, most employers will not use standardized criteria, and there are no standardized tests in the private economy.

Communications skills and the nature of the job constitute the justifications, and the language requirements appear mostly to be imposed on a case-by-case basis in *Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Luxembourg, Portugal, Sweden* and *United Kingdom*. Apart from a few Member States, there are no reported cases as regards infringement of EU law in this regard, suggesting that the language requirements are unreasonable or unnecessary. However, the expert from *Luxembourg* notes that it is impossible to control in practice, beforehand, whether the language requirements match the reality of the exercise of the specific job.

Notably, in *Cyprus*, language requirements appear in general to be justified by reducing the unemployment of Greek-Cypriot workers, and this policy not only seems incompatible with EU free movement law, but there also seems to be a prima facie case of nationality discrimination.

And in *United Kingdom*, shortly after the first year of application of the Act a business announced an English language only policy at a distribution plant. Commentators are in agreement that unless the requirement can be justified (which seems unlikely to the UK expert) it is contrary to the Act. The question of whether or not a ‘speak English only’ policy can be justified has not yet been tested in the tribunals and courts under the Equality Act 2010.

XXIII. Language requirements in access to social benefits

In the vast majority of the Member States but four, language requirements are not linked to entitlement to social benefits.²⁵¹

However, “[...] in practice lack of knowledge of [the national] language may form an obstacle for enjoyment of [social] rights [...]” and when “[...] application forms are in [the national language] and shall be filled in [the national language], [...] EU nationals that cannot speak and write at least basic [national language] shall face difficulties in their relations with public administration, unless they are assisted by some association or the like,” as adequately observed by the experts respectively from *Latvia* and *Italy*.²⁵² This issue is mentioned specifically by the experts regarding *Italy, Latvia* (vocational training for jobseekers, which may hamper the access to employment) and *Lithuania*.

In contrast to this, and as an example of good practice, *United Kingdom* issues information brochures on applying for social benefits in all the main languages spoken in the UK. Similarly, public employment offices in *Cyprus* provide services in the Greek, English, Romanian and Bulgarian languages. On some occasions, services are provided in other EU languages also.

As indicated above, in four Member States measures to link language requirements to entitlement to certain social assistance benefits exist (*Belgium, Denmark, Germany* and *The Netherlands*).

In *Denmark* and *Germany*, requirements on attending specific language courses selected and/or provided by the authorities or actors concerned may be imposed on those job seeking, unemployed EU citizens receiving unemployment benefits and/or social assistance. The aim of the measures is

²⁵¹ Within those Member States, other requirements may, however, be imposed on applicants as a prerequisite for accessing social benefits; for instance residence requirements. This is the case with regard to the French RSA (the former RMI).

²⁵² With regard to respectively Latvian and Italian legislation and practice, however.

to *improve the employment opportunities* of the persons concerned, which may be considered a legitimate aim. With regard to the measures' proportionality and non-discriminatory application, the Danish and German policies appear to apply irrespective of nationality and only to persons who have a chance to go back to the labour market. Furthermore, unemployed may in general be met with requirements to attend courses or other activities aiming at improving their employment possibilities. Moreover, as the courses appear to be free of charge and as not finishing respectively a Danish or German course with success appears to have no impact on benefits (as long as the unemployed does not refuse to participate in such language courses), and as the requirements do not appear to constitute requirements on language skills *per se* for receiving social benefits, but rather requirements to attend language courses for those having insufficient language skills for the labour market, the Danish and German measures appear to be applied in a non-discriminatory and proportional manner.

Regarding *The Netherlands*, since 2010 a bill introducing language requirements for the reception of Social Assistance benefits is pending in the Second Chamber. According to the government, this Bill will only propose a requirement - also applicable to EU nationals - to prove sufficient knowledge of the Dutch language in cases where language knowledge will *improve the job opportunities* of the applicant. The government assured that the new requirement will be applied in a proportional and non-discriminatory manner. However, in April 2013 the Dutch government announced the policy plan that anyone who does not speak Dutch and applies for social assistance must take a course in Dutch and finish it with success. If the applicant does not meet this requirement, the social benefit will be reduced or stopped.

Other than information about the requirement on finishing a language course with success under the 2013-policy plan, there is no information available on the specific requirements for proof of language proficiency pursuant to the 2010-Bill or the 2013-policy plan, neither on the level required.

The 2010-Bill has the aim of *improving the employment opportunities* of the applicant concerned. However, the 2013-policy plan may have *an element of integration*, as it appears to apply to all applicants of social assistance, regardless of whether those persons might not be able to return to the labour market at all.

The non-discriminatory as well as the proportional application of the language measures concerned might be questioned, mainly due to the fact that the Dutch announced policy is explicitly held to apply only to those who do not speak Dutch. Moreover, the requirement on finishing the language course with success entails that the Dutch policy plan *de facto* assumes a character of a requirement on language skills *per se* for receiving social benefits, rather than constituting a requirement on attending language courses. In addition, not finishing the Dutch language course with success, and hence not having sufficient language skills, have an impact on benefits that will subsequently be reduced or stopped. Furthermore, as the announced policy appears to apply to persons who have a chance to go back to the labour market as well as persons who might not be able to return to the labour market at all, the original and official aim of the language requirement pursuant to the bill (i.e. to improve the job opportunities of the applicant concerned) appears less reasoned with regard to those persons who might not be able to return to the labour market at all.

Regarding *Belgium*, Chapter VII of the Flemish Housing Code makes access to social housing in the Flemish region conditional upon the tenant demonstrating his willingness to learn the Dutch language. This condition is applicable without distinction as regards nationality. It would appear that any proof of language proficiency is accepted, including a certificate that the future tenant

follows a specific integration course organized by the Flemish authorities. This integration course is compulsory to foreigners except for EU citizens - as well as Belgian citizens - who have used their freedom to circulate within the Union.

The aim of the measure appears to be *an element of integration*. In addition, the *linguistic and cultural policy* of the Flemish region (and of *Belgium* in general) may be of relevance. Apparently, well-settled case law of the Dutch-speaking section of the Belgian State Council interprets Article 4 of the Belgian Constitution as precluding the use of another language than Dutch in the Dutch-speaking region. Furthermore, the language requirement was justified by the Belgian constitutional court in a case unsuccessfully challenging the requirement on the grounds, i.a. that it breaches Article 9 of Regulation 1612/68 on equal access to social advantages. Thus, the court dismissed the claim and refused to ask for a preliminary ruling on the matter, arguing that basic knowledge of Dutch may be necessary with a view to reach the general interest objectives of ensuring that the tenant and the renter can communicate and of improving quality of life as well as conviviality among tenants.

Namely the proportionality of the language requirement may be questioned; notwithstanding the facts that the linguistic and cultural policy pursued by a government has been acknowledged in practice by the CJEU²⁵³ and has been held to correspond to what is necessary for a post in *Groener* (C-379/87).²⁵⁴ Indeed, it does not seem entirely obvious that similar considerations apply with regard to access to social benefits, since there appears to be a significant difference between respectively filling a specific and - in terms of attaining the objectives of the language policy - important post as a teacher, and receiving social benefits when residing in an entire region. Also, whether basic knowledge of Dutch is in fact necessary to attain the objective of ensuring that the tenant and the renter can communicate and of improving quality of life as well as conviviality among tenants seems debatable. The compatibility of the language requirement with EU free movement law may thus seem questionable; also in light of the recent CJEU ruling in *Las* (C-202/11), where the CJEU held that Article 45 TFEU precludes legislation of a federated entity of a Member State, which requires all employers to draft cross-border employment contracts exclusively in the official language of that federated entity on pain of nullity.²⁵⁵

²⁵³ *Groener* (C-379/87) para. 19, *Las* (C-202/11) paras. 25-27, and *Runevic-Vardyn and Wardyn* (C-391/09) paras. 85-87.

²⁵⁴ Para. 21.

²⁵⁵ Para. 35.