

R.MOLIENĖ, L.ŽILINSKIENĖ, L.SESICKAS, Š.LIEKIS

Summing-up of the legal consequences of implementation of European Union (EU) laws and administrative practice regulating implementation of the freedom of establishment of artisans and liberal professions in Lithuania and some European Union countries

The study is prepared by the order from the European Committee under the Government of the Republic of Lithuania implementing the National Programme on Analysis of Social and Economical Changes in the Context of Lithuania's Accession into the EU. The program was co-financed by the Danish Ministry of Foreign Affairs Local pre-accession assistance

EXECUTIVE SUMMARY

This research project was carried out on the consequences of implementation of European Union (EU) laws and administrative practice of artisans and representatives of liberal professions in Lithuania and several EU countries. The subject of the research is the content and limitations of the freedoms provided by EC (European Community) law and the regulations of the Republic of Lithuania. The aim of the research is to identify and evaluate the legal effects of implementing EU legislation in Lithuania. The survey includes both descriptive and comparative parts: the first deals with the terms, as well as the content of the regulations and their analysis; the second - analyzes the differences between EU and Lithuanian legislation. An additional section is provided to reveal the policy and outcomes of implementing certain legislative changes in several EU member states as well as in Lithuania. Moreover, focusing the research more closely on the Lithuanian legal and economic situation, a questionnaire, which was presented to major political institutions of Lithuania is provided, and is followed by an analytical evaluation. The whole research project is divided into two parts. The focus of the first is an overview presented on the consequences of implementing EU regulations dealing with the freedom of establishment of artisans and representatives of liberal professions in Lithuania. The focus of the second part is the practice of freedom of establishment and freedom to provide services in several EU countries and its analysis.

Part 1

Chapter 1

LEGAL NORMS REGULATING THE EU FREEDOM OF ESTABLISHMENT

This chapter studies the EU legislation dealing with the freedom of establishment of artisans and representatives of liberal professions in Lithuania. Further, the concept of the freedom of establishment of artisans and of liberal professions in EU law as well as its content and focus area are discussed. Moreover, conclusions are provided on the EU directives concerning the freedom of establishment of artisans and of liberal professions that concern the practice of implementing EU regulations dealing with the freedom of

establishment of artisans and representatives of liberal professions as well as observation and implementation of those directives.

It is noted that freedom of establishment is among the freedoms that make up the basis of the EU internal market. The internal market is seen as a borderless area where the rules of the EU provide for a free flow of goods, people, services and capital. A distinction is made between "service" provided by the foreigners and "freedom of establishment". Of no less importance is the distinction between the "freedom of establishment" and "freedom of labor flow", as the latter has fewer constraints.

The other major freedoms that stem from the freedom of establishment are: (i) the settlement of people given the freedom of establishment in EU territory; (ii) the procedure of arrival, departure and settlement; (iii) the right to stay after the conduct of work; (iv) the right to settle provided the members of the family.

In this section of the survey other terms such as "service", "primary establishment", "secondary establishment" and the like, as well as several other EC laws are reviewed in greater detail.

This section puts forward a classification of legitimate national means of restricting freedom of establishment based on the analysis of European Court of Justice practice. They are analyzed and exemplified in the research presented and are as follows: (i) general restrictions on the freedom of working sphere; (ii) cases of discrimination, including direct, indirect and hidden discrimination; (iii) means that indicate the general system differences of member states; (iv) neutral restrictions prohibiting the immersion to into the market.

Chapter 2

LEGAL NORMS OF THE REPUBLIC OF LITHUANIA REGULATING FREEDOM OF ESTABLISHMENT AND THEIR CONFORMITY WITH THE REQUIREMENTS OF THE EU LAW

The chapter summarizes the legal acts of Lithuania that regulate the freedom of establishment of artisans and representatives of liberal professions. It indicates the main concept of freedom of establishment of artisans and representatives of liberal professions in Lithuanian law as well as its content and implementation. Greater attention, however, is given to the regulation, application, and implementation of laws dealing with freedom of establishment of artisans and representatives of liberal professions. Much research is provided on the comparison of the laws in Lithuania and the EC together with the outcomes of the changes introduced at the point of the harmonization of the EU and Lithuanian legal systems.

It is stated that the main law that governs legal status of foreigners in Lithuania is the Law on the Legal Status of Foreigners. This document regulates basic aspects concerning foreigners' arrival, departure and establishment procedures. The research reviews specific regulations highlighting differences between Lithuanian and EC laws. However, the survey contributes to the subject by not only indicating the distinctions between Lithuanian Laws and directives of the EC, but also through the presentation of a series of changes suggested in the draft Law on Legal Status of Foreigners seeking to eliminate the possible discrepancies. Among the changes introduced in the Lithuanian law the

adjustment of grounds on which foreigners can be banned from the possibility of entry can be mentioned. The draft Law on Legal Status of Foreigners encompasses the whole list of grounds on the basis of which the citizen of the member states is provided a right of sojourn. The right is given if a citizen comes to: (i) work; (ii) do legal business; (iii) provide service; (iv) obtain service in Lithuania. The said draft also defines the term “family member” and provides information on the laws regulating the right offered to family members of the people wishing to establish themselves in Lithuania.

Further, the survey explicitly presents the necessary conditions to qualify for the residence permit in the state. The survey concludes that not all the points in these laws with were amended although the laws concerning the right to stay for a representative of a member state have been reviewed with regard to EC laws. It is noticed that if the residence permit is not given to the EU national, his family members are also disqualified from obtaining one, with the exception of several instances presented in the survey. As for now, it is stated that the person who is to be given a residence permit, is required to present only the identification card or passport he used on the entry to the state and the proof to be considered in the category of people allowed to be given the freedom of establishment. A deviation is observed in the Lithuanian laws as compared to EC regulations in the case of the amount of tax required from the foreigners at the stage of residence documents’ provision. The regulation established by the government of Lithuania sets a higher tax, thus acting contrary to the laws of non – discrimination. However, in the course of ongoing adjustments in Lithuanian and EU law in 2002, the deadline for settling the mutual right of accepting work qualifications. The work presents several rules of applying the regulations to the people interested in obtaining a license to work for their profession in Lithuania.

According to lawyers’ right of establishment, lawyers can be provided with a right to provide services in the country other than the one in which (s)he received the qualifications. Moreover, a special procedure has been set up to provide nationals of EU countries with the right to provide services as lawyers in Lithuania. The Council of the Bar of Lithuania is the institution that should be presented with all the necessary documents if a person wishes to provide legal services and it also carries out the decision on providing a license. Lawyers coming from EU member states can be included in the list of lawyers operating in Lithuania after the three years of legal practice in Lithuania. However, according to several other laws established, there can be noticed a number of ambiguities on what particular requirements are presented to lawyers and on the basis of what specific terms will they be validated as practicing law in Lithuania on absolutely the same legal basis as their Lithuanian colleagues.

The freedom of establishment of doctors and dentists can be judged almost equal in Lithuania as compared to EU member states. The career education and minimum requirement for obtaining the professional qualifications match. However, although the medical professionals are to fulfill the requirements that are similar to the ones in the EU inconsistencies in the freedom of establishment still can be observed. Moreover, there are several other cases of freedom of establishment discrimination noted.

Similarly, analyzing the cases with freedom of establishment of nurses; although their diplomas are viewed as providing the same professional status both in Lithuania and in the EU member states, during the actual course of providing a working license additional requirements might be set, which again bring controversy to the matter.

On the other hand, the above-mentioned controversy is not observed in the case of pharmacists and pharmacologists.

The freedom of establishment as applied to veterinarians requires them to pass an additional qualification exam.

The freedom of establishment of social workers involves a number of procedures to go through in order to receive a qualified professional work license.

The right of establishment of the architects is reviewed as well. The analysis touches upon the right of establishment of civilian aviation specialists; insurance brokers and agents; the right of establishment of sales agents; the establishment of the persons engaged in the distribution of the toxic products; for the persons providing services in agriculture, gardening; for the persons providing services in forestry and wood industry.

It is thus concluded that, in general, national legislation relating to the freedom of establishment and freedom to provide services of different liberal professions and artisans is brought *largo sensu* in conformity with EC law.

Part 2

ADMINISTRATIVE PRACTICE OF THE IMPLEMENTATION OF THE FREEDOM ESTABLISHMENT IN THE EU COUNTRIES (DENMARK GREAT BRITAIN AND FRANCE) AND LITHUANIA

The second part of the research project concentrates on the practice of applying freedom of establishment of the artisans and representatives of liberal professions in several countries of the EU and Lithuania. Since the task of the research did not require the selection of any particular countries, the countries were selected on the legal criteria, of difference in legal traditions.

Chapter 1

EUROPEAN UNION COUNTRIES

The analysis of national legislation in respect of freedom of establishment puts forward the conclusion that the greatest attention was given to approximation of national and EU legal systems. However, it has been only several years that the EU member states started their individual work on the law concerning freedom of establishment. It has been observed that the major obstacles in the final adjustment are the elimination of difficulties in administration and legal requirements.

The above-mentioned problems have more to do with concerns about the mobility of business and competitive abilities of specific businesses as observed in the general EU legal systems, therefore they are not directly related to the freedom of establishment in the law of EU. This, actually, is the reason global competition is judged as more influential in creating the single market of the EU. However, the harmonization of jurisdictions as noted in the survey does not and cannot eliminate that competition.

About two-thirds of businesses operating in the EU's private sector are medium and small enterprises. The charter of the small and medium businesses reflects the major concern for such topics as: the reinforcement of professional skills and knowledge; the balance of EU laws on competition and the need to retain a certain level competition; the need to further pursue the harmonization in the laws.

The goal of this particular political branch, as noted in the study, is to provide Europeans the possibility of establishing their businesses in the EU's member states.

Denmark. It is stated that today Denmark is among the most attractive countries in which to establish a foreign business, especially because of the low business taxes, cost of real estate and qualified labor. However, the number of new establishments in Denmark has recently started to decrease. Therefore, the government introduced certain initiatives to encourage that establishment, such as (i) elimination of legal obstacles, (ii) consultations, (iii) special help provision to businesses in attempt to establish or those that are at the very beginning stages and many more. In order to attract more investments the government also made several amendments in the law and lowered taxes. Particular attention is provided in offering business consultancy to all who desire to establish a business or to those already in operation. Moreover, companies with foreign investment are given the same status as the Danish ones.

Great Britain. As noted, the UK is considered a country with a flexible policy that offers low taxes and very minor obstacles on the manner in which new enterprises are established. The significant factors influencing the initiation of a business are the fiscal, administrative and macro-economic factors. Those that influence a successful process of the first are regulations in administration, strong trade unions and working capacity. Thus, the government of the UK handles the cancellation of ineffective administrative rules that in the long run provide for a more inviting investment atmosphere. The tendency to support foreign investment is especially observed through the estimation of all the effects that any changes might introduce and many others that are referred to in great detail in the survey.

Section 3 discusses the main establishment conditions in France. It is observed that France has one of the most negative reputations in view of business establishment. The high unemployment rate, a very particular policy of business regulation and the domination of large companies create a negative atmosphere for foreign investment. Many other problems are mentioned as causing inconveniences in setting up the enterprises. Most of the attempts that were introduced to promote foreign investment did not prove to be successful. However, from 1998 further attempts were initiated to

implement two major programs of suppressing economic interferences to promote the establishment of new businesses.

Chapter 2

LITHUANIA

The second chapter of the second part, dealing with Lithuania, presents the analysis of foreign investment and establishment conditions in Lithuania.

The researchers utilized information, provided by the Lithuanian ministries to the questions sent by the research group, on the most important issues related to the freedom of establishment in the country. The researchers also provided the overview of the state information and consulting support for the new start-up businesses; provision of the information, consulting, leasing and training on easier terms by the State. The support of local government support for the new business start-ups; the State support for the small and medium enterprises, including self-employed persons; as well as the limiting factors hindering development of the small and medium enterprises in Lithuania are extensively discussed.

Two polls were carried out by the research group. One polled the foreign citizens working in Lithuania, finding about obstacles for establishment, another polled the businessmen on the difficulties to start-up business.

At the end of the research, the group provided analysis of the hypothetical case study for implementation of legal and administrative requirements for representative of legal profession while exercising a right of establishment in Lithuania. At present, while research took place, the lawyers from the EU countries can not use the rights to freedom of establishment in practice, it unclear to which extent and how effectively the lawyers from the EU countries would be able to fulfil legal requirements to become defence lawyers.

CONCLUSIONS

The main conclusions in the summary are that the present legislation in Lithuania allow, to a large extent, to use of the rights, not in a discriminatory fashion, included into the definition of the freedom of establishment. The necessary legal conditions for some of the artisans and free professions (lawyers, medical doctors, dentists, nurses, veterinarians) to implement their right of establishment are made in Lithuania. The legal conditions for the others are in the process of being created.

The recommendations on the minor discrepancies between the EC law and Lithuanian legislation are identified and suggested to be eliminated. Finally, a list of specific administrative procedures is suggested in order to enforce effectively a right of establishment for artisans and representatives of liberal professions under the Lithuanian law.