

3. ECONOMIC ACTIVITY OF FOREIGNERS

Data concerning the employment of foreigners on the territory of the Czech Republic are derived from records of the Ministry of Labour and Social Affairs of the Czech Republic (MLSA CR) on issued valid work permits to foreigners, green cards to foreigners, and the number of pieces of information on starting work by citizens of the EU/EEA, Switzerland, and foreigners from third countries, who do not need a work permit or a green card for work and are registered by labour offices, as well as from records on foreigners holding trade licences granted by the Ministry of Industry and Trade of the Czech Republic.

1) Records of the Ministry of Labour and Social Affairs of the Czech Republic

Employment of foreign nationals with economic status of employees

Since 1 May 2004 citizens of the EU/EEA and Switzerland and their dependants are no longer considered foreigners from the point of view of the Act No. 435/2004 Sb., on Employment, and according to the Act they enjoy the same legal status as Czech citizens do, which means they have free access to the labour market in the Czech Republic. The following belong to the EU Member States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden. Besides the EU Member States, the following countries belong to the European Economic Area (EEA): Norway, Liechtenstein, and Iceland.

Other foreigners, who are neither citizens of the EU/EEA and Switzerland nor their dependants, can execute work on the territory of the CR on condition that they have received a work permit and a residence permit provided that the Act on Employment does not set down otherwise.

Employment of foreign nationals with economic status of registered entrepreneurs

The fulfilment of tasks is also regarded as employment if they are ensured by:

- an associate, a statutory body, or a member of a statutory body, or another body of a business company for the business company; and
- a member of a cooperative or a member of a statutory or another body of a cooperative for the cooperative.

Those foreigners can fulfil tasks provided that they were granted a work permit and a residence permit in the Czech Republic.

Tasks following from a core business of a business company or a cooperative are not tasks, which are fulfilled by statutory or other bodies of a business company or a cooperative on the grounds of their function, e.g. conduct of a business by the company executive, participation in management of a cooperative by a member of the board of the cooperative, activities of a member of the supervisory board, etc. Tasks of statutory bodies are specified in detail in the Commercial Code.

Valid work permits of foreigners

The information on valid work permits granted to foreigners provided in this chapter pertains exclusively to persons holding visas for a temporary short-term stay up to 90 days and long-term visas over 90 days. The below mentioned conditions of employment of foreigners in the Czech Republic are related to legislation valid as at 31 December 2010.

A work permit can be granted to a foreigner by a labour office for a job vacancy, which is reported by the employer to be vacant and which cannot be filled otherwise with regards to the required qualifications or lack of free labour force.

A work permit with regards to the conditions on the labour market is granted also to a foreigner who will be a seasonal employee for the period of six months in a calendar year provided that at least a six-month period has passed in between the respective employments.

The following are also obliged to apply for a work permit: an associate, a statutory body or a member of a statutory body, or another body of a business company, or a member of a cooperative, or a member of a statutory or another body of a cooperative, who fulfils tasks for the business company or the cooperative resulting from the business activity of the legal person. At the same time the business company or the cooperative shall report to the labour office characteristics of the tasks that will be provided by an associate or a cooperative member. When granting work permits the labour office takes into consideration conditions on the labour market.

The work permit is granted to foreigners regardless conditions on the labour market if

- they are to be employed for a limited period for the purpose of improving their skills and qualifications in the selected job (trainees), but only for a period of one year as maximum. This period can be prolonged, but as a maximum only for the period necessary to obtain professional qualifications in accordance with regulations valid in the Czech Republic;
- they are up to 26 years of age and performing occasional and time-limited jobs within the exchange between schools or within programmes for the youth, in which the Czech Republic participates;
- they are clergymen of a church registered in the Czech Republic or of a religious society;
- it is set down for them in a promulgated international treaty, the ratification of which was approved by the Parliament of the CR and which is binding for the Czech Republic;
- they were granted a stay sufferance visa in accordance with the Act on the Residence of Foreigners or were granted a long-term residence permit for the same purpose;
- they are an applicant for international protection or were granted a residence visa for more than 90 days for the purpose of stay sufferance according to the Asylum Act, however, after 12 months since the application for asylum has been submitted, at the earliest;
- they will perform work on the territory of the Czech Republic on the basis of their having been elected or nominated to a post; in this case the employer shall substantiate in writing that it is a job position filled by an election or by an appointment (Section 147 of the Act on Employment).

Data on work permits granted come from the records of respective labour offices, which in accordance with the Act No. 435/2004 Sb., on Employment, decide within the administrative procedure on granting or revocation of a work permit.

The work permit is not required for foreigners who:

- a) were granted asylum on the territory of the Czech Republic or were granted subsidiary protection;
- b) are holding a permanent residence permit for residence on the territory of the CR;
- c) are dependants of members of diplomatic missions and consular authorities or of employees of international government organizations having their seat or residence in the CR on condition that reciprocity is ensured by an international agreement concluded on behalf of the Government of the Czech Republic;

d) are

*performing artists,
teachers and lecturers,
academics at universities,
science, research, and development workers participating in a scientific meeting,
pupils or students up to 26 years of age,
sportspersons,*

persons ensuring in the CR deliveries of goods or services, or is delivering the goods, or persons assembling things on the basis of a business contract, or, as the case may be, performing guarantee and repair works, and whose stay on the territory of the Czech Republic does not exceed seven consecutive calendar days or the total of 30 days in a calendar year;

- e) *are employed on the territory of the CR in accordance with an international treaty, the ratification of which was approved by the Parliament of the CR and which is binding for the CR;*
- f) *are members of rescue units providing aid in compliance with international agreements on mutual aid for remediation and mitigation of consequences of accidents and natural disasters and in cases of humanitarian aid;*
- g) *are employed in international transport, if they were sent to perform their work on the territory of the CR by their foreign employer;*
- h) *are persons accredited in mass media;*
- i) *are military or civilian staff of the armed forces of their country of origin (sending country) in accordance with a special act;*
- j) *are systematically preparing, in the Czech Republic, for their future careers;*
- k) *are sent to the territory of the Czech Republic within services provided by an employer having registered office or seat in another EU Member State;*
- l) *reside on the territory of the Czech Republic on the grounds of a long-term residence permit for the purpose of joint cohabitation of a family, if it is joint cohabitation of a family with a foreigner under the letters a) or b);*
- m) *stay on the territory of the Czech Republic on the basis of a long-term residence permit of a resident of another EU Member State for the purpose of employment if more than 12 months have passed since the permit was granted;*
- n) *who perform in the Czech Republic systematic educational or scientific activity as a pedagogic worker or academic of a university or as a science, research, or development worker in a public research institute or other research organization according to a special regulation;*
- o) *have acquired secondary or higher professional education or higher professional education at a conservatory according to the Education Act, or a university education according to the Act on Universities;*
- p) *reside on the territory of the Czech Republic on the basis of a long-term residence permit for the purpose of joint cohabitation of a family, if it is a family with a foreigner who has the status of a long-term resident in the European Community or a long-term resident on the territory of the European Community in another EU Member State, and who was employed on the basis of a work permit or a green card during that stay for 12 months as a minimum.*

*In the case of an employment of a foreigner under the letters a) to e) and letters j) to p), however, the employer or legal or natural person, to whom a foreigner was sent by their employer on the basis of a contract for performance of work – is obliged **to inform in writing on this fact the competent labour office on the day when the foreigner starts performing his work at the latest.***

The work permit cannot be granted to foreigners who

- *applied for granting of international protection in the Czech Republic, for the period of 12 months since the day the application for international protection has been submitted; or*
- *does not meet some of the conditions set down by the Act on Employment for granting of a work permit.*

Green cards

Since 1 January 2009 a new type of the long-term residence permit for the purpose of employment in special cases, so-called green card, was launched on the territory of the Czech Republic. This is a dual nature document by means of which foreigners are granted a long-term residence and a work permit at the same time.

The job vacancy offered, which can be filled under the green card regime, means that the job has not been filled within 30 days since it was notified to the labour office, or means a job identified by the Ministry of Industry and Trade of the Czech Republic in the central register as a job suitable for crucial personnel.

The Ministry of the Interior of the CR decides on issuing of the green cards.

The long-term residence permit under the green card regime is issued in categories as follows:

“A” – for workers having a university degree and crucial personnel (for the period up to 3 years with possible prolongation for 3 years every time);

“B” – for workers working in jobs requiring at least apprenticeship certificate (for the period up to 2 years with possible prolongation for 3 years every time); and

“C” – for other workers (for the period up to 2 years without the possibility of prolongation).

The citizens of states, the list of which is determined by a decree of the Ministry of the Interior of the CR, are entitled to apply for the green card. These states are Australia, Montenegro, Croatia, Japan, Canada, South Korea, New Zealand, Bosnia and Herzegovina, Macedonia, the United States, Serbia, and the Ukraine.

Spouses of green card holders of categories “A” or “B” can ask for a long-term residence permit for the purpose of joint cohabitation of the family provided that the “A” category green card holder is working on the territory of the CR with the green card for the period of at least 6 months and the “B” category green card holder is working on the territory of the CR with the green card for at least 1 year.

At the end of 2010 there were 126 issued green cards registered.

Types of work permits

An individual permit means a permit to employ a foreigner under a contract of employment by a domestic employer. The domestic employer is a legal or natural person authorized to carry out economic activities in the CR on the grounds of (i) a record in the competent Commercial Register or other register as determined by law (e.g. the Trade Licences Register or the Patent Agents Register), (ii) a record in other relevant registers (e.g. the Auditors Register or the Tax Consultants Register, or (iii) an entry in specified registers kept by a competent authority of the CR (such as Register of Self-Employed Farmers). The domestic employer is also a natural person, who does not run a business, yet employs another natural person for their personal needs.

A contract means an employment of a foreigner by a legal or natural person having registered office or residence outside the CR, which is not engaged permanently in a business in the CR, yet sends their employees to the CR to execute business activities or other contracts concluded with a domestic legal or natural person.

Duty to inform of the employer

Citizens of the EU/EEA and Switzerland and their dependants do not need to have a work permit for the purposes of employment on the territory of the CR. The same applies to the dependants of citizens of the Czech Republic, who are not citizens either of the Czech Republic or any other EU Member State. Employers, or legal or natural persons, which citizens of the EU/EEA and Switzerland and their dependants were sent to by their employer, are obliged to inform in writing on this fact the labour office locally competent depending on the locality of the workplace, where the work is performed, on the day of start of the execution of work of these persons, at the latest.

This duty to inform applies also to other foreign citizens who do not need a work permit (see points a) to e) and points j) to p) of the aforementioned information starting with "The work permit is not required") for the execution of their work on the territory of the CR.

Registration of foreign nationals

Employers are obliged to keep records of citizens of the EU/EEA and Switzerland and their dependants as well as all foreigners employed by them or send to them by foreign employers for the execution of work.

The tabular summaries by countries demonstrate a certain tradition, but also the possibility of free movements (Slovakia), cooperation persisting from the former years (Poland, Bulgaria), offers of less skilled jobs (Ukraine, Romania, Moldova, Mongolia, and Vietnam), and, last but not least, the labour market opening to other countries, when the inflow of capital to the CR is accompanied by the inflow of labour force, too (Germany, United States, United Kingdom, France, etc.).

By the end of 2010 there were 215 367 foreign employees on the territory of the Czech Republic registered at labour offices.

The prevailing part of the EU27 citizens registered at labour offices (143.9 thousand in total) is citizens of Slovakia (100.7 thousand in total as at the end of 2010, it is by 2.5 thousand more than as at the end of 2009). Of other EU Member States, a higher number of workers comes from Poland (19.0 thousand, year on year (y-o-y) decrease 1.2 thousand), Bulgaria (5.7 thousand, y-o-y increase 1.1 thousand), Romania (4.8 thousand, i.e. by 1.0 thousand more than as at the end of 2009), and more than 2 thousand of persons are from Germany and the United Kingdom. Generally, more of them are men (67% of employees from the EU Member States).

Concerning citizens of other countries, the dominating nationals are from the Ukraine (42.1 thousand persons), but their number continues to decrease; compared to 2009 there was a decrease by 15.3 thousand. By the end of 2010 a higher decrease than in the year 2009 was recorded for citizens of Vietnam (by 0.5 thousand), Mongolia (by 0.6 thousand), Moldova (by 2.2 thousand), and Uzbekistan (by 1.0 thousand). The year-on-year increase in the number of citizens of Croatia and Thailand (by 0.1 thousand) was an exception. This group is also dominated by men (61% of workers from other countries).

Expected changes of legislation on employment in 2011

Based on transposition of the Council Directive 2009/50/EC to the legislation of the Czech Republic, since 1 January 2011 entry and stay of third-country nationals on the territory of the CR is enabled for the purpose of execution of highly qualified employment. It regards the so-called blue card.

It will be possible to obtain a blue card for an announced job vacancy, which has not been filled within 30 days since it had been announced to the labour office. Submitted employment contract shall be concluded for a period of at least one year for working hours stipulated by law; the

contract shall, among others, include also the amount of contracted gross monthly or annual wage in the amount of average gross annual wage multiplied by 1.5 announced by the notification of the Ministry of Labour and Social Affairs of the CR. Document proving the high qualification shall be, among others, an integral part of the application.

Employers shall continue to obtain foreigners only for job vacancies that cannot be filled otherwise with regards to the required qualification or lack of free labour force and providing that they will announce their intention to employ a foreigner to the labour office in advance and will negotiate it with the office including the number of foreigners, type of work they will do and expected duration of their performance of work.

Pre-announcement and negotiation of the intention to employ a foreigner will not be required in case that an employer will employ a foreigner

- a) who will be issued a work permit regardless the situation on the labour market;
- b) from whom a work permit is not required;
- c) who will ask for prolongation of the work permit;
- d) who will be employed as a green card or a blue card holder.

A work permit will not be required from foreigners, who will stay on the territory of the CR based on the long-term residence permit for the purpose of joint cohabitation of a family, if it applies to a family with a foreigner having the status of a long-term staying resident in the European Community on the territory of the CR – a former blue card holder or the status of a long-term staying resident in the European Community on the territory of another Member State of the European Union, who is a former blue card holder.

2) Register of the Ministry of Industry and Trade of the Czech Republic

Foreigners holding trade licence

In accord with the Trade Licensing Act No. 455/1991 Sb., as amended, foreigners can do business in the CR like Czech citizens, if they fulfil obligations as set down in this Act and related regulations. They are allowed to carry on a business activity according to the Trade Licensing Act as foreign natural persons, but they can also establish legal persons in the CR (usually business companies or cooperatives) according to the Commercial Code, or found on the territory of the CR organizational components of their enterprises abroad. The foreign natural person is a person, who does not have residence on the territory of the Czech Republic. This person must bear a residence permit to stay in the Czech Republic in accordance with the Act. No. 326/1999 Sb., unless such a natural person is a citizen of a EU Member State or citizen of a state the CR concluded a treaty banning this restriction with. This provision thus applies also to nationals of states, which are bound by an international treaty concluded with the European Communities, as well as to nationals of states, which are bound by the EEA Treaty.

For purposes of this publication the term of **“a foreigner holding trade licence”** (hereinafter as a foreigner with TL) has been chosen, because the numbers of entrepreneurs include entrepreneurs-foreigners with a temporary stay over 90 days, entrepreneurs-foreigners with a permanent residence, family members of persons with a long-term residence, persons, who were granted asylum or subsidiarity protection (hereinafter as asylum seekers), and citizens of the EU Member States and citizens of Switzerland, Norway, Iceland, and Liechtenstein, and their dependants.

The number of entrepreneurs-foreigners holding trade licence was gradually increasing year by year. Their number dropped in 1998 for the first time as a result of the amendment to the Trade Licensing Act, which was published in the Collection of Laws of the Czech Republic under No. 286 in 1995. The amendment imposed stricter duties on entrepreneurs as to submitting law-specified documents. The second decline in the number of entrepreneurs occurred after 2001 due to the adoption of a large amendment to the Trade Licensing Act, which was published in the Collection of Laws of the Czech Republic under No. 356 in 1999. At the same time, the Act No. 326/1999 Sb., on the Residence of Aliens on the Territory of the Czech Republic and Amending Certain Acts made conditions for obtaining a long-term visa for business purposes stricter.

The trade licensing offices terminated trade licences of entrepreneurs-foreigners who have not submitted mandatory documents on the residence. This caused entrepreneurs-foreigners

decreased in number already in 1998 and then in 2002. However, since 2003 a rather high increase in the number of these persons has been actually shown.

On 1 May 2004 an amendment to the Trade Licensing Act harmonising it with EU legislation came into force and subsequently it was published in the Collection of Laws of the CR under No. 167 in 2004. This legal document made, inter alia, status of the EU citizens and the Czech citizens equal. On 1 July 2008 an amendment to the Trade Licensing Act came into force and then it was published in the Collection of Laws of the CR under No. 130 in 2008. This amendment introduces the only one free trade with the core business of **“Production, trade, and services not classified in Annexes 1-3 to the Trade Licensing Act”** with 80 economic activities replacing then existing 125 free trades. This resulted in a decrease in the number of trade licenses issued.

The number of foreigners from the EU Member States with valid trade licence was continually increasing and in 2004 and 2005 there were more than 14 thousand of entrepreneurs-foreigners registered in the Czech Republic. In 2006 the number of entrepreneurs-foreigners decreased. However, this drop was not really deep and can be explained by implementation of the planned data relocation from the existing local registers of entrepreneurs into a new central information system, which, among other things, brought the elimination of duplicate data entered into the system in respective local registers. However, the number of the EU citizens holding valid trade licence exceeded the level of the year 2005 already in 2007 and a marked increase occurred in 2008, 2009 and 2010. Majority of foreigners are Slovak nationals (10.7 thousand); fewer of them are Polish (1.6 thousand) and German citizens (about 1.5 thousand persons). The share of foreigners from the EU Member States with valid trade licence represents only one fifth of all foreigners with trade licence. The total number of entrepreneurs with trade licence is affected mostly by citizens of Vietnam (33.2 thousand) and citizens of the Ukraine (29.7 thousand). Citizens of Vietnam are more interested in making business on the territory of the Czech Republic, which is clearly attributed to the accession of the Czech Republic to the Schengen Area and advantages resulting from that for those entrepreneurs. Among other countries, the number of foreigners with valid trade licence exceeding 1 thousand was recorded in the case of citizens of Moldova and the Russian Federation.

Before 31 December 2010, for foreign natural persons with the duty to have a residence permit for stay over 90 days the trade licence originated only at the time of the record in the Commercial Register, while to other foreigners doing their business under the Trade Licensing Act (EU citizens, citizens of the countries acceding to the Agreement on the EEA, foreigners with permanent residence, family members of residents with long-term stay and asylum seekers) their trade licence originated on the day of notification or, at trades with a trade permit on the day when the decision on granting of the trade permit comes into force. After the Act No. 427/2010 Sb. came into force on 1 January 2011, the right to perform trade originates for a foreigner, who is obliged to have his or her stay permitted, on the day of notification of their trade to the municipal trade licensing office or on the day when the decision on granting of a trade licence comes into force, providing that a foreigner at notification of the trade (at submitting of an application for granting of a trade licence) meets all requirements for performing of the trade including the permitted stay. In case that a foreigner obtained from the trade licensing office for the purpose of proceedings on residence permit a copy of an entry, the trade licence originates for him on the day when he or she supplies evidence of granting of a long-term visa or a long-term residence permit to the trade licensing office providing that the document on residence permit was documented within 3 working days from the day of notification of the place of residence of the foreigner on the territory of the Czech Republic, for whom the trade has been notified or for whom the application for a trade licence has been submitted and at the same time in the period of 6 months at the latest from the delivery of the copy of an entry.

3) Total employment of foreigners

The total employment of foreigners refers to the sum of valid work permits of foreigners, the number of foreigners registered by labour offices, and the number of foreigners holding trade licence.

Illegal employment

This publication also includes table on the numbers of foreign citizens, who were not granted the necessary work permit and were captured during the years 2007-2010 by controlling bodies of labour offices while performing illegal work.

In 2010, as well as in previous years, labour offices carried out on their own or in cooperation with other bodies of state administration (Alien Police Service, Customs Administration of the Czech Republic, labour inspectorates, trade licensing offices, tax authorities) checks on how foreign citizens were employed. In 2010 labour offices carried out 2 333 checks (in 2007 1 484, in 2008 1 933, and in 2009 1 898) at employers, who were employing foreign workers. In total there were 14 186 foreign workers checked, which is by 7 711 persons less than in 2007 (21 897 persons in total), by 10 017 persons less than in 2008 (in total 24 203 persons), and by 4 903 persons less than in 2009 (in total 19 089 persons).

In 2010 there were 1 797 illegally employed foreigners without a work permit of the aforementioned number of checked persons found (i.e. 12.7% of the total of persons checked; that is absolutely as well as relatively more than in 2007 (1 662 i.e. 7.6% of the number of checked persons) and less than in 2008 (2 342 i.e. 9.7% of the number of checked persons) and in 2009 (3 170 i.e. 16.6% of the number of checked persons).

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The number of foreigners registered by labour offices (until October 2004 the offices registered exclusively persons with the status of employees) was falling rapidly in the second half of the 1990s down to 93.5 thousand in 1999. After a temporary increase in 2000 - 2001 their number decreased again to 101.2 thousand in 2002; this development was influenced exclusively by the drop in the number of working Slovak citizens. Since 2003, however, a slight increase in the number of employees was obvious and the number reached 108.0 thousand as at 31 December 2004. Since 2005 the number of foreigners was growing rapidly up to 240.4 thousand by the end of 2007. The number of these working foreigners further increased by almost 20% (by 44.3 thousand to 284.6 thousand persons) in 2008. Over three years the number of these foreigners almost doubled. On the contrary, in 2009 the number of foreigners declined by almost 20% (by 53.8 thousand persons to the number of 230.7 thousands) because of the economic crisis. In 2010 the decrease in the number of foreigners continued by almost 7% (by 15.3 thousand to 215.4 thousand).

The number of foreigners with the economic status of the employed depends on the situation in the labour market. Areas with low percentage of unemployment usually report higher number of foreigners with a work permit granted or registered at labour offices. In Prague, the number of foreigners fell by 8.1 thousand. The number of foreigners markedly decreased also in Středočeský Region (by 7.5 thousand persons). The biggest decrease in the number of working foreign citizens was recorded in districts Mladá Boleslav (by 5.5 thousand), Hradec Králové (by 1.0 thousand), Plzeň (by 0.8 thousand), and Kladno (by 0.7 thousand). In some regions there was a slight year-on-year increase in the number of foreigners (in Moravskoslezský Region by 1.1 thousand, in Ústecký Region by 0.5 thousand, and in Jihomoravský and Zlínský Region (by 0.1 thousand).

Decrease occurred in non-EU citizens who carry out tasks arising from core business activities of legal entities as associates and members of cooperatives. At the end of 2010, 2.5 thousand citizens of non-EU countries had the status of associates (3.5%) and 13.6 thousand of them had the status of members of cooperatives (19.1%) of their total number of 71.4 thousand registered at labour offices. The number of foreigners as members of cooperatives decreased by 13.7 thousand persons compared to 2009.

The number of foreigners holding trade licence culminated at the end of 1997 (almost 63 thousand persons) for the first time, rising almost 3.5 times compared to the end of 1994. In 1998 it dropped by almost one third compared to the previous year. Since 2000 the trend in the number of these working foreigners has been substantially affected by the amendment to the Trade Licensing Act.

The Act amendment made the conditions for obtaining a long-term visa for the purpose of business stricter and this led to a relatively huge drop in the number of these persons in 2002. Since the following year, however, the number of trade licence bearers was increasing and at the end of 2005 it reached more than 67 thousand persons. In 2006 the number of foreigners-entrepreneurs slightly dropped, but in the following year 2007 it increased up to the level of 69 thousand persons. In 2008 the number of foreigners reached already 77.2 thousand. The increment of foreigners in business then accelerated in 2009 when it increased year-on-year by 10.6 thousand to 87.8 thousand persons, i.e. by more than 13.7%. In 2010 it reached already 91 thousand. This year-on-year increase compensated to some extent a rather significant decrease in the number of foreigners with the status of employees, which was recorded, for example, among citizens of the Ukraine.