

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 third country nationals, who do not need a work permit or a green card or a blue card for work and are registered by labour offices, as well as from records of the Ministry of Industry and Trade of the Czech Republic on foreigners holding trade licences.

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, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom. 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

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;
- 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 2013.

A work permit can be granted to a foreigner by a regional 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 and the employer has announced in advance to the regional labour office and negotiated with it the intention to employ foreigners including their number, type of work they will perform and expected duration of their work performance.

The pre-announcement and negotiation of the intention to employ foreigners is required in the case when an employer will employ a foreigner:

- a) who will be granted a work permit regardless the situation on the labour market;
- b) who is not required to have a work permit;
- c) who will apply for extension of the work permit; or
- d) who will be employed as a green or a blue card holder.

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 passes 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 regional labour office characteristics of the tasks that will be performed by an associate or a cooperative member. When granting work permits the regional 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 a 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 applicants 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.

Data on work permits granted come from the records of respective regional 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 treaty 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 are 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 family reunification, if it is family reunification 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) *perform in the Czech Republic systematic educational or scientific activity as a pedagogic worker or an 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 family reunification, 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;*

- r) *reside on the territory of the Czech Republic on the basis of a long-term residence permit for the purpose of family reunification, if it is a family with a foreigner who has the status of a long-term resident in the European Union on the territory – the former blue card holder or the status of a long-term resident in the European Union on the territory of another EU Member State who is a former blue card holder.*

*In the case of employment of a foreigner under the letters a) to e) and letters j) to r), however, the employer or a legal or natural person, to whom a foreigner was sent by his or her employer on the basis of a contract for performance of work – is obliged to **inform in writing on this fact the competent regional labour office on the day when the foreigner starts performing his or her 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*
- *do 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. It is a dual nature document by means of which foreigners are granted a long-term residence permit 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 regional 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);

“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. On 20 February 2013, based on the aforementioned decree, the list of countries, citizens of which may apply for issuing of a green card, was extended. From the original 12 countries the list was extended to 43 countries for applicants for issuing of a green card of A, B or C category. Citizens of another 21 countries may apply for a green card of the A category.

Spouses of green card holders of “A” or “B” categories can ask for a long-term residence permit for the purpose of the family reunification 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.

During the period from 1 January 2009 to 31 December 2013, the total of 495 issued green cards were registered, of which 268 green cards were valid as at 31 December 2013.

Blue cards

Since 1 January 2011, based on the transposition of the Council Directive 2009/50/EC to the Czech legislation, conditions were made for an introduction of another type of permitting of employment and residence of foreigners on the territory of the CR for the purpose of performance of highly qualified employment, the so-called blue card.

A job vacancy, which can be filled under the blue card regime means such vacancy that has not been filled within 30 days since it was reported to the regional labour office and for performance of which a high qualification is required – i.e. regularly completed higher education or higher professional education provided that the study lasted for at least 3 years.

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

The employment contract has to be concluded for the period of at least one year with weekly working hours stipulated by law and – besides requisites stipulated by the Labour Code – it has to contain the amount of contracted gross monthly or annual wage corresponding at least to 1.5 times the average gross annual wage announced in the notification of the Ministry of Labour and Social Affairs of the CR.

A change of the employer or employment position of a blue card holder during the first two years of residence on the territory of the Czech Republic is liable to prior consent of the Ministry of the Interior of the CR provided that the blue card holder will continue to fill a job position requiring high qualification that can be pursuant to a special regulation filled by a foreigner. After the two years pass, the blue card holder is obliged to announce such changes to the Ministry of the Interior of the CR within the period of 3 working days.

During the period from 1 January 2011 to 31 December 2013, the total of 167 issued blue cards were registered, of which 146 blue cards were valid as at 31 December 2013.

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 his or her 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 of the employer to inform

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 foreign employer, are obliged to inform in writing on this fact the regional 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 received a work permit or do not need a work permit (see points a) to e) and points j) to r) 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.

Since in 2012 there was a transition to a new administration system, to which also during the entire year 2013 data on foreign employment were filled and processed in the system, only an informed guess of the total number of foreign nationals is available. According to it, in the end of 2013, respective regional branches of labour offices in the CR registered 234 159 foreign nationals in total.

Despite that, it can be stated that the number of foreign workers who need a work permit for their work continued to decrease and, on the contrary, what was increasing was the number of foreigners who do not need a work permit to perform their work as well as the number of the EU/EEA citizens and citizens of Switzerland and their dependants, who have free access to the labour market.

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 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. According to the Trade Licensing Act, the foreign natural person is a natural person, who does not have residence (i.e. permanent residence) on the territory of the Czech Republic. This person must hold 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 an 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; the numbers of entrepreneurs include entrepreneurs-foreigners with granted visa for stay over 90 days or a long-term residence permit, 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 refugees), 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 (Sb.) of the Czech Republic under the 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 the 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, which was published in the Collection of Laws of the CR under the 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, which was published in the Collection of Laws of the CR under the 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 the then existing 125 free trades. This resulted in a decrease in the number of trade licenses issued.

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 refugees) 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.

On 1 July 2012, a system of Basic Registers has been launched, which is regulated by the Act No 111/2009 Sb., on Basic Registers, as amended. In relation to the connection of the Trade Licensing Register with the system, data kept in the Trade Licensing Register have been updated (e.g. of persons with terminated stay on the territory of the Czech Republic, historically originated duplicities of identification numbers of persons were eliminated, and trade licences of deceased persons have been terminated), which was reflected also in the number of persons kept in the Trade Licensing Register. This decrease in the number of foreigners continues also in 2013.

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 and continued in the following years. Majority of foreigners are Slovak nationals (12.8 thousand), which is an increase by 0.7 thousand compared to 2012, when it was 12.1 thousand; fewer of them are German citizens (2.6 thousand), i.e. by 0.8 thousand more than in 2012 and Polish citizens (about 1.9 thousand persons). In 2013, the number of foreigners from non-EU countries further decreased by about 7.4 thousand compared to 2012. The majority of third-country nationals consists of citizens of the Ukraine (27 014), the number of whom decreased by almost 5.3 thousand, year-on-year, and citizens of Viet Nam (25 085), the number of whom also decreased by about 2 thousand compared to 2012. Among other countries, the number of foreigners with trade licence exceeding 1 thousand was recorded among citizens of the Russian

Federation (1 967). They are followed (with much lower number) by citizens of the United States (976), Moldova (the Republic of) (959), and Serbia and Montenegro (553).

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 regional labour offices, and the number of foreigners holding trade licence.

Illegal employment

Supervisory activity in the area of keeping of provisions of the Employment Act is performed by the State Labour Inspection Office (hereinafter "SLIO") and Regional Labour Inspectorates, the powers of which is also to conduct administrative proceedings on imposition of fines for ascertained infractions and administrative delicts.

Controls of illegal employment in 2013 were made by teams of inspectors in cooperation with customs offices, the Police of the CR – Alien Police Service, Labour Office of the CR, the Czech Social Security Administration or, as the case may be, other bodies (trade licensing offices, revenue authorities). During 2013, these authorities controlled 34 997 (in 2012 it was 35 557) employers (16 362 legal persons, 18 635 natural persons - entrepreneurs); among 1 375 of them (in 2012 it was 1 957) performance of illegal employment was found. In total, 1 776 foreign citizens (in 2012 it was 2 037) performing illegal work were captured, of whom 295 were the EU citizens (in 2012 it was 432 EU citizens) and 1 481 third country nationals (in 2012 it was 1 605 third country nationals). 1 047 foreigners performed illegal work in the form of employment without an employment relationship, 423 foreigners performed work that was in contradiction to their work permit or without a permit or in contradiction to a green card or a blue card and 11 foreigners performed work without valid residence permit on the territory of the Czech Republic.

Illegally working foreigners were most often nationals of the Ukraine and Viet Nam, less of them were nationals of China, Moldova (the Republic of), Mongolia, Turkey, Macedonia (the former Yugoslav Republic of), Uzbekistan, and Serbia. Illegal employment of foreigners was recorded mainly in restaurants and mobile food service activities, renting and operating of own or leased real estate, demolition and site preparation, construction of residential and non-residential buildings, and support activities to agriculture and post-harvest crop activities.

In 2013, the SLIO imposed in relation to illegal employment of third country nationals **126** fines that were not legally effective (in 2012 139 fines were imposed) in the total amount of CZK **57 409 000** (in 2012 the amount of fines was CZK 47 069 400). Another 270 fines are proposed to be imposed or are pending.

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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. In 2009, the number of foreigners in business increased by 10.6 thousand, year-on-year, to 87.8 thousand persons, i.e. by more than 13.7%. In 2010 it reached 91 thousand and in 2011 it was already over 93 thousand persons. In 2012, it dropped again to 91 thousand persons. Also in 2013, there was a drop in the number of foreigners to almost 86 thousand.