

### **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 (MLSA) on issued valid work permits to foreigners, issued Employee Cards, Green Cards, and Blue Cards to foreigners, and the number of pieces of information on commencement of work by citizens of the EU/EEA, Switzerland, and third-country nationals, who do not need a work permit, an Employee Card, a Green Card or a Blue Card for work and are registered by regional labour offices, as well as from records of the Ministry of Industry and Trade on foreigners holding trade licences.

#### **1) Records of the Ministry of Labour and Social Affairs**

##### **Employment of foreign nationals with economic status of employees**

Since 1 May 2004 nationals 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 pursuant 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, Croatia, 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 nationals of the EU/EEA and Switzerland nor their dependants, can perform work on the territory of the CR on condition that they have received a work permit and a residence permit or an Employee Card, a Green Card or a Blue Card, 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.

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.

A work permit can be issued also to a foreigner, who is a long-term residence permit holder for the purpose of "business" and besides doing business he or she wants to work in an employment relationship pursuant to the Labour Code, too.

##### **Valid work permits of foreigners**

The information on valid work permits granted to foreigners provided in this chapter pertains exclusively to persons with a temporary residence upon short-term visas for stay up to 90 days and to persons with a long-term residence over 90 days. The below mentioned conditions of

employment of foreigners in the Czech Republic are related to legislation valid as at 31 December 2015.

**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 qualification or lack of free labour force. The employer at the same time shall announce to the regional labour office the job description, i.e. type of work and place of work performance, prerequisites and requirements determined for the job, basic information on labour and wage conditions including expected duration of the work performance.

**A work permit with regards to the conditions on the labour market** is granted by a regional labour office to a foreigner who wants to be employed on the territory of the CR and it applies to:

a) seasonal work for the period of six months in a calendar year provided that at least a six-month period passes in between the respective employments;

b) fulfilment of tasks resulting from the core business of a legal person ensured by an associate, statutory body or a member of a statutory body or another body of a business company for the business company or by a member of a cooperative or a member of a statutory or another body of a cooperative for the cooperative;

c) a holder of a long-term residence permit for business purposes;

d) a short-term employment up to three months.

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

a) they are sent to the territory of the CR by a foreign employer based on a contract concluded with the domestic legal or natural person for fulfilment of tasks resulting from the contract;

b) they are to be employed for a limited period for the purpose of improving their skills and qualification in the selected job (trainees), but only for a period of six months as a maximum. This period can be prolonged, but as a maximum only for the period necessary to obtain professional qualification in accordance with regulations valid in the Czech Republic;

c) 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;

d) 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;

e) 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;

f) they are applicants for international protection or were granted a visa for stay over 90 days for the purpose of stay sufferance pursuant to the Asylum Act, however, after 6 months after they have provided data for the submitted application for international protection, at the earliest.

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

**A work permit, an Employee Card, a Blue Card or a Green Card** is not required as 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 dependants of employees of international government organizations having their seat on the territory of

*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 stuff 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 and provide 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) or with a foreigner, who stays on the territory of the Czech Republic based on a valid long-term residence permit;*

*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;*

*n) perform in the Czech Republic systematic educational or scientific activity as a teacher or lecturer or an academic of a university or as a science, research, or development worker in a public research institute or other research organization pursuant to a special regulation;*

*o) have acquired secondary or higher professional education or higher professional education at a conservatoire pursuant to the Education Act, or higher education pursuant to the Higher Education Act;*

*p) reside on the territory of the Czech Republic on the basis of a long-term residence permit for the purpose of protection on the territory pursuant to the Act on the Residence of Aliens on the Territory of the Czech Republic;*

*r) they are clergymen of a church registered in the Czech Republic or of a religious society registered in the Czech Republic;*

- s) are sent to the territory of the Czech Republic by their foreign employer based on a contract concluded with a Czech legal or natural person exclusively for the purpose of enhancement of skills and qualification of the foreigner necessary for the performance of work for the foreign employer outside the territory of the Czech Republic. It is the Government of the CR that shall decide when a foreigner can be sent to the Czech Republic. The total duration of stay of the foreigner must not exceed 6 months.

In the case of employment of a foreigner under the letters a) to e) and letters j) to s), 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 to perform work) is obliged to **inform in writing on this fact the competent regional labour office on the day of commencement of work of the foreigner at the latest.**

**A work permit cannot be granted to foreigners who**

- applied for granting of international protection in the Czech Republic, for the period of 6 months since the day when data were provided for the submitted application for international protection; or
- do not meet some of the conditions set down by the Act on Employment for granting of a work permit.

## **Employee Cards**

With effect from 24 June 2014, in relation to the transposition of the Directive 2011/98/EU of the European Parliament and of the Council, an Employee Card was introduced, which has so-called dual nature, i.e. it is a work permit and a residence permit at the same time.

An Employee Card is issued by the Ministry of the Interior for a concrete job vacancy, which is kept by the Ministry of Labour and Social Affairs in the central register of job vacancies that can be filled with Employee Card holders.

A job vacancy, which can be filled under the Employee Card regime means such job vacancy, which has not been filled within 30 days since it was notified to the regional labour office, except for job vacancies of officials of territorial self-governing units and job vacancies of employees, who execute state administration in administration authorities.

The employment contract or contract for work has to contain besides requisites stipulated by the Labour Code also a stipulation from which it results that regardless the scope of work the monthly wage, salary or reward of a foreigner shall not be lower than the basic rate of the monthly minimal wage. The weekly working hours in each basic employment relationship has to be at least 15 hours.

The condition to prove professional qualification for the performance of required employment results from the character of the employment.

An application for an Employee Card shall be submitted at an embassy or a consulate of the CR abroad. During the stay on the territory for a visa for stay over 90 days or for a long-term residence permit granted for another purpose a foreigner can apply for an Employee Card at the Ministry of the Interior.

A change of the employer or employment position of an Employee Card holder or employment of the foreigner at another job position or at another employer are liable to prior consent of the Ministry of the Interior.

## **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 introduced on the territory of the Czech Republic. It was 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 Ministry of the Interior decided on issuing of Green Cards. The long-term residence permit under the Green Card regime was issued in categories as follows:

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

“B” – for workers in job positions requiring at least apprenticeship certificate (for the period of up to 2 years with possible prolongation by 3 years every time);

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

Since 23 June 2014 it is not possible any more to apply for a Green Card or to apply for prolongation of a Green Card. Issued Green Cards remain valid until the date, which is stated on the card and they are regarded as Employee Cards. Before the Green Card validity expires, it is possible to ask the Ministry of the Interior for an Employee Card, namely within the period of 90 days as a minimum and 14 days as a maximum before the validity of the Green Card expires.

During the period from 1 January 2009 to 31 December 2015, the total of 637 issued Green Cards were registered, of which 2 Green Cards were valid as at 31 December 2015.

## **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 decides on issuing of 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.

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 provided that the Blue Card holder will continue to fill a job position requiring a high qualification that can be pursuant to a special regulation filled with a foreigner. After the two years pass, the Blue Card holder is obliged to announce such changes to the Ministry of the Interior within the period of 3 working days.

During the period from 1 January 2011 to 31 December 2015, the total of 436 issued Blue Cards were registered, of which 224 Blue Cards were valid as at 31 December 2015.

## **Types of work permits**

An individual permit means a work permit, an Employee Card or a Blue Card of a foreigner in an employment relationship with a domestic employer. The domestic employer is a legal or natural person authorized to carry out economic activities on the territory of the CR on the grounds of a record in the competent Commercial Register or other register as determined by law (e.g. the Trade Licences Register or the Register of Patent Attorneys), a record in a relevant list (e.g. the list of auditors or the list of tax advisers), or an entry in specified registers kept by a competent authority of the CR (e.g. 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 territory of 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**

Nationals of the EU/EEA and Switzerland and their dependants do not need to have a work permit, an Employee Card or a Blue Card 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, to which citizens of the EU/EEA and Switzerland and their dependants were sent by their foreign employer, are obliged to inform in writing on this fact the locally competent regional labour office (depending on the locality of the workplace, where the work is performed), on the day of commencement of the performance of work of these persons, at the latest.

This duty to inform applies also to other foreign citizens who received a work permit, an Employee Card or a Blue Card or do not need a work permit (see letters a) to e) and letters j) to s) of the aforementioned information starting with “**A work permit, an Employee Card, a Blue Card or a Green Card is not required**”) for the performance of their work on the territory of the CR.

The employer is obliged to inform in writing the competent regional labour office within 10 calendar days at the latest that foreign nationals ended performance of their work or that their sending has finished. The same is valid also in the case that a foreign national has not commenced work.

The duty to inform that a foreigner (holder of an Employee Card or a Blue Card) has not commenced work has to be fulfilled by the employer within 45 calendar days at the latest since the date when the application of the foreigner for the issue of an Employee Card or a Blue Card was complied with.

### **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 performance of work.

With regards to changes of information systems during 2012–2015, only qualified estimates are available as for the total number of foreign nationals performing work on the territory of the CR in the employee status. According to the estimate, in the end of 2015, the respective regional labour offices registered 323 244 foreign nationals in total on the territory of the CR. Despite that, it can be stated that the number of foreign workers who need a work permit, an Employee Card or a Blue Card 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, an Employee Card or a Blue Card 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**

### **Foreigners holding a trade licence**

Pursuant to 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 pursuant 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 public registers), or found on the territory of the CR organizational units of their enterprises abroad. Pursuant 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 pursuant to the Act No 326/1999 Sb, unless it is a national of an EU Member State or a citizen of a state with which the CR concluded a treaty banning this restriction. 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 a trade licence**” (hereinafter as a foreigner with a 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 permanent residence, dependants of residents with a long-term stay, persons, who were granted asylum or subsidiary protection (hereinafter as refugees), and nationals of the EU Member States and citizens of Switzerland, Norway, Iceland, and Liechtenstein, and their dependants.

The number of entrepreneurs-foreigners holding a 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 for submitting documents stipulated by law. 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 acquisition of a long-term visa for business purposes stricter.

The trade licensing offices terminated trade licences of entrepreneurs-foreigners who had not submitted mandatory documents on the residence. Due to that, 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, among others, status of EU nationals 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 nationals, citizens of the countries acceding to the Agreement on the EEA, foreigners with permanent residence, dependants of residents with a 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 a residence permit a copy of an entry, the trade licence originates for him or her 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 a 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 duplicate 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 continued also in 2014. In 2015, a slight increase was recorded again.

The number of foreigners – EU nationals with a valid trade licence was constantly increasing; in 2004 and 2005 over 14 thousand foreign persons were doing business in the Czech Republic. In 2006, the number of foreigners – entrepreneurs dropped. The decrease was not deep and it can be explained by implementation of the planned data relocation from the existing local registers of entrepreneurs to the new central information system, which, among others, resulted in the elimination of duplicate entries recorded in the system of respective local registers. In 2007, however, the number of EU nationals holding a trade licence exceeded the level from the year 2005 and a significant increase occurred in 2008 and continued in the following years as well. Most of the foreigners are citizens of Slovakia (14.3 thousand), compared to 2014 (13.4 thousand) it is 0.9 thousand up; they are followed by Germans (2.9 thous.), among whom a slight decrease was recorded compared to 2014, and citizens of Poland (about 2.1 thous. persons). In 2015, the number of foreigners further dropped as for third-country nationals (about 1.3 thousand less compared to 2014). The majority of third-country nationals are citizens of Viet Nam (22 928) and the Ukraine (22 796). Compared to 2014 their number also decreased. As for other countries, there were over 1 thousand foreigners with a trade licence among citizens of the Russian Federation (2 367) and the United States (1 232). They are followed (with much lower number) by citizens of Moldova (the Republic of) (729) and Belarus (514).

### **3) Total employment of foreigners**

The total employment of foreigners refers to the sum of valid work permits, Employee Cards and Blue Cards of foreigners, the number of foreigners registered by regional labour offices, and the number of foreigners holding a 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 power of which is also to conduct administrative proceedings on imposition of fines for ascertained infractions and administrative delicts.

Controls of illegal employment in 2015 were made by teams of inspectors in cooperation with customs offices, the Police of the CR – the Alien Police Service, the Labour Office, the Czech Social Security Administration or, as the case may be, other bodies (trade licensing offices, revenue authorities). During 2015, these authorities controlled 9 044 (in 2014 it was 15 642) employers (5 164 legal persons, 3 880 natural persons - entrepreneurs); among 1 595 of them (in 2014 it was 1 118) performance of illegal employment was found. In total, 1 152 foreign citizens (in 2014 it was 834) performing illegal work were captured, of whom 294 were EU nationals (in 2014 it was 184 EU nationals) and 858 third-country nationals (in 2014 it was 650 third-country nationals). 337 foreigners performed illegal work in the form of employment without an employment relationship, 554 foreigners performed work that was in contradiction to their work permit or without a permit or in contradiction to a Green Card, a Blue Card or an Employee Card and 67 foreigners performed work without a valid residence permit on the territory of the Czech Republic, some of them failing to meet even several of the requirements.

Illegally working EU nationals were especially citizens of Romania, Slovakia, Bulgaria, and Hungary; as for foreigners, they were the most frequently citizens of the Ukraine and Viet Nam, some of them were citizens of Moldova (the Republic of), the Russian Federation, Albania, China,



*the Republic of Korea, Turkey, and Thailand. Illegal employment of foreign citizens was recorded mainly in the following economic activities: construction, accommodation, hotels and restaurants, wholesale and retail trade, and manufacturing.*

*In 2015, the SLIO imposed for administrative delicts in relation to illegal employment of third-country nationals **90** fines (in 2014 it was 270 fines) in the total amount of CZK **10 154 000** (in 2014 the amount of fines was CZK 51 000 000), of that number, fines in the total amount of CZK 4 954 000 are legally effective. Another 108 fines are proposed to be imposed or are pending.*