



Labour immigration in the Czech Republic – the commentary of the Ministry

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Abstract:

This article, written by an employee of the Ministry of Interior of the Czech Republic presents a brief survey of the impact of EU legislation on labour immigration of third-country nationals to the Czech Republic in the context of recent developments in the labour market. It further analyses the influence of certain EU Directives on the newly proposed Czech immigration system.

For the last decade, the Czech Republic has belonged among the Central European countries with the highest number of legal labour immigrants from non-EU states. After the outbreak of global economic crisis at the end of 2008, total number of third-country nationals employed in the Czech Republic rapidly decreased but still remained relatively high in comparison with the numbers registered in the neighbouring EU countries. The number of work permits issued to third-country nationals fell by more than 70 % between 2008 and 2012.¹ Although this figure is sometimes interpreted as the result of allegedly restrictive measures² taken by Czech authorities issuing work permits, visas and residence permits, in our view, it may satisfactorily be explained as a consequence of developments in Czech labour market - the decrease in job vacancies in economic sectors traditionally employing third-country nationals (e. g. construction and manufacturing), rising number of jobseekers registered by the Labour Office and the new competition from Bulgarian and Romanian nationals.³

¹ According to official statistics of the Ministry of Labour and Social Affairs, there were 128 934 work permits registered on 31 December 2008, while only 36 640 of them three years later. (The data are available at: http://portal.mpsv.cz/sz/stat/zam_ciz_stat_prisl). Although 2012 statistics have not been issued yet, available educated guess of the Ministry indicates that there was no increase in the number of work permits in 2012 either.

² No measures were taken to reduce the number of foreign employees in the Czech Republic. An example of what might have been perceived as a restrictive measure was a ban put on commercial temporary assignment (posting) of third-country nationals employed by private employment / recruitment agencies to other companies. Though this measure affected many third-country nationals employed by such agencies, it was by no means intended to push third country-nationals away from Czech labour market. Instead, it was taken to enhance responsibility of companies and enforce direct labour contracts between them and third-country nationals.

³ Bulgaria and Romania became the Member States of the EU in 2007. Their nationals were immediately, i.e. without any transitional period, given free access to Czech labour market. Many Czech employers subsequently gave them preference over third-country nationals needing work permits. (Employment of third-country nationals is always less flexible; an employer can never rely on approval of worker's work permit or extension of its validity by Czech authorities. In addition, an employer of third-country nationals has more duties to these authorities and faces the risk of higher fines if he fails to comply with them). While third country nationals

In spite of the severe impact of global economic crisis on Czech labour market, statistics of applications for employment-related visas and residence permits submitted in last four years by third-country nationals have shown that the Czech Republic is still a very attractive destination for labour immigrants. Therefore, an increased immigration inflow might be expected in a future period of restored economic growth.

This well-founded estimate⁴ is one of the important reasons why Czech authorities currently strive to introduce a brand new, more effective, flexible and transparent immigration system. This legislative challenge is not confined to labour immigration but concerns all types of economic and non-economic immigration. The new immigration system might be perceived as a complex set of strategic measures based on long-term planning and thorough evaluation of every piece of experience gained so far by Czech authorities in the field of immigration.

The main goals of the new immigration system are: (a) to eliminate detected deficiencies in current legislation, (b) to simplify migration-related procedures and reduce administrative burdens, (c) to enhance responsibilities of foreigners and subjects having interest in their immigration (employers, universities etc.), (d) to enable Czech authorities and inspection bodies to effectively check up the compliance of foreigner's activities with the approved purpose of stay, (e) to strengthen pro-integration measures. The concept of *labour immigration* is based on preference of permanent immigration of high-skilled third-country nationals and circular / temporary immigration of less skilled workers. The labour market will remain open for citizens of all countries.

In addition to that, key features of newly proposed legislation also stem from the best practice of other EU Member States and, of course, from the EU legislation. *EU Directives concerning labour immigration significantly change Czech legislation and contribute to its development.* With regard to *labour* immigration, there are three relevant Directives that have already been transposed into Czech legislation: "The Posting of Workers Directive" (96/71/EC), "The Blue Card Directive" (2009/50/EC) and "The Sanction Directive" (2009/52/EC). "The Single Permit Directive" (2011/98/EU) is currently being transposed and the ongoing discussions about the "Intra-corporate Transferees Directive" and "Seasonal Worker Directive" also have to be taken into account. *Since they are a compromise reached by all Member States, which considerably differ in structure of their domestic economies and labour markets, EU Directives sometimes inevitably fail to perfectly meet the needs of the Czech Republic - and more targeted solutions are sought on the national level.*

largely failed to keep their jobs in times of economic downturn, citizens of other EU Member States employed in the Czech Republic were (statistically) successful and their number slightly rose. However, the experience of Czech authorities has shown that EU citizens often have to cope with the same sort of problems like immigrants who are required to obtain work permits: dependency on networks of informal "employers", intermediaries and translators, insufficient or unpaid salaries, substandard working conditions and safety etc.

⁴ The Ministry of Interior registered almost 2 000 applications for employment-related long-term visas in 2012, even though the number of monthly submitted applications is currently limited by quotas in 5 selected third countries, including Ukraine which is the most important source country of labour immigration to the Czech Republic. In addition, third-country nationals submitted more than 300 applications for green cards and almost 100 applications for blue cards in 2012.

Blue cards were introduced in the Czech Republic on January 1, 2011. Two years later, they still have a marginal role and the whole project can hardly be considered successful. The Labour Office of the Czech Republic constantly registers only tens of job vacancies which employers are willing to fill with potential blue card holders. No explanatory analysis of this issue has been conducted on the national level yet.

On the other hand, the transposition of the “Blue Card Directive” has also had in our view many indirect but undeniably positive outcomes. For instance, Czech authorities took the opportunity to reject an application for a blue card in case the employer has been fined for enabling performance of undeclared work. Moreover, they decided to extend this rule to all the above-mentioned new single permits so that no sanctioned legal entity or a natural person are allowed to employ any third-country national during the period of next twelve months. Another example of the same approach is the generalization of the rule that an applicant has to present a valid work contract or a binding job offer specifying a salary not inferior to a relevant salary threshold.

A general temporary ban on employment of third-country nationals will in our opinion certainly be an important step forward in tackling undeclared employment of foreigners which is the subject matter of the “**Sanction Directive**”. Many sanctions imposable according to the Directive on employers of illegally staying (and working) third-country nationals, including criminal liability and penalties, had been introduced in the Czech Republic in 2008 and 2009, i. e. before the Directive which stipulated them was implemented. Among the sanctions implemented later, the exclusion of employers of illegally staying third-country nationals from entitlement to public benefits, aid or subsidies, including EU funding, and participation in public contracts for three years should be emphasized as an example of an effective deterrent and preventive measure which had been missing in the Czech legislation.

The concept of a **single permit**⁵ entitling its holder both to working and staying in the territory of the Czech Republic is definitely one of the pillars of the new immigration system. Legal acts establishing this system are expected to come into legal force in 2014. The new *Act on the Residence of Foreign Nationals in the Territory of the Czech Republic* introduces four new types of a single permit: two general types for all job vacancies (regardless of required qualification) and two special types for specific jobs:

- **National Visa for the Purpose of Employment** will be issued with maximum validity period of 12 months which cannot be extended.
- **Employee Card** will be issued for up to two years and will be repeatedly extendable.
- **High-skilled Employee Card** will be issued only for selected high-skilled professions which are in short supply in Czech labour market. Unlike the blue card, which facilitates mobility of high-skilled workers between EU Members States, the high-skilled employee card represents a national tool for brain-gain policy. Its holders will be eligible to apply for permanent residence after only two years of uninterrupted stay

⁵ Although the concept itself did not originate in EU legislation, its newly introduced application (i.e. the above-mentioned new immigration system) follows the principles of Single Permit Directive.

and work in the Czech Republic. They will also be immediately entitled to family reunification.

- ***Intra-corporate Transferee Card*** will be issued only to managers, specialists and graduate trainees temporarily transferred within the international corporations that established their branches or subsidiaries in the Czech Republic. If “The Intra-corporate Transferees Directive” is adopted in the future, the legislation will be amended in order to comply with its provisions.

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Third-country nationals employed in the Czech Republic as **seasonal workers** will be obliged to apply separately for work permits and residence permits.⁶

Thus, the transposition of EU legislation undoubtedly helps to fill the gaps in Czech legislation (e. g. the exclusion of employers of illegally staying third country nationals from public benefits and tenders). EU legislation further inspires and motivates Czech authorities to take deeper measures in order to secure more effective management of migration flows (e. g. completely new labour immigration system based on single permits and certain rules derived from “The Blue Card Directive”).

The article has been written as part of the project Migration to the Centre supported by the Europe for Citizens Programme of the European Union and the International Visegrad Fund.

This article reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



Funded by the Europe for
Citizens Programme
of the European Union



⁶ These vacancies will not be incorporated into the system of single permits mainly because of the specific nature of these time-limited and non-extendable jobs.