

AMENDMENTS TO THE CROATIAN FOREIGNERS ACT

On 30 June 2017, the Croatian Parliament adopted extensive amendments to the existing Foreigners Act in order to implement relevant EU legislation and clarify certain provisions subject to different interpretation in practice.

The existing Foreigners Act (Official Gazette No. 130/11, 74/13, and 69/17; "Foreigners Act") sets out detailed rules for entry, work and stay of foreigners on Croatian territory. While the introduced amendments do not substantially change the general framework of residence and work permits, certain existing provisions were clarified and new rules related to (i) posted, (ii) seasonal workers, and (iii) intra-corporate transferees were introduced.

CLARIFICATIONS OF THE EXISTING FRAMEWORK

One of the legislator's main tasks was to clarify and improve certain unclear provisions of the existing Foreigners Act, namely:

- redefinition of the concept of family members in relation to same-sex relationships;
- determination of income for independent workers applying for work and residence permits;
- definition of foreigners whose stay is not calculated as the period for the permanent stay;
- technical improvements in relation to the conditions for the approval of permanent stay;
- precise definition of the registration procedure for foreigners on short stay;
- precise stipulation of the registration procedure for temporary and permanent residence;
- more detailed elaboration of effective measures for ensuring the return of foreigners.

IMPLEMENTATION OF THE RELEVANT EU LAW

The amendments to the Foreigners Act include a new set of rules, as required under three EU directives – Enforcement Directive¹, Seasonal Workers Directive² and Intra Corporate Transfer Directive³.

In line with the Enforcement Directive, a common framework of measures required for efficient enforcement of the rules regulating the status of posted workers across the EU was introduced, which includes:

- an obligation of foreign employers to appoint a posting representative;
- stronger judicial protection, information access and administrative cooperation;
- special provisions related to a more efficient inspection of the posted workers.

Further amendments relate to the legal status of third-country seasonal workers, as introduced under the Seasonal Workers Directive. The implementation of the Seasonal Workers Directive into Croatian legislation should contribute to the effective management of migration flows for seasonal and temporary migration and ensure decent working and living conditions for seasonal workers. The main changes in relation to the seasonal workers include the following:

- the definition of seasonal workers is generally redefined;
- third-country seasonal workers are entitled to work up to either 90 days or 6 months;
- special pre-conditions are set out for obtaining work and residence permits;
- the maximum duration of stay for seasonal workers in Croatia is set at 6 months;
- one-time extension of work and residence permits for seasonal work is permitted;
- seasonal workers should be entitled to equal labour rights as Croatian nationals.

¹ Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System

² Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

³ Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

The final set of important amendments to the Foreigners Act relates to the implementation of the Intra Corporate Transfer Directive that regulates intra-corporate transfer of employees. The Intra Corporate Transfer Directive aims to facilitate mobility of intra-corporate transferees within the EU and to reduce the associated administrative burden. For this purpose, the Intra Corporate Transfer Directive introduces a specific intra-EU mobility scheme, whereby holders of valid intra-corporate transferee permits issued by an EU Member State are allowed to enter, stay and work in one or more Member States in accordance with the provisions governing short-term and long-term mobility. In this respect, the following most relevant changes of the Foreigners Act were introduced:

- exact definition of the term of intra-corporate transferee (managers, experts and trainees);
- definition of (i) the pre-conditions for intra-corporate transferee work and residence permit, and (ii) the maximum duration of stay for intra-corporate transferees;
- third-country nationals are entitled to work in Croatia up to 90 days within a 180-day period without obtaining a work and residence permit or work registration certificate, provided that an intra-corporate transfer permit is issued by an EEA member or Switzerland;
- third-country nationals are entitled to obtain a work and residence permit for long-term mobility in Croatia, if an intra-corporate transferee would work for more than 90 days in a business entity in Croatia within the corporate structure of the parent company;
- intra-corporate transferees are entitled to equal labour rights as Croatian nationals.

Discussions in relation to the EU labour market are currently ongoing throughout Europe and Croatia is no exception. The law making procedure of amendments to the Foreigners Act was long lasting and exhausting. As the transposition deadlines for all three mentioned directives had passed in 2016, the European Commission opened an infringement case against Croatia for missing the implementation deadline regarding the Enforcement Directive. Challenges relating to labour force migration and social dumping were also extensively discussed in the Croatian Parliament. It remains to be seen whether the adopted amendments to the Foreigners Act indeed represent a balanced and optimal solution in the current political and geographical setting or if further amendments will soon be needed.

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